AN IMPERFECT SYSTEM: AN INNOCENT MAN

Petition for Executive Clemency
for
Dennis Waldon Stockton

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INTRODUCTION

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Bowman, who was the critical prosecution witness, has now admitted that he lied on the stand when he testified that Mr. Stockton agreed to kill Mr. Arnder for money. Bowman's credibility at trial was protected by an unscrupulous prosecutor, who illegally withheld evidence that Bowman got a deal in exchange for his testimony, as well as other evidence helpful to Mr. Stockton. But the undisclosed deal was not the only reason that Bowman lied on the stand.

We now know the other reason. Bowman was the real killer. Two witnesses swear that Bowman admitted that he, in fact, killed Mr. Arnder. Bowman confessed to the murder to his then-wife at the time he committed the murder, and again just last winter to a friend.

Other evidence corroborates these witnesses. Bowman, a convicted felon and an extremely violent man, has already admitted three times under oath that the offer to kill Mr. Arnder was first made to him. Bowman, not Mr. Stockton, possessed a machete at the time of the murder that was capable of causing the severing wounds inflicted on Mr. Arnder's body. Bowman's own son, who Bowman sought to corrupt by including him on Bowman's frequent criminal jaunts, swears that Bowman admitted that he had killed more than one person.

By contrast, the evidence against Mr. Stockton was meager, even putting aside the gross misconduct by the prosecution. No physical, eyewitness, or other direct evidence has ever connected Mr. Stockton with Mr. Arnder's death or the murder scene. When one considers that almost every piece of testimony against petitioner was tainted

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by prosecutorial misconduct, and that the chief prosecution witness lied on the stand to save himself from a capital murder charge, it is clear that Mr. Stockton should not be in prison, let alone facing imminent execution.

As discussed below, even one of the investigators in the Patrick County Sheriff's Department who investigated this crime states: "By the end of the investigation and conviction of Dennis Stockton I reached the conclusion, in my own mind, that the evidence was insufficient to convict Mr. Stockton beyond a reasonable doubt. That is, notwithstanding the jury's verdict, I believe there is a question whether Mr. Stockton is guilty."

Dennis Stockton's trial was a travesty. In this case where the Commonwealth sought the death penalty, the prosecutor intentionally failed to turn over evidence that would have proven conclusively that the real killer, who both confessed to the crime and that he committed perjury against Mr. Stockton, got a deal in exchange for his testimony, and then lied about it on the stand. The prosecutor also failed to turn over other evidence that would have materially helped Mr. Stockton's defense.

Moreover, at the urging of that same prosecutor, Mr. Stockton was denied the services of an investigator, despite the fact that most of the relevant witnesses lived in North Carolina. Without an investigator, Mr. Stockton's lawyers had no real opportunity to discover either evidence of Bowman's guilt or the other evidence that was covered up by the prosecution.

The rank unfairness of these proceedings did not end upon Mr. Stockton's conviction. Mr. Stockton was represented in his first two habeas proceedings by the law firm of Mary Sue Terry, who later as Attorney General violated well-established cannons of legal ethics by appearing on subsequent briefs for the Office of the Attorney General seeking Mr. Stockton's continued imprisonment and execution. In addition, prison authorities, with the backing of the Office of the Attorney General, recently blocked Mr. Stockton from taking a polygraph test to establish his innocence.

Up to now, the courts have refused to grant Mr. Stockton a new, fair trial. Stockton's last hope, and the last hope that truth and fairness will prevail, reside in the Governor of the Commonwealth. Because he is innocent of capital murder, and because the trial that convicted him of capital murder was grossly unfair, Mr. Stockton respectfully requests that the Governor grant him clemency.

I. DENNIS STOCKTON IS INNOCENT

A. There Was Little Evidence Against Stockton

Kenneth Arnder was last seen alive on July 20, 1978. His mother testified that, after Arnder had placed several telephone calls that day, Stockton picked him up at her home in Mount Airy, North Carolina. She further testified that Arnder told her that he was going to Kibler Valley in Patrick County, Virginia to let things "cool off" because he had stolen some automobile wheels. Arnder's body was found on July 25, 1978 in Surry County, North Carolina. He had been shot once in the head and his hands had been severed.

Stockton was not arrested until almost four years after Arnder's body was found. To this day, particularly in light of that four-year window of investigation, the lack of evidence against Stockton is remarkable:

- *No physical or direct evidence connected Mr. Stockton with Mr. Arnder's death, and no such evidence has ever been found;*
- *No eyewitness ever connected Mr. Stockton with either the murder or the alleged murder scene;*
- *No evidence connected Stockton with any alleged murder weapon;*
- *No murder weapon has ever been produced;* and
- *The person who allegedly hired Stockton to kill Arnder has never been tried for the hiring.*

Why, then, was Dennis Stockton even arrested, let alone convicted and sentenced to death, for the Arnder murder?

B. Randy Bowman Committed Perjury

Four years after the crime, on June 23, 1982, Randy Bowman, a convicted felon, sought out and volunteered a statement to police saying that, in 1978, he was present in the living room of Tommy McBride in Mount Airy, North Carolina in the presence of four other persons when he heard Mr. Stockton agree to kill Mr. Arnder for McBride. Two days later, Stockton was arrested.

However, at trial, of all the persons allegedly present at McBride's house that day, only Randy Bowman testified that any such conversation ever took place. Indeed, *every other witness alleged by Bowman to have been present at the alleged meeting at McBride's home, including McBride himself, denied that any such meeting had ever occurred, let alone that any such conversation had taken place.*[1] Whether the prosecution could establish that Mr. Stockton was guilty of murder-for-hire, therefore, turned entirely on Bowman's credibility.

At the time of his testimony, however, Bowman was an imprisoned felon. Well aware that the jury might wonder about Bowman's motives for testifying, the prosecutor sought to allay the jury's concerns and defuse any cross-examination on the subject. He encouraged and allowed Bowman to testify that his primary motive for testifying was that "it would be the right thing to do;" that although he "hoped" that his testimony might help reduce his sentence, he denigrated the significance of that consideration, saying that "I don't really have much time left, so it can't help me much." (Exhibit B, Testimony of Randy Bowman at 400.)

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[1] In addition to Bowman, McBride and Mr. Stockton, the other persons allegedly present at this alleged "meeting" were McBride's wife, Diane; J.C. Hatcher, and Donnie Tate. All but Tate testified at Mr. Stockton's trial, and each testified that no such meeting at McBride's home had ever occurred. (Testimony of Diane McBride at 472-73; Testimony of Tommy McBride at 484; Testimony of J. C. Hatcher at 501-02.) The relevant portions of their trial testimony are attached as Exhibit A.

Bowman was asked, and specifically denied, that he had received any promises in return for his testimony. (Exhibit B at 399-400.) Bowman persisted in his stance on cross-examination: when asked whether the prosecution had promised that "they would do all they could to see that [he] got what consideration [he] could get" for his testimony, Bowman testified "naw, they didn't make any promises." (Exhibit B at 411.) As it turned out, this was a bald-faced lie, and the prosecutor knew it. The prosecution's complicity in Bowman's perjury, as well as the many other instances of prosecutorial misconduct and elemental unfairness in Mr. Stockton's trial which are discussed in Section IV below, have been well documented. The other and more important reason why Bowman lied, however, remained a secret until now.

II. RANDY BOWMAN IS THE REAL KILLER

Startling new evidence has now come to light that explains why Randy Bowman was so anxious to volunteer Mr. Stockton for the Arnder murder. That evidence leads to only one conclusion: Randy Bowman is, in fact, Kenny Arnder's murderer. Certainly, the evidence against Bowman is exponentially more compelling than the tissue-thin case against Mr. Stockton.

First, Bowman clearly and unequivocally confessed to killing Mr. Arnder, not once but twice. Bowman's then-wife, Patricia McHone, has sworn under oath that, in the summer of 1978 which was contemporaneous with Mr. Arnder's murder, Bowman returned home and told Ms. McHone that he had just killed Mr. Arnder. (Affidavit of Patricia Ann McHone at ¶ 6, attached hereto as Exhibit C.)

This compelling testimony does not stand alone. Kathy Carreon, who was a close friend of Bowman's, has declared under penalty of perjury that Bowman told her in the winter of 1994 that Bowman "killed Kenny Arnder with the help of two friends." (Declaration of Kathy Carreon, attached hereto as Exhibit D.)

Second, Bowman himself supplies his motive for killing Mr. Arnder. In his testimony at the preliminary hearing, Bowman admitted that he was first offered money by McBride to kill Mr. Arnder. (Transcript of August 17, 1982 Preliminary Hearing at 31, attached hereto as Exhibit E.) Bowman's trial testimony is more incriminating: at trial, Bowman admitted that McBride offered the contract to Bowman instead of Mr. Bowman, and that he thought about accepting the contract to kill Mr. Arnder. (Exhibit B at 409.) For a third time, in an affidavit he signed just four months ago in an unavailing attempt to rebut his clear recantation of his trial testimony, Bowman again admitted that McBride offered him the money. (Affidavit of Randy Bowman, May 8, 1995, attached hereto Exhibit F.) Mr. Stockton's name emerges in this transaction only because Bowman put it there. The true facts are obvious: Bowman substituted Mr. Stockton's name for his own.

Third, Ms. McHone swore under oath that, in the summer of 1978 and contemporaneously with Mr. Arnder's murder, Bowman possessed not only numerous firearms of every caliber, but also a machete. (Exhibit C at ¶ 7.) No weapon capable of severing Mr. Arnder's hands has ever been connected with Mr. Stockton. However, Bowman's machete could easily have accomplished that task. Bowman's possession of such a weapon is powerful corroborative evidence of his guilt.

Fourth, Bowman's own son, Timothy Crabtree, has sworn under oath that Bowman admitted to him that he had killed more than one person, and that he even kept a journal listing at least some of the people that he had injured. (Affidavit of Timothy Crabtree at ¶ 7-8, attached hereto as Exhibit G.)[2]

Fifth, Bowman's character, as well as his prior and present conduct, are perfectly consistent with both his commission of this offense and his perjury to avoid justice.

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[2] Authorities in North Carolina and Virginia were advised about the existence of both this affidavit and the journal before they were revealed in public documents. However, apparently no effort was made to secure a search warrant or to take any other action to preserve this evidence.

Statements of those close to Bowman reveal a heartless brute without conscience or morality. Both his former wife and son swear that Bowman is an extremely violent person, whose reputation for violence is well known. (Exhibit C at ¶ 3-5; Exhibit G at ¶ 9.) Bowman regularly attacked and injured people, and repeatedly threatened to kill Ms. McHone and their child. (Exhibit C at ¶ 3.) Bowman's attacks on Ms. McHone were so violent that several required her hospitalization. (Exhibit C at ¶ 3.) Bowman even regularly beat his own mother. (Exhibit C at ¶ 3; Exhibit G at ¶ 7.)

Bowman would do anything to avoid punishment for his crimes. Ms. McHone tells of one occasion when Bowman had someone drive an automobile over Bowman's leg so that he could be hospitalized on the day that he was due to appear in court. (Exhibit C at ¶ 5.) Ms. McHone tells of another time when Bowman actually shot himself in the shoulder in order to avoid appearing in court. (Exhibit C at ¶ 5.) Compared to these instances, lying about Mr. Stockton being involved in Arnder's death was child's play, particularly given the stakes involved.

Both Ms. McHone and Timothy Crabtree are extremely frightened of Randy Bowman. (Exhibit C at ¶ 1, 8; Exhibit G at ¶ 9.) They nevertheless have come forward to give evidence against Bowman. Their willingness to do so is powerful evidence that they are telling the truth about Bowman's confessions at great risk to themselves.

III. BOWMAN HAS RECANTED HIS TESTIMONY AGAINST STOCKTON

A. Bowman's Recantation

Randy Bowman has finally admitted that he lied during Stockton's trial. On April 20, 1995, Bowman admitted to Joe Jackson, a staff reporter for the Virginian-Pilot newspaper in Norfolk, Virginia, that he had not heard Stockton accept an offer of money to kill the victim. (April 26, 1995 Virginian-Pilot article, attached hereto as Exhibit H.) Bowman said specifically: *"I don't know if [McBride and Stockton] made a deal*

. . . . I was in [McBride's house] to sell something. The subject came up . . . how [McBride] would like to have him dead, so I'm out of there. *I've never said I heard -- I didn't hear Stockton say, "I'm going to do it."* Jackson confirmed that, "[q]uestioned several times about the apparent contradiction between his 1983 testimony and his new claim, Bowman repeatedly said he left immediately after McBride made the offer."

Bowman's clear exoneration of Stockton is confirmed in the affidavit of Joe Jackson, attached hereto as Exhibit I. In his affidavit, Jackson confirms that Bowman thoroughly and repeatedly recanted his 1983 testimony. (Exhibit I at ¶ 2.) Jackson took "scrupulous notes" during his interview of Bowman. (Exhibit I at ¶ 2.) Jackson reviewed his article and affirmed in his affidavit that everything in the article was true. (Exhibit I at ¶ 3.) Moreover, Jackson stated that, if called, he would testify that Bowman did indeed recant his trial testimony. (Exhibit I at ¶ 4.)[3]

B. Other Evidence Corroborates Bowman's Retraction

As discussed earlier, almost no evidence pointed to Stockton's guilt. By contrast, there is substantial and compelling evidence corroborating both Bowman's retraction and Jackson's affidavit confirming Bowman's retraction.

1. Clifford Boyd

Clifford Boyd was a certified investigator in the Patrick County, Virginia Sheriff's Department during the investigation of this crime and at the time of Mr. Stockton's arrest and trial, and worked on the investigation of this crime. Mr. Boyd confirms under oath that he knew that Bowman "was offered promises in exchange for his testimony against Mr. Stockton;" and that Mr. Boyd "communicated this to his

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[3] After the article appeared, the Commonwealth sent two police officers -- one from North Carolina, where Bowman lives -- to Bowman's house and convinced him to sigh an affidavit disavowing his confession to Jackson. However, a credibility contest between Joe Jackson and Randy Bowman -- who, upon information and belief, has now been charged with yet another burglary in North Carolina -- is in fact no contest.

superiors." (Affidavit of Clifford Boyd at ¶ 7, attached hereto as Exhibit J.) Indeed, Mr. Boyd states that he "was surprised to learn that Bowman testified at Mr. Stockton's trial that he was made no promises and that the government allowed him to say that under oath." (Exhibit J at ¶ 7.)

Mr. Boyd also points out that "McBride was a reasonably intelligent person and would never hire someone to commit murder in the presence of [an] unsavory character like Randy Bowman." (Exhibit J at ¶ 6.) Mr. Boyd concludes: "By the end of the investigation and conviction of Dennis Stockton I reached the conclusion, in my own mind, that the evidence was insufficient to convict Mr. Stockton beyond a reasonable doubt. That is, notwithstanding the jury's verdict, I believe there is a question whether Mr. Stockton is guilty." (Exhibit J at ¶ 4.)

2. Frank Burton Cox

Frank Burton Cox was incarcerated in the Patrick County Jail from March 11, 1983 until August 1983. (Affidavit of Frank Burton Cox at ¶ 2, attached hereto as Exhibit K.) Cox stated in a 1984 affidavit filed in the Patrick County Circuit Court that Bowman was a trustee at the jail during Stockton's trial in March 1983, and that Cox had substantial contact with Bowman during this time. (Exhibit K at ¶ 2.) Cox stated that Bowman told Cox that he had lied at Stockton's trial, and that he was angry with officials at the jail who had "not acted fairly as they were supposed to have done after he had testified against Stockton." (Exhibit K at 3.) According to Cox, Bowman also asked Cox whether he needed a witness for his own trial, and that Bowman said that "he was willing to testify to anything [Cox] wanted [Bowman] to on the witness stand." (Exhibit K at ¶ 4.)

IV. DENNIS STOCKTON DID NOT RECEIVE A FAIR TRIAL

A. The Trial Prosecutor Knowingly Helped Bowman Lie On The Witness Stand

On September 3, 1982, before his trial started, Stockton's trial lawyers filed a Motion for Discovery in the trial court. In that motion, Stockton requested that the court order the Commonwealth to provide his trial counsel with "any and all information exculpatory in nature," "the name and address of any other person implicated in the crime charged in this case" and "cop[ies] of any statements made by any of the above persons." (Motion for Discovery, attached as Exhibit L.) Stockton had a constitutional right to this information. In response, during a September 27, 1982 pretrial discovery hearing, the trial prosecutor expressly stated that the Commonwealth had no such information. (Transcript of September 27, 1982 Pretrial Discovery Hearing at 275-76, attached hereto as Exhibit M.)

This was not true. On February 28, 1990 -- *seven years after Stockton was sentenced to death* -- the trial prosecutor finally turned over, among other illegally-withheld evidence, a letter that Bowman had written to the investigating sheriff before trial. In the letter, Bowman wrote:

> I'm writing to let you know that I'm not going to court unless you can get this 6 or 7 months I've got leaf [sic] cutoff where I don't have to come back to prison . . . .

(Attached hereto as Exhibit N.)

Moreover, the cover letter that accompanied the withheld evidence revealed for the first time that Bowman had received a prosecutor's promise in exchange for his testimony against Stockton. The trial prosecutor's February 28, 1990 letter states as follows:

> I am not aware of any promises made to Bowman other than that *I told him that I would endeavor to see that he would be transferred.*

(February 28, 1990 Giorno Letter, attached hereto as Exhibit O.)

Even the Virginia Attorney General's Office now admits that Bowman received a promise in exchange for his testimony.. In their brief filed before the United States Court of Appeals for the Fourth Circuit, the Attorney General's Office conceded: *"There is no substantial dispute that the Commonwealth's attorney had told Bowman that he would do what he could to help Bowman get a transfer within the North Carolina correctional system in return for his cooperation in the Stockton case."* (Brief of Appellee at 28.)

As noted earlier, McBride has never been tried for the alleged hiring. The North Carolina authorities have refused to prosecute McBride on the strength of Randy Bowman's credibility. This refusal was more than justified, as recent events have confirmed.

B. Dennis Stockton's Defense Counsel Was Unfairly Denied The Service of An Investigator

In 1982, Mr. Stockton was appointed a lawyer to represent him on this capital murder charge. At that time, Philip Gardner had been a lawyer in Martinsville for about 10 years and had experience in serious criminal cases, although he had never handled a capital case before. (Affidavit of Philip Gardner at ¶ 3, attached hereto as Exhibit P.) Mr. Gardner realized early on that the only connection this case had with Virginia was the alleged place of the murder, however, all of the witnesses, the police investigation, the location and discovery of the decedent and the physical evidence were all in North Carolina. (Exhibit P at ¶ 4.) Mr. Gardner did not know the relevant geography in North Carolina, he did not know the people involved with the investigation there, he had no contacts and he knew nothing about the possible witnesses that needed to be interviewed. (Exhibit P at ¶ 9.) The case he was assigned was 4 years old and the evidence was stale. (Exhibit P at ¶¶ 3, 6.)

Mr. Gardner admits that he was not professionally trained as an investigator, that he did not know the techniques employed by a trained investigator and that he did

not know the tricks-of-the-trade to find witnesses who did not want to be found. Mr. Gardner summed it up in his affidavit, "My communicative skills are not geared towards infiltration of the criminal element where the likes of Randy Bowman thrive." (Exhibit P at ¶ 9.)

Mr. Gardner filed a motion requesting the assistance of an investigator. In response, the Commonwealth's Attorney argued, incredibly, that Mr. Gardner could get information from the Commonwealth's investigators. The trial court concluded that Mr. Stockton did not have a right to an investigator and denied his motion. Instead, the Court assigned a second lawyer, in lieu of an investigator, to assist Mr. Gardner. The second attorney was inexperienced and green and offered no additional investigative help along the lines needed by Mr. Gardner.

The government, on the other hand, utilized the Patrick County Sheriff's Department, the Virginia State Police, the North Carolina State Bureau of Investigation and the Surry County, North Carolina Sheriff's Department. Each of those law enforcement departments contributed to the prosecution of Mr. Stockton.[4]

What we now know in this case dramatizes how critical an investigator would have been. In recent months, hundreds of hours have been expended in the renewed investigation of this case and the results are revealing and compelling. The government's opposition to a fair fight contributes to the impression that the

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[4] We now know that one of the Patrick County Sheriff's investigators on the case, Clifford Boyd, believes that there is a question of Mr. Stockton's guilt. (Exhibit J.) Mr. Boyd, now retired, said that the witnesses against Mr. Stockton lacked the "confidence" of credibility. Each of the key witnesses against Mr. Stockton were felons, two of whom were serving sentences when they testified. Indeed, the State of North Carolina chose not to prosecute Tommy McBride, the alleged hirer, on the strength of Randy Bowman's testimony.

In a message to your Honor, Mr. Boyd concludes, "I am a strong advocate of the death penalty However, I must say this case has deeply bothered me for years and I have waited to see if the courts would intervene. I am troubled that an innocent man may be put to death. I urge you to prevent a miscarriage of justice." (Exhibit J at ¶ 9.)

government would do anything to obtain a conviction. The overall impression about this case is that Mr. Stockton did not receive a fair trial.

C. The Former Attorney General, Mary Sue Terry, Unethically And Improperly Sought The Execution Of The Former Client Of Her Law Firm

Two law firms represented Mr. Stockton when he filed his first petition for a writ of habeas corpus in 1985. One of the firms was the two-person firm of Rogers & Terry. In 1985, Mr. Stockton filed a second writ of habeas corpus and was again represented by Rogers & Terry. In 1986, Mary Sue Terry, of Rogers & Terry, became Attorney General of Virginia. Throughout her tenure in that office, Ms. Terry fought vigorously to have Mr. Stockton executed. Ms. Terry's name appeared on the legal material submitted to the various courts which considered Mr. Stockton's petitions.

Mr. Terry's appearance as defender and then prosecutor of the same client for the same events was abhorrent and reprehensible conduct by a lawyer. It violated the most fundamental and basic tenets of the legal profession and it tarnishes the appearance of the pursuit of justice.

Canon 5 of the Code of Professional Responsibility for lawyers practicing law in Virginia prohibits the prosecution undertaken by Ms. Terry. Specifically, DR 5-105(D) states:

> A lawyer who has represented a client in a matter shall not thereafter represent another person in the same or substantially related matter if the interest of that person is adverse in any material respect to the interest of the former client unless the former client consents after disclosure.

As Attorney General, Ms. Terry was the chief law enforcement officer of the Commonwealth. There is no indication that Ms. Terry recused herself from Mr. Stockton's prosecution or otherwise took any steps to comply with the letter or spirit of DR 5-105(D). Her aggressive representation of the Commonwealth against her former client, in violation of the ethical rules, should be condemned.

Mr. Stockton deserves, as do all citizens of the Commonwealth, to be protected by their own counsel and by the Attorney General of Virginia. The conduct of the former Attorney General fell woefully short of this requirement. The Commonwealth of Virginia must always act in a fair and just manner, and must also always give an appearance of being fair and just. That appearance is absent here.

D. The Prison Authorities And The Attorney General's Office Unfairly Prevented Dennis Stockton From Taking A Polygraph Test To Establish His Innocence

In July of 1995, counsel for Mr. Stockton attempted to administer a polygraph examination to Mr. Stockton in advance of any final court decisions in this case, so that Mr. Stockton would not be influenced by the usual stress and tension created by an imminent execution date, and because the test would therefore accurately assess the veracity of his responses. The polygraph results were intended to be submitted with any petition for clemency which might become necessary. In July of 1995, no execution date had yet been sent.

However, counsel's request for the polygraph to take place was denied by Warden Netherland of Mechlenberg Correctional Center (Exhibit Q), and that denial was affirmed by the Regional Director in the Department of Corrections and approved by the office of the Attorney General of Virginia. This denial was unreasonable and gives the impression that the state does not want to know the truth.

V. THE GOVERNOR SHOULD GRANT MR. STOCKTON CLEMENCY BECAUSE THERE IS SUBSTANTIAL DOUBT THAT HE IS GUILTY

After Randy Bowman admitted that he had lied at Mr. Stockton's trial, Virginia's largest newspaper, the Virginian-Pilot, said in an editorial that "Because a key witness has changed his story, we can no longer be certain that . . . Dennis W. Stockton murdered Kenneth Wayne Arnder . . . in 1978, and did it for money." (Exhibit R.) In a

second editorial, that newspaper said: "It is no longer clear beyond a reasonable doubt that [Dennis Stockton] deserves to die." (Exhibit S.)

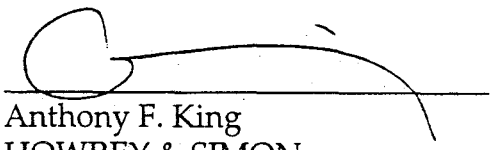
All that was before it became clear that, in fact, Randy Bowman is the real killer, and that Randy Bowman lied in order to get away with murder. Nevertheless, Dennis Stockton still faces death on September 27.

An imperfect system has resulted in the conviction and imminent execution of the wrong person. It is precisely for such cases that the Virginia Constitution vests the Governor of the Commonwealth with the power to grant clemency. This power allows the Governor to prevent the almost unimaginable horror of the execution of an innocent man.

The courts have failed. It is up to the Governor. Mr. Stockton respectfully requests that the Governor grant him clemency.

Respectfully submitted,

DENNIS WALDON STOCKTON
BY:



September 20, 1995

Anthony F. King
HOWREY & SIMON
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Phone: (202) 783-0800
Fax: (202) 383-6610

Steven D. Rosenfield
917 E. Jefferson Street
Charlottesville, Virginia 22901
Phone: (804) 296-4139
Fax: (804) 296-1209

Exhibit
1

A. No, sir.

MR. GIORNO: All right. That's all.

The next witness for the defense, TOMMY LEE MCBRIDE, having been duly sworn, testified as follows:

DIRECT EXAMINATION - QUESTIONS BY MR. ARMSTRONG

Q. Would you state your full name for the Court?

A. Tommy Lee McBride.

Q. How old are you, Mr. McBride?

A. 44.

Q. Mr. McBride, did, at any time, during the summer of 197 did you put out a contract to have Kenny Arnder killed?

A. No, sir.

Q. Did you ever offer such a contact to Dennis Stockton?

A. No, sir.

Q. Did you ever offer such a contract to Randy Bowman?

A. No, sir.

Q. Did a meeting ever take place at your house during the summer of 78 or any other time for that matter in which the murder of Kenny Arnder was discussed?

A. No, sir.

Q. Did you ever meet at your house with Randy Bowman, an individual named Mr. Sunshine Hatcher, Dennis Stockton, a Mr. Tate concerning the killing of Mr. Kenny Arnder?

A. No, sir.

Q. Did you know Kenny Arnder?

A. No, sir.

RE-DIRECT EXAMINATION - QUESTIONS BY MR. GARDNER

Q. Mr. STockton, you had said--when I had asked you you said you weren't exactly sure when he was up there but you thought it was at least through January or February and then when Mr. Giorno asked if you had your old phone records and you said that you did and you looked at your phone records, you found a call or Mr. Giorno found for you a call that was made to you from Dennis in March, is that correct?

A. Yes, sir.

Q. All right. Thank you.

The next witness for the defense, DIANE MCBRIDE, having been duly sworn, testified as follows:

DIRECT EXAMINATION - QUESTIONS BY MR. GARDNER

Q. Tell the ladies and gentlemen of the jury your name, please.

A. Diane McBride.

Q. Where do you live Mrs. McBride?

A. Mount Airy.

Q. Mount Airy?

A. Yes.

Q. Where did you live in 1978?

A. North Franklin Road.

Q. What is the name of your husband?

A. Tommy McBride.

Q. Now, Mrs. McBride, I'd like to direct your attention please to June of 1978, were you living on Franklin Road there?

A. Yes, I was.

Q. Are there any stores in that location?

A. Yes, there is.

Q. And what store is that?

A. The Pantry.

Q. And what is the relation of your house to the Pantry?

A. It's next door.

Q. Next door. And was your husband living there at that time?

A. Yes, he was.

Q. Mr. Tommy McBride?

A. Yes, sir.

Q. All right. Now, Mrs. McBride, during June of 1978 do you recall a meeting or were you present at a meeting or a gathering when Mr. Tommy McBride was present and a Dennis Stockton present and a Mr. Bowman present and perhaps, a fellow named Sunshine Hatcher and maybe a fellow named Smith, do you remember any such meeting as that?

A. No, sir, I do not.

Q. Were you ever present at a meeting of any of those individuals that I've just named when there was talk of someone being killed named Kenny Arnder?

A. No, sir.

Q. Were you ever present at any meetings with any of these people I'm talking about when Dennis Stockton agreed to do anything for your husband to Kenny Arnder for money?

A. No, sir.

A. He was up there several times.

Q. Why did he come up there?

A. Just friend of mine.

Q. All these just friends of yours?

A. Right.

RE - CROSS EXAMINATION - QUESTIONS BY MR. ARMSTRONG

Q. Mr. McBride, you made statements denying that you had anything to do with the Kenny Arnder killing or that you'd let a contract long before you were indicted for this crime, did you not?

A. That's exactly right.

The next witness for the defense, J. C. (SUNSHINE) HATCHER, having been duly sworn, testified as follows:

DIRECT EXAMINATION - QUESTIONS BY MR. GARDNER

Q. Please tell the jury your name.

A. J. C. Hatcher.

Q. Do you have a nick-name?

A. Sunshine.

Q. Ah, Mr. Hatcher, where were you living in 1978?

A. I was in Florida.

Q. Were you at Tommy McBride's house in 1978 in June or July?

A. No, sir.

Q. And where were you in Florida?

A. In jail.

Q. In June?

A. Yes, sir.

Q. You were not at Tommy McBride's house at any time in June of 1978?

A. No, sir.

Q. Were you at Tommy McBride's house at any time when, ah, a fellow named Bowman was there and Stockton was there and Diane McBride was there and there was talk of killing a boy named Arnder.

A. No, sir.

Q. All right. And where are you now? Where are you pulling time now?

A. Chatham, Virginia.

Q. In Chatham?

A. Yes, sir.

Q. Were you subpoenaed here today?

A. Yes, sir.

CROSS EXAMINATION - QUESTIONS BY MR. GIORNO

Q. Mr. Hatcher, how many felonies have you been convicted of?

A. Beg your pardon?

Q. How many felonies have you been convicted of?

A. Oh, I don't know. Quite a few of them.

Q. Quite a few of them. How many is quite a few?

A. About nine or ten.

Q. About nine or ten. What kind were they?

A. Drugs, B and E.

Q. Well, tell me about the drugs. What kind of drugs? Were you selling drugs or using them or what?

A. Selling.

Exhibit
2

it among yourselves and do not make any further investigations on your own. All right, you're now excused until 9:30 tomorrow morning.

3/22/83

The next witness for the Commonwealth, RANDY BOWMAN, having been duly sworn, testified as follows:

DIRECT EXAMINATION - QUESTIONS BY MR. GIORNO

Q. Would you state your name, please, sir.

A. Randy Bowman.

Q. Mr. Bowman, how old are you?

A. 28.

Q. Are you a convicted felon?

A. Yes, sir.

Q. How many felonies have you been convicted of?

A. Three or four.

Q. What kind of crimes have you been convicted of?

A. Forgery, assault with a deadly weapon, breaking and entering and larceny.

Q. You ever been convicted of perjury?

A. No, sir.

Q. Have you ever been convicted of giving false information to a police officer?

A. No, sir.

Q. Randy, Have an-Have any promises been made to you in return for your testimony here this morning?

A. No, sir.

Q. I believe you're presently serving an active prison sentence, is that correct?

A. Yes, sir.

Q. All right. Why are you testifying here today?

A. I must feel it would be the right thing to do.

Q. You feel it would be the right thing to do. Any other reason?

A. Uhmm-I hope it may help.

Q. You hope it may help in what respect?

A. Well, get out sooner or something, I guess.

Q. So, that's one-another one of rhe reasons why you're testifying here today, is that correct?

A. Yea.

Q. And, also, because you feel it would be the right thing to do.

A. Yea. I don't. . .

Q. All right.

A. I don't really have much time left, so, it can't help me much.

Q. Randy, do you know Dennis Stockton?

A. Not personally, I've seen him around.

Q. Can you identify him here for the jury and the Court?

A. Yes. There-that's him right there.

Q. Let the record show that he is pointing to the defenda is that correct?

A. Yes, sir.

Q. Pointing to the defendant? All right. Now, Randy, calling your attention to June of 1978, did you have occasion to see Dennis Stockton at Tommy McBride's house?

A. Yes, sir.

Q. Why were you at Tommy McBride's house?

A. I was selling some stolen property.

Q. You were selling stolen property?

A. Yes, sir.

Q. Where does Tommy McBride live?

A. On Franklin Road. Up there next to the Pantry.

Q. Next to the Pantry?

A. Yea.

Q. And that's Franklin Road in what city?

A. Mount Airy.

Q. Mount Airy, North Carolina?

A. Yes, sir.

Q. What time of day or night did you arrive at Tommy McBride' house?

A. It was sorta late in the night.

Q. Who else was there?

A. Ah, me and, ah, Tommy McBride and his wife.

Q. Who's his wife?

A. Diane McBride.

Q. Ok. Who else?

A. Dennis Stockton, Donnie Tate and Sunsin-I think, Sunshi Hatcher was there.

Q. Sunshine Hatcher?

A. Yea.

Q. Ok. Was this a large house or a small house?

A. Small house.

Q. Ok. At the time that you went to Tommy McBride's house do you recall exactly when it was in 1978?

A. It was somewhere after June the 6th, because I'd been shot on that day.

Q. You were shot on June the 6th?

A. Yes, sir.

Q. And was it before or after you were shot?

A. I think it was after.

Q. Ok. Do you recall how long after, can you give the jury an idea? I know it's been four years-five years.

A. Probably a couple of weeks.

Q. A couple of weeks after you were shot on June the 6th. At the time, were you drinking?

A. Not that I know of.

Q. Were you using any narcotics of any other drugs?

A. No, sir.

Q. Was anybody else there using any drugs?

A. Uhm-I don't know. I'd expect they was but, you know, didn't see it.

Q. You didn't see it. Ok. While you were there, did Tommy McBride or did anyone else raise the subject of Kenny Arnder?

A. Yea, he said. . .

Q. All right, just a second now, when you say, he, who are you referring to?

A. Tommy McBride.

Q. All right. What exactly was said?

A. Ah, He asked me did I need to make some money. Told him, yea. He said, well, he, you know, we wanted to have the Arnder boy killed, you know.

Q. Who was it who said he wanted to have the Arnder boy killed?

A. Tommy McBride.

Q. Where did-Where did he make this comment?

A. In the livingroom.

Q. In the livingroom of the house?

A. Yea.

Q. All right. And what was your response?

A. I didn't really have time to make a response. Dennis Stockton said he needed to make some money.

Q. Dennis Stockton, the defendant?

A. Yes, sir.

Q. All right. What exactly did Dennis Stockton say?

A. Said I'll do it, I need to make some money. So, ah, they went into the back room.

Q. Which room did they go into?

A. The bedroom on the left.

Q. And are you familiar with what's in the bedroom on the left?

A. Yea. That's where Tommy goes to get his money when you sell him something.

Q. That's where he goes to get his money?

A. Yea. He always goes in there before he comes out with it; so, I think that's what he went in there for.

Q. How do you know that's where he keeps his money?

A. Well, everytime I've ever sold him anything he goes in there and gets the money.

Q. All right. What was the price that he offered to have the Arnder boy killed?

A. $1,500. $500 now and a 1,000 after it.

Q. $500 down and a $1,000 after it?

A. Yes, sir.

Q. Did Mr. Stockton and Mr. McBride come back out while you were still there?

A. No, I left.

Q. How long after this offer was made did you leave?

A. Right after. I didn't stay or hand around, you know, it was late.

Q. All right. Did you-How long after that-after this conversation-this contract was offered, how long afterwards was that the Arnder boy was killed, did you hear about it?

Q. Now, McBride, you say McBride didn't offer this contract to Stockton he offered it to you.

A. Yea, that's what I said.

Q. And you previously testified that you were thinking about it, isn't that a fact?

A. Yea. Sure did.

Q. And you left after they went into this room and you don't know what happened in that room.

A. No, I don't.

Q. If what you're saying is true, you're telling this jury that you had information about a man being-that a man was going to be killed is that right?

A. I never really took it serious.

Q. So, the way-the way it was said, what you heard and the way it was said was such that you didn't think that anybody was going to be killed.

A. Naw, I've heard lots of people talk about things like that, you know.

Q. Didn't mean anything to you.

A. Well, hardly ever anything happens. I didn't think no more about it till I read it in the paper.

Q. Just big talk as far as you were concerned?

A. Yea.

Q. Because if what you had heard was serious talk and if what you had heard meant anything, then that means you walked out of there thinking a man was going to die and did absolutely nothing about it.

A. Yea, I guess that's right, yea.

Q. When did you first come forward and tell somebody about this?

A. Oh, it's been, I guess, a couple of years ago.

Q. And you were in jail when you first mentioned it to somebody, weren't you?

A. Naw, I don't believe I was.

Q. You were being questioned about your involvement in crimes when you came up with this, isn't that a fact?

A. Yea.

Q. The police were talking to you.

A. Yea.

Q. And they were talking to you-during the conversation that you were having with the police, this case came up.

A. That's right.

Q. And while they were talking to you about this case, you knew you had to come up with something and that was the first time you had mentioned this to anybody, wasn't it? Any police officer.

A. That was the first time, yea.

Q. And you didn't come up with it until you had been put on the heat about this killing.

A. Naw, I don't think I was on no. . .

Q. Well, they were talking to you about it weren't they

A. Yea.

Q. When did you first tell somebody about what you said you overheard?

A. Told my wife when I got in the car.

Q. I'm talking about at the jail.

A. I don't remember just when it was. I think it was somewhere in maybe the spring of 81.

Q. Now, I had asked you about whether or not at the time you were talking to the deputies and you came forth with this information it was about three years after what you say you heard at Tommy McBride's house, is that right? Would three years be about right?

A. I think so, yea.

Q. And I believe that, ah, you told Mr. Giorno that no promises were made to you about your testimony here.

A. That's right.

Q. But one promise was made to you wasn't it. That they would do all they could to see that you got consideration for this testimony.

A. Well, they-I was hoping to get some consideration out of it, yea.

Q. -And they promised you that they'd do all they could to see that you got what consideration you could get.

A. Naw, they didn't make any promises.

Q. Well, they didn't promise you that the Judge would do this or the Judge would do that but they gave you their word that they would help you in any way they could to see that you

got what consideration you could for your testimony, isn't that a fact?

A. They told me that they couldn't make any promises. Said they didn't know if they could help me or not.

Q. You were told you would get your consideration on pending charges and you thought you would get consideration on pending charges, isn't that a fact?

A. I was hoping to, yea.

Q. Now, you've-you've previously testified haven't you that it was in early 1980?

A. That's right. Yea, I did.

Q. And you were under oath when you said that. That it was early 1980 when you say you heard Stockton say something in the jail about somebody. . .

A. Yea.

Q. having trouble living with something and somebody was killed.

A. That's right.

Q. Now, was it in early 1980?

A. Naw, I-I'm mistaken about that. I didn't get out of prison till sometime late in May. Had to be later.

Q. And then you-you later changed your testimony the same day, at the preliminary hearing, did you not and you said that it was maybe March or May of 1980.

A. I may have said that. If I did, I was mistaken cause I didn't get out of prison till May.

Exhibit 3

AFFIDAVIT OF PATRICIA ANN MCHONE

I, Patricia Ann McHone, being duly sworn states as follows:

1. I previously submitted an affidavit in behalf of Dennis Stockton under the pseudonym Jane Doe. I submitted it anonymously because I feared for my safety from Randy Bowman. I am frightened that he or a family member may try to kill me for the information I am giving. I am trying to relocate in order to try and assure my safety. I cannot stress enough how scared I am of Randy Bowman.

2. I was married to Randy Bowman in March of 1978.

3. Prior to my marriage to Randy, I was subjected to physical and psychological abuse. I watched Randy beat his mother on many occasions. I saw him get into fights and seriously hurt people. He struck me countless times, some requiring hospitalization. He threatened to kill our child if I did not do what he wanted. His reputation for violence is well known in Mt. Airy, N.C.

4. He threatened to kill me a number of times if I failed to help him or if I ever revealed his criminal acts. Randy regularly stole from automobiles and residences. He particularly liked to steal weapons, both handguns and rifles. He also stole other items which could get him money. He rarely worked an honest job during the years I was with him.

5. Randy often pulled "stunts" to avoid going to court. On one occasion he had someone drive a car over his ~~arm~~ leg, breaking it, so that he could be in the hospital on the day he was due in

court. He once shot himself in the shoulder to avoid a court appearance. He used these tricks to avoid court in order to obtain a favorable outcome from the court and prosecutor. At least, that was what he told me.

6. In the summer of 1978, on one particular occasion, I accompanied Randy to the home of Tommy McBride in Mt. Airy. Randy often took property he had stolen to Tommy's house to sell. I waited in the car until Randy came out. When he entered the car he told me that Tommy offered him money to kill Kenny Ardner. He added that Dennis Stockton said he would do it for the money. However, within a short time of that visit, I cannot remember precisely when, Randy came home one evening and told me that he had just killed Kenny Ardner. I did not know Kenny Ardner, nor do I know Tommy McBride or Dennis Stockton.

7. In or about July, 1978, Randy possessed or had access to many types and caliber of weapons and ammunition. He also possessed a machete.

8. I was interviewed by law enforcement. I did not volunteer information about the confession because I was afraid. No one asked me questions other that what Randy told me when he left Tommy McBride's house. I am not sure I would have told law enforcement about Randy's confession to me, had they asked. Randy Bowman or one of his family members are capable of killing me and I am frightened beyond description. I have decided to come forward, reluctantly, because I feel comfortable with Mr. Stockton's lawyers and investigator who asked me to tell the

truth. I am terribly frightened of Randy, but I am also upset at [redacted] the possibility that an innocent man will be executed [redacted]

Patricia Ann McHone

Patricia Ann McHone

[redacted]

City/County of [redacted], To wit:

The foregoing Affidavit was subscribed and sworn to before me, a notary public, by Patricia Ann McHone, on this 16th day of September, 1995.

Notary Public

My commission expires: ~~Oct~~ 4th 1998

Exhibit
4

September
FRI 15, 95

my name, is Kathy m carreon

IN The winter of 1994 of octoper.
I was good FRiends with Randy
Bowman Spending much time with
Him. During that winter Randy
Bowman told me that he killed
Kenny arcneR with the Help
of two friends.

I knew Dennis Stockton,
through, Conversation
of Hearing Randy talk about
Dennis.

I make this Statement under
penalty of perjury

Kathy m carreon 9.15 95
6,55 pm

WITness GERALD Ronald Cook
6:55 PM 9-15-95

Exhibit
5

Q. Where did this happen, where did this take place?

A. At Tommy McBride's house.

Q. Tommy McBride's house, and where is that located?

A. Franklin (inaudible) there close to the pantry.

Q. Close to the pantry, and in what city and state?

A. Mt. Airy, North Carolina.

Q. All right, who was present?

A. Dennis Stockton, Donnie Tate, myself, Tommy McBride and his wife and I'm not sure but I think Sunshine Hatcher.

Q. Sunshine Hatcher. Why were you there Mr. Bowman?

A. Selling some stolen property, a stereo, a rifle.

Q. And to whom were you selling.

A. Tommy McBride.

MR. ARMSTRONG: If your Honor please if I can interrupt, I don't think-- we have a light on here that indicates when recording is being made and it's not on and I wonder if we could move the recording device over to in front of this witness. I just don't think it's being picked up your Honor.

Q. All right, Mr. Bowman was there a discussion at that time about Kenneth Ardner?

A. Well, yes.

Q. Would you relate to the Court please exactly what was said and who said it?

A. Tommy McBride asked me did I want to make some money, I said yeah I'd like to make some money. He said well there's this Ardner boy you know--

JUDGE: Speak out loud if you will.

A. I'd like to get rid of him, have him killed, he said I'll give you $500.00 right now and $1,000.00 after it's done and the gun to do it with. Stockton spoke up and said something about he'd do it and they went into another room and went to talking.

Q. All right. Sockton, did you ever answer-did you ever accept or otherwise answer Mr. McBride's offer to kill Ardner.

A. No sir.

Q. Were you thinking about it?

A. Well, I didn't--I thought about it you know I didntt really know if the man was serious or not you know.

Exhibit
6

Randy Gray Bowman
121 B. Korner St.
Mt. Airy, N.C.

I went to Tommy McBride's house to sell him some hot stuff. I don't remember what it was. The subject came up about the Ardner boy stealing dope. McBride brought it up. McBride asked me if I needed to make some money. He (McBride) said $500.00 now and $1,000.00 when it was done and he would furnish the gun. Stockton said I will do it, I need the money. The best I remember they (Stockton and McBride) went into the back room. I got my money for the stolen stuff and left. I didn't hear anything that was said in the back room.

Pat McHone, who I later married, was waiting in the car. I told her what McBride had said.

The statement I gave Investigator Gregory and my court testimony was true. McBride said the $1,500.00 was for killing Ardner.

I didn't tell the reporter I was changing my testimony. I did not tell the reporter that I didn't hear Stockton say "I will do it, I need the money."

I am making this statement of my own free will. No threats or promises have been made. The above statement is true as I remember it.

Randy Gray Bowman
Randy Gray Bowman

Sworn to and subscribed before me this 8th day of May, 1995.

Johnnie Ray Betts
Notary Public
Surry County, N.C. My commission expires September 13, 1996.

Michael R. Bass
Michael R. Bass, VSP

Ron L. Perry
Ron L. Perry, NCSBI

DEFENDANT'S EXHIBIT 2

Exhibit
7

AFFIDAVIT OF TIMOTHY CRABTREE

I, Timothy Crabtree, being duly sworn states as follows:

1. I am ~~fifteen~~ Sixteen years of age.

2. My biological parents are Randy Bowman and Patricia McHone; my adopted father is James Crabtree.

3. I am signing this affidavit after discussion with my adopted father.

4. In the fall of 1994, I expressed my desire to get to know my biological father, who I had not seen since I was a little boy. My adopted father expressed his concerns and voiced his objections, but I went.

5. I lived with Randy from December, 1994 through April, 1995. We lived at my grandmother's house (Randy's mother) in Mt. Airy, N.C.

6. During that time Randy said I did not have go to school, so I did not. Randy told me that it would do me no good to go to school. He did not have a job, but instead he got money from stealing and selling property. He wanted me to help him and I refused for a long time. I finally did help him commit burglaries.

7. During my time with Randy I saw him hit and beat his mother often. That was the main reason I left. He also told me many stories about people he beat up or about the people he killed. I also read about people he hurt from a journal he kept in a composition book. He never mentioned names.

8. He told me of one incident where he killed a boy and disposed of the body with the help of some friends. He showed me where they left the body and I remember it was near a stream in or near Mt. Airy, N.C. He said this happened before I was born.

9. Randy's reputation for violence is well deserved. He is feared by many people that I met while I lived with him. I have concerns for my own safety in light of signing this affidavit.

Tim Crabtree
TIMOTHY CRABTREE

STATE OF NORTH CAROLINA
City/County of Surry, To wit:

The foregoing Affidavit was subscribed and sworn to before me, a notary public, by Timothy Crabtree, on this 15 day of September, 1995.

Kim M. Haus
Notary Public

My commission expires:
2-12-96

Exhibit
8

The Virginian-Pilot (Norfolk)

April 26, 1995, Wednesday, FINAL EDITION

SECTION: FRONT, Pg. A1

LENGTH: 1783 words

HEADLINE: STOCKTON WITNESS CHANGES HIS STORY;
TESTIMONY IN 1983 TRIAL MADE THE CASE FOR THE DEATH SENTENCE.

BYLINE: JOE JACKSON, STAFF WRITER

DATELINE: MOUNT AIRY, N.C

BODY:

The key prosecution witness in the capital murder case of Dennis W. Stockton - sentenced to death in 1983 for the murder-for-hire of a teenager in Southside Virginia - has changed his story, claiming he did not hear Stockton take the deal that led to his conviction and sent him to death row.

The apparent recantation of Randy G. Bowman, 40, comes as Stockton's appeals have nearly run their course and he faces imminent execution in Virginia's death chamber. Next Wednesday is the deadline for Stockton's lawyers to file their plea for a final review of his case by the U.S. Supreme Court. After that, Stockton's last option is to ask Gov. George F. Allen for clemency.

The prosecutor in the 1983 case says that even though he is skeptical of Bowman's belated change of heart, the case should be reinvestigated and Stockton should not be executed until questions are answered.

From Virginia's death row, Stockton, who has steadfastly maintained his innocence for 12 years, said he expects an execution date to be set for mid- to late summer.

Now 54, Stockton gained notoriety after chronicling the escape in 1984 of six death row inmates from Mecklenberg Correctional Center.

He was charged in 1982 with the 1978 murder of Kenneth Wayne Arnder, 18, whose body was found near Mount Airy. Arnder was shot in the head and his hands were hacked off above the wrists. Arnder's mother said she last saw her son alive with Stockton.

In 1982, authorities in Patrick County filed murder charges against Stockton. According to the state, Stockton killed Arnder in Patrick County, Va., then moved his body across the state line. No physical evidence linked Stockton to Arnder or the murder to Virginia, and no weapon was found.

But Anthony Giorno, the assistant commonwealth's attorney who tried the case, had a witness: Bowman, a small-time felon who testified he was at the house of Tommy Lee McBride when he heard Stockton agree to kill Arnder for $ 1,500.

Bowman testified that McBride, another felon, wanted Arnder killed because of a soured drug deal. McBride, Stockton and others Bowman said were present at

the meeting denied that it ever occurred.

Giorno was able to seek the death penalty because of Bowman's claim that it was a contract killing. Bowman was the only witness who said he heard the deal. He also said he overheard Stockton admit the killing in a North Carolina holding cell, an assertion Stockton has denied.

Yet last Thursday, Bowman told a reporter during an interview in his apartment that he never heard Stockton accept such a deal.

''I don't know if they (McBride and Stockton) made a deal,'' Bowman said. ''I was in there to sell something. The subject came up . . . how he (McBride) would like to have him dead, so I'm out of there. I've never said I heard - I didn't hear Stockton say, 'I'm going to do it.' ''

Questioned several times about the apparent contradictions between his 1983 testimony and his new claim, Bowman repeatedly said he left immediately after McBride made the offer.

At one point he said, ''I don't recall hearing Stockton make (the deal) - it's been several years.'' Later, he added, ''I left. . . . I never heard Dennis take the deal.''

Giorno, now an assistant U.S. attorney in Roanoke, said Monday he was skeptical ''of someone who changes their story 13 years after the fact . . . Up to this point, Randy Bowman has been steadfast and consistent in what he has said.''

Yet Giorno added that Bowman's apparent change of heart gave him pause.

''Certainly the case should be reviewed,'' he said. ''It may impugn the murder-for-hire aspect. If it takes additional time to conduct a review, we should do that. . . .

''The public's confidence in the entire justice system suffers if there's a perception Stockton is being unjustly sentenced to death. We can't afford that. I think this should be looked at by someone in the attorney general's office.''

Don Harrison, spokesman for Attorney General James Gilmore, said Tuesday his office would not comment until they ''see something official'' from Stockton's lawyers.

Stockton's lawyers said they will file that official action next Wednesday when petitioning the Supreme Court to review Stockton's case. They said that, at the very least, they hope to win Stockton a new trial on charges of first-degree, and not capital, murder.

''Randy Bowman has never had any credibility,'' said Steve Rosenfield of Charlottesville, one of Stockton's attorneys. ''This latest information surprises us only in the sense that it has now become so apparent that Bowman would not know the truth if it bit him. His recantation would support our contention that . . . Bowman may very well have provided information that he thought was salable to the state.''

The question of Bowman's veracity has been central to Stockton's claim of innocence since his conviction, court records show. Although circumstantial evidence by three other witnesses could have brought Stockton to trial on first-degree murder charges, it was Bowman's tale of the $ 1,500 deal that elevated the charges to capital murder, Stockton's lawyers have said.

Stockton, now 54, was no angel himself. Before his 1982 charge for killing Arnder, his record was peppered with burglary, forgery, weapons and drug charges. He has confessed to the June 1979 killing of Ronnie Lee Tate, which Stockton said was self-defense. Stockton was never charged in that case.

Soon after Stockton's 1983 capital conviction, questions of fairness arose. In a 1984 civil case challenging Patrick County jail conditions, two inmates testified that Bowman bragged to them about lying in Stockton's trial.

Inmate Frank Cox testified, ''Randy . . . did tell me in so many words that he lied on Dennis, because he said, 'I hate that son of a bitch. He's a queer.' ''

Cleveland Junior Martin, another inmate, testified that he, too, had spoken with Bowman. ''I can remember one instance when he said he would - well, not in these exact words, but what it amounted to was he would say anything for anybody if the money was right. . . .' ''

Last week, Bowman denied this accusation, claiming that Cox and Martin lied. ''They moved into a cell with Stockton, became friends with him,'' he said. ''They was trying to help him out.''

Also, in a 1986 prison interview with The Mount Airy News, Stockton named a third person who allegedly heard Bowman say he lied during Stockton's trial.

''Mike Tate got out of prison in 1985 and my brother was auditing The Pantry at Dobson, North Carolina,'' Stockton told a reporter. ''Mike walked in and told Doug that he'd just got out of prison and said that Bowman was down there bragging about how he had lied on me. And Doug told me that Mike said that Randy said that he got some money out of it.''

In 1989 and 1990, Stockton's lawyers received evidence that Giorno may have promised Bowman a deal in exchange for testimony - information that never made it into Stockton's trial. Affidavits by two former Patrick County Sheriffs' officials showed that Bowman was upset ''because promises allegedly made to him were not kept.'' Bowman allegedly wanted a sentence reduction or to be moved to another prison in exchange for his testimony, but was upset when he didn't get it.

Two weeks before Stockton's trial, Bowman wrote a letter from prison in North Carolina to Jay Gregory, now Patrick County's sheriff, in which he said: ''I'm writing you to let you know that I'm not going to court unless you can get this 6 or 7 months I've got left cutoff where I don't have to come back to prison.''

Gregory and Giorno have said that no secret deals were cut with Bowman for his testimony.

Court records show that Bowman received lenient treatment in Surry County's courts.

In August 1982, a stolen-property charge against Bowman was dropped 17 days after he testified in Stockton's preliminary hearing. After that, he received minimal sentences for repeat offenses.

His most recent charges were for threatening to kill his mother and a next-door neighbor. Originally sentenced to 179 days in jail, he appealed and took a plea agreement that reduced that time to 30 days, 17 of which he served, according to court records and Bowman.

Thursday, Bowman denied ever making any deals with Patrick County officials. He said that although the letter to Gregory looked like his writing, he never wrote it. Contrary to court records, Bowman said he served every day of his sentences.

''Nobody ever promised me we'll do this or that,'' he said. ''I remember getting mad because they wouldn't take me back to North Carolina. . . . I just got hassle for testifying against Tommy McBride. Nothing good came to me after that trial.''

Bowman said he was in prison in North Carolina when Surry County officials approached him about the Arnder killing. ''My name came up. . . . I don't know how. Maybe they talked to my ex-wife, Pat McHone. . . . The way the Surry County officer was talking to me, I got the idea I could be charged, so I told what I knew.''

Yet, according to Bowman, ''the only thing I was involved in was such a little bit,'' maintaining that his testimony could not have convicted Stockton. ''What I heard wasn't a lot,'' he said.

''I don't believe nobody knows the whole truth - I don't know if Dennis got a fair trial,'' he said. ''I wouldn't pull the switch on him. He might be guilty or he might not.''

Stockton's voice quivered during a phone interview Tuesday when a reporter read him Bowman's words. He is in Powhatan Correctional Center.

''I've said all along that the first time I ever saw Randy Bowman or heard his name was when he walked into my probable cause hearing on Aug. 17, 1982,'' he said. ''That date is seared into my brain. Everything Bowman said on the witness stand was a lie. . . .''

''Why did Bowman change his story now?'' Stockton asked. ''When you're telling the truth, 15 years can pass and you can remember what you said. But if you're telling a lie you forget what you said tomorrow.

''I've questioned God about it many times,'' he said. ''It's God at work. . . I just felt the truth was going to come out. I've dreamed over the years of Randy Bowman coming forward and saying that he lied.

''Whatever the outcome, it'll be God's will be done,'' Stockton added. ''The bottom line is that when it's Dennis Stockton's day to stand in judgment, murder-for-hire will not be something I'll have to answer for.''

''I read this in the Bible a long time ago, and have always kept it,'' he said, quoting Proverbs 22:12: ''The eyes of the Lord keep watch over

knowledge, but he overthrows the words of the faithless.''

GRAPHIC: Photos, ''Everything Bowman said on the witness stand was a lie,'' said Dennis Stockton, left, who says he first saw Randy Bowman at a 1982 hearing.

LOAD-DATE-MDC: April 27, 1995

Exhibit
9

AFFIDAVIT

I, Joe Jackson, being duly sworn states as follows:

1. I am a staff reporter with The Virginian-Pilot located in Norfolk, Virginia.

2. On April 20, 1995, I interviewed Randy Bowman in his home in Mt. Airy, N.C. During that interview, he recanted his 1983 testimony in the capital murder trial in which he said he heard Dennis Stockton accept a deal from Tommy McBride to kill Kenneth Arnder. On April 20, Bowman said several times that he never heard Stockton take such a deal. I took scrupulous notes during that interview.

3. A newspaper story based on that interview appeared on page 1 of The Virginian-Pilot on April 26, 1995. After carefully reviewing my notes, I affirm that everything that was in that article was true. I stand behind the facts presented in that article.

4. If called to testify, I would testify according to the above facts.

Joe Jackson

STATE OF VIRGINIA
City/County of , To wit:

The foregoing affidavit was subscribed and sworn to before me, a notary public, by Joe Jackson, on this 30th day of May, 1995

Jennifer D. Vick
Notary Public

My commission expires: August 31, 1995

Exhibit
10

AFFIDAVIT OF CLIFFORD BOYD

I, Clifford Boyd, being duly sworn state as follows:

1. I am executing this affidavit for the Hon. George F. Allen, Governor.

2. I am 65 years of age and I live in Ararat, Virginia (Patrick County) where I have lived my entire life.

3. For years, I was employed by the Patrick County Sheriff's Department where I served four years as a supervisor of all personnel in the department. During that time, as a certified investigator, I worked on many investigations, including the investigation of the death of Kenneth Ardner which included Dennis Stockton as one of several possible suspects.

4. By the end of the investigation and conviction of Dennis Stockton I reached the conclusion, in my own mind, that the evidence was insufficient to convict Mr. Stockton beyond a reasonable doubt. That is, notwithstanding the jury's verdict, I believe there is a question whether Mr. Stockton is guilty.

5. I base my opinion on my lack of confidence in the veracity of several of the Commonwealth's witnesses, in particular Bowman and Gates. Each of these witnesses had a reason not to be entirely truthful and each was known to be untrustworthy. Bowman, in particular, was the only witness to put Mr. Stockton on death row.

6. I have always been troubled that Mr. McBride, the person who allegedly paid Mr. Stockton to kill the Ardner boy, was not prosecuted and Mr. Stockton was. Either they are both

guilty and Bowman's testimony should have been used at McBride's trial or Bowman's credibility is not to be believed. McBride always denied the murder for hire. Other than Bowman, we could develop no other witness to the murder for hire. I also felt that McBride was a reasonably intelligent person and would never hire someone to commit murder in the presence of unsavory character like Randy Bowman.

7. I was also aware that Randy Bowman was offered promises in exchange for his testimony against Mr. Stockton; I communicated this to my superiors. I was surprised to learn that Bowman testified at Mr. Stockton's trial that he was made no promises and that the government allowed him to say that under oath.

8. During my many years in the U.S. Air Force and the resulting travel to many foreign countries, I have learned that we have the best judicial system in the world, although our system is not perfect and not without its flaws.

9. I am a strong advocate of the death penalty. However, I must say this case has deeply bothered me for years and I have waited to see if the courts would intervene. I am troubled that an innocent man may be put to death. I urge you to prevent a miscarriage of justice.

10. I hope this information will help you in deciding the fate of Mr. Stockton.

Clifford Boyd
CLIFFORD BOYD

STATE OF ~~VIRGINIA~~ N. Car.
County of ~~Patrick~~ Surry To wit:

The foregoing Affidavit was subscribed and sworn to before me a, notary public, by CLIFFORD BOYD, on this 16 day of ~~August~~ Sept., 1995.

J. Ann B. Earl
Notary Public

My commission expires:
Sept. 12, 1997

Exhibit
11

V I R G I N I A:

IN THE CIRCUIT COURT OF PATRICK COUNTY

COMMONWEALTH OF VIRGINIA

-vs-

DENNIS STOCKTON.

AFFIDAVIT OF: FRANK BURTON COX

NOW COMES the AFFIANT, FRANK BURTON COX, and pursuant to testifying in the above-styled case, has been duly sworn and hereby states the following based upon his personal knowledge of the facts therein represented:

1. I am Frank Burton Cox, the affiant in this present cause, and all information, statement and facts adduced in this statement is based upon my personal knowledge of the facts therein set forth.

2. I know Randy Bowman, who testified as the Commonwealth's witness giving testimony against the defendant, Dennis Stockton, in the criminal proceedings of the case of the COMMONWEALTH v. DENNIS STOCKTON, held in the Circuit Court of Patrick County.

During the proceedings of Stockton's case, Randy Bowman was a truste at the Patrick County jail, and he routinely came around to my cell as part of his truste duties at the jail.

I had been detained at the Patrick County jail from March 11th. 1983, until my trial in August 1983, and until my transfer to the Powhatan Receiving and Classification Center.

3. After Stockton's trial, Randy Bowman was removed from his duties as a truste, this got him angry with most of the jail officials at Patrick County Jail, because he complained that they had mistreated him and not acted fairly as they were supposed to have done after he had testified against Stockton.

Randy Bowman informed me that he had lied at the trial of Stockton, and he wanted to know whether Stockton's attorney would talk to him, and he would render the information on how he had lied and what reasons he had for giving the false testimony at trial against Stockton.

4. Randy Bowman also asked me whether I needed a witness for my own trial; he told me that he was willing to testify to anything I wanted him to on the witness stand.

I declined his offer and told him that I did not need him to testify to anything on my behalf, since he did not know anything in my case and could not help me on the facts and circumstances of my case.

5. Randy Bowman told me on several occassions that he had lied against Stockton. When I asked him why he adhd done so, he told me that he had Stockton, and that Stockton was a "queer," and that he did not like him.

I asked my attorney, Reid Young, III, whether I should then inform Stockton's attorney of these facts; I was advised by Young that I should not be involved in this matter since it would affect my case, and therefore, it should remain like that and say nothing to Stockton or his attorney on this information.

6. I will offer voluntary testimony on behalf of Stockton at any trial, retrial, hearings and court proceedings on this information which I received personally from the witness, Randy Bowman which demonstrates that Randy Bowman offered false statements against Dennis Stockton at his trial in the CIRCUIT COURT OF PATRICK COUNTY, which resulted in the imposistion of a death penalty against the said defendant, Dennis Stockton.

MOREOVER, I will voluntarily consent to a polygraph test on the statements set forth in the foregoing, and all issues respecting these statements.

I HAVE READ ALL OF THE ABOVE AND THEY AND TRUE AND CORRECT AND BASED WHOLLY UPON MY PERSONAL KNOWLEDGE OF THE FACTS THEREIN REPRESENTED.

RESPECTFULLY SUBMITTED

BY: Frank B Cox

FRANK BURTON COX.

[AFFIANT]

SUBSCRIBED AND SWORN TO BEFORE ME THIS:

26 day of: July 1984

My commission expires 3-8-87

Maggie Watkins

NOTARY PUBLIC.

Received and filed, this the 6th day of August, 1984

Marilyn S. Forbes Clerk

Exhibit
12

VIRGINIA: IN THE CIRCUIT COURT OF PATRICK COUNTY

COMMONWEALTH OF VIRGINIA, Plaintiff,	)	
vs.	)	MOTION FOR DISCOVERY
DENNIS STOCKTON, Defendant.	)	

NOW COMES Dennis Stockton, Defendant herein, by counsel, and respectfully files this his Motion for Discovery, the particulars of which are as follows, to-wit:

1. Your Defendant has been indicted by the Circuit Court of Patrick County and charged with capital murder.

2. Defendant's jury trial is more than seven (7) days distant from the filing of this Discovery Motion.

3. Pursuant to Rule 3A:14 of the Rules of Court of the Supreme Court of Virginia, your Defendant respectfully prays that this Honorable Court render an Order directing the Commonwealth to provide counsel for the Defendant, within ten (10) days of the entry of such Order, the following information:

(a) copies of any and all information of whatsoever kind, nature, or description relating to any examination of the body or parts of the body of the person the Defendant is charged with killing, including but not limited to the following:

(i) autopsy reports and each and every part thereof and each and every page thereof;

(ii) x-ray reports;

(iii) actual x-rays or copies thereof or photographs thereof including all x-rays taken of the body or any part thereof and any and all x-rays used for comparative or identification purposes; and

(iv) laboratory reports of any tests of any kind, nature or description done in conjunction with the autopsy or examination of the body in question.

(b) copies of any reports of any examination of any tool, firearm, knife, or any other implement or instrument or object submitted for examination in conjunction with the investigation and prosecution of this case.

(c) copies of any reports or any fingerprints or footprints or toeprints or skin analysis made in conjunction with the investigation or prosecution of this case.

(d) copies of any dental records used in the identification of the body in question and copies of any reports made as a result of any use of dental records or x-rays analyzed for purposes of identification of the body in question.

(e) copies of any other reports of any item or anything submitted to any laboratory or other place for identification or analysis or examination in conjunction with or arising from the investigation or prosecution of this case.

(f) copies of any and all photographs of any kind, nature or description taken in conjunction with or arising from the investigation or prosecution of this case.

(g) copies of any and all statements, oral or written, made by the accused.

(h) copies of any notes or any statements, written or oral, of the accused, including the notes or memorandum of any police officer or investigator.

(i) copies of any papers or documents of any kind, nature or description signed by the accused.

(j) copies of any letters, memorandums, notes, or other writings authored of signed by the accused.

4. Pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and Dozier v. Commonwealth, 219 Va 1113, 253 S.E. 2d, 655 (1979), your Defendant respectfully prays that the Court order the Commonwealth to provide counsel for the defense with the following:

(a) any and all information exculpatory in nature;

(b) the name and address of each and every person present in the home or residence of Tommy McBride when the Defendant allegedly agreed to kill the deceased;

(c) the name and address of every person present when Defendant allegedly made statements in jail in North Carolina implicating himself in the crime in this case;

(d) the name and address of any other person implicated in the crime charged in this case;

(e) the address of Tommy McBride; and,

(f) copy of any statements made by any of the above persons.

Respectfully submitted this 1st day of September, 1982.

DENNIS STOCKTON

By _____ Counsel

Philip G. Gardner, Esq.
GARDNER, GARDNER & BARROW, P.C.
10 N. Bridge Street
P.O. Box 552
Martinsville, VA 24114-0552

Ward L. Armstrong, Esq.
One Walnut Street
P.O. Box 1431
Martinsville, VA 24114-1431

CERTIFICATE

This is to certify that a true copy of the foregoing pleading was this day mailed to all counsel of record.

Philip G. Gardner
Counsel

9-1-82
Dated

Received and filed, this the 2
day of Sept, 19 82
Marilyn L. Harlan, Clerk

Exhibit
13

by the accused and I think we're entitled to, ah, know it and if it's, ah, if he's got it in some notes or memorandums, ah, that's what we're looking for.

THE COURT: Any problem there, Mr. Giorno?

MR. GIORNO: I'll be happy to make Mr. Gregory available to you as long as it's in my presence or the presence of Mr. Burton, the Commonwealth's Attorney, and you can ask Mr. Gregory whatever questions you like as far as statements made by-by Mr. Stockton to him pursuant to this investigation.

MR. GARDNER: I don't want to put words in your mouth, but if I understand what you're saying, g, h, i and j, ah, are agreeable?

MR. GIORNO: Yes, sir.

MR. GARDNER: To recap then, down to number four, the Commonwealth has no objections to any of the requests down to number four?

MR. GIORNO: True.

MR. GARDNER: Your Honor, the purpose of number four is to find out if the Commonwealth has evidence that would tend to exonerate the accused, evidence that we should know about to follow up-to present any possible defenses for Mr. Stockton that we may be able to have. Ah, I'm operating somewhat under a handicap in that Mr. Stockton is in jail and he can't get out, so, whatever work or investigation is done will have to be done by me and Mr. Armstrong and it's the sort of case, Judge, where

the North Carolina authorities were initially involved /and then the Patrick County authorities were involved and what I'm basically looking for is if there are other suspects, if there's evidence that points to other suspects, ah, that is what I'm looking for in number four a.

THE COURT: Any problem there, Mr. Giorno?

MR. GIORNO: Judge, I have no problem with 4a. I do not have any information which would tend to be exculpatory in this-inconnection with this case. When I say that, there is nothing that's been brought to my attention that would indicate that there was some other criminal agent involved in this particular killing other than-than Mr. Stockton. If I did, I would certainly make that available to you. As far as b, c, d and f, I don't feel that it is incumbent upon the Commonwealth to provide you with the names of all the witnesses who, ah, were present at that time other than it was-than as was revealed at the preliminary hearing.

MR. GARDNER: Judge, the preliminary hearing in this case revealed that it is probably going to be the theory of the Commonwealth that at a certain place and time the defendant was in the presence of Tommy McBride when Tommy McBride said to those persons gathered there, I'll pay some money for somebody to kill the Ardner boy and the witness who testified said something to the effect that Dennis Stockton said I need the money, I'll do it and McBride and Stockton went into a room, a bedroom, and discussed the case. All right. My purpose here,

Exhibit
14

Rt 2 Box 523B
Yadkinville NC
27055

3 MAR 9 1983

RECEIVED MAR 7 1983

Mr Jay Gregory

C/o Patrick County Jail
Stuart Virginia

Tuesday 3-2-8

Hi Mr. Gregory

I'm writing you to let you know that I'm not going t Court unless you can get this bor? months I've got le Cutoff where I dont have to come back to prison I've got a bunch of problems but I cant tell you abou them now. I dont have to tell you how searious this I'll probley get killed over this any way and I think I deserve to get out of prison before I do. Mr Gregory if you'll call Raleigh and explain to th how searious this thing is. I'm sure you can work c Some thing.

Sincerly

Randy

Exhibit
15

OFFICE OF THE
COMMONWEALTH'S ATTORNEY
Orchard Street
Post Office Box 1076
STUART, VA 24171
703 694-1820

ANTHONY P. GIOFFRE
Commonwealth's Attorney
CHRISTINE M. REILLY
Assistant Com. Atty.

February 28, 1990

Marcia A. Cranberg, Esquire
Louis M. Bograd, Esquire
ARNOLD & PORTER
1200 New Hampshire Avenue, N.W.
Washington, D.C. 20036

Markham S. Pyle, Esquire
LAW OFFICES OF JOHN S. HARTLEY
25 West Church Street
Suite 210
Martinsville, Virginia 24114

Re: Dennis Waldon Stockton Re-Sentencing

Gentlemen and Ms. Cranberg:

In January, prior to the previous date set for the re-sentencing in the above-referenced matter, Stockton filed a pro se motion for exculpatory evidence in the Patrick County Circuit Court. Shortly thereafter, the matter was continued and counsel re-entered the case. It is clear that the case has been returned for sentencing only.

In keeping with my previously filed response to his motion, I am not aware of any exculpatory evidence in this matter. In an abundance of caution, however, I am writing to disclose information which may arguably be viewed by you as mitigation evidence. I do not, however, concede that such information qualifies as mitigation evidence, nor do I concede its admissibility at Stockton's re-sentencing.

It is apparent from an affidavit of Clifford Boyd attached to pleadings of November 2, 1989, in Stockton's habeas case, that Boyd told you on or before January 5, 1989, that Tommy McBride had told him that Jerry Slate had tortured Kenneth Arnder. In July 1989, Boyd related this story to members of the Office of the Attorney General. Boyd noted at that time that he had previously spoken to Stockton's attorneys. Former Sheriff Jesse Williams also

spoke with members of the Attorney General's Office in July 1989. Like Boyd, Williams said that he had spoken to Stockton's attorneys several months prior to that date.

Boyd and Williams said that Randy Bowman was upset after Stockton's trial because promises allegedly made to him were not kept. Boyd said that Bowman was angry because he claimed Jay Gregory and the Surry County authorities had promised that he would be transferred to another penitentiary or would receive a sentence reduction. Williams said that when Bowman was to be returned to North Carolina after the trial he created a scene. Williams said that Bowman claimed Jay Gregory and I had promised Bowman that he would not be sent back to North Carolina.

Randy Bowman sent a letter to Jay Gregory dated March 2, 1983, in which he wrote that he would not come to court unless he could get the remaining six or seven months of his sentence curtailed. As you can see from the enclosed copy, Bowman did not write that he had been promised the sentence reduction. Actually, he closes the letter by writing that if Gregory will call Raleigh he is sure Gregory can work something out.

I am not aware of any promises made to Bowman other than that I told him that I would endeavor to see that he would be transferred. Jay Gregory told him only that he would try to help him. Of course, Bowman testified at trial that he hoped to benefit from his testimony.

Bowman gave a statement in June 1982 that a Donnie Tate told him that "Pogie" Newman and Donnie Tate went with Stockton to move the body of Kenneth Ardner. Sheriff Gregory never located "Pogie" Newman or a Donnie Tate. Donnie Tate may actually be Ronnie Tate, whom Stockton killed in 1979. While this statement does not cast doubt on Stockton's involvement in the murder for hire, it alleges that others were aware of Ardner's death after it happened and moved the body with Stockton. A copy of this statement is enclosed.

I have also enclosed a statement of Donald York who testified at Stockton's trial. In this statement York said that McBride told him that he had paid Stockton to

kill the Arrington boy. York said that McBride told him that Stockton and Stockton's friend Jerry Slate had killed the boy and that Slate had cut the hands off. York did not say in the statement whether it was Stockton who had told these things to McBride.

Again, while I do not view any of the above-mentioned information as exculpatory or mitigating, I am disclosing it for whatever it is worth.

Very truly yours,

Tony

Anthony P. Giorno

APG:sgh
Enclosures

Exhibit
16

AFFIDAVIT

STATE OF VIRGINIA, AT LARGE,
CITY OF MARTINSVILLE, TO-WIT:

I, Philip G. Gardner, being first duly sworn, do hereby make this affidavit as follows:

1. My name is Philip G. Gardner. I am a member in good standing of the Virginia State Bar. I have been a member in good standing of the Virginia State Bar since 1972. I am admitted to practice before all State Courts in Virginia and the United States District Court for the Western District of Virginia, the Eastern District of Virginia, Fourth Circuit Court of Appeals, and the United States Supreme Court.

2. The main focus of my practice has been trial practice. In the last 22 years, I have tried over 350 jury trials, about half of which are criminal cases.

3. I represented Dennis Waldon Stockton as his trial counsel when he was convicted of capital murder in the Patrick County Circuit Court. At the time I was appointed to represent Mr. Stockton, I had been in practice for about ten years; and I had a reasonable amount of experience in trying serious criminal cases although I had never handled a capital murder case. Mr. Stockton's indictment for capital murder was the first anyone could remember in the history of Patrick County. No Patrick County lawyers were available who could, or would, represent Mr. Stockton. Judge Frank I. Richardson, Jr., requested that I represent Mr. Stockton and I consented. At the time I was appointed to represent Mr. Stockton, his case was already four years old. No one had been charged or indicted in the Kenneth Ardner murder before Mr. Stockton, and no significant investigative work had been done prior to Mr. Stockton's indictment.

4. Even though the murder of Kenneth Ardner was alleged to have occurred in Patrick County, Virginia, all of the other significant events surrounding the case and all of the people involved in the case lived in North Carolina in the rural areas surrounding Mt. Airy and Dobbins.

5. Mr. Stockton was incarcerated at the time of his indictment for the murder of Ardner and has been incarcerated ever since. He was, thus, not available to assist in the investigation of the case. He had no friends or family who were available or willing to assist in the investigation of this case.

6. Shortly after I was appointed to represent Mr. Stockton, it became apparent that I would be severely handicapped in representing him and his defense would suffer if he did not have the benefit of an investigator. The case was already four years old, and any significant investigation would have to take place in an area I was totally unfamiliar with.

7. I approached the Trial Judge, The Honorable Frank I. Richardson, Jr., and he was resistant to allowing even moderate amounts of money for an investigator. He flatly denied the written motion made to allow an investigator. Judge Richardson also denied my motion during the trial to sequester the jury, and he denied my motion that lunch be brought into the jury. This resulted in the jury being exposed to improper influences and a new trial on the sentencing phase was ordered at a cost of untold thousands of dollars to the Commonwealth. Judge Richardson is a good man, and I consider him a friend and I mean no disrespect by these comments; but this case was handled like a routine breaking and entering and grand larceny. His refusal to sequester the jury or even send out for lunch is an example of this. My pleas for the allowance of an investigator were denied. The Trial Court's concern for saving the taxpayers' dollars was certainly misplaced since the Commonwealth of Virginia only had to pay me approximately $500 for representing Mr. Stockton. The money made absolutely no difference to me, but the Trial Court's failure to allow Mr. Stockton even a reasonable amount of money for an investigator prejudiced his case and doomed him from the beginning.

8. In capital murder litigation, throughout the Commonwealth, it is now routine, as a matter of course, for an allowance to be made for investigative services.

9. After Judge Richardson refused my request for reasonable funds for investigative work, I undertook to investigate this case myself. I found myself as a native of Martinsville, Virginia, in the Dobbins and Mt. Airy area of North Carolina where I knew no one and knew nothing about the area. Authorities with the sheriff's office in these jurisdictions were polite to me but they didn't seem to know where any addresses were and they didn't seem to know where anyone lived. I found myself knocking on doors in strange places late at night in remote locations with hostile people slamming doors in my face. If Mr. Stockton had been charged in North Carolina, at least he would have had a lawyer who lived in the community where all the evidence was located to try to properly investigate the case. If the case hadn't been four years old, perhaps it wouldn't have been so difficult to investigate. If Mr. Stockton had been out of jail and could help his lawyer, perhaps it would have been easier. All these factors and others combined to make the investigation of this case practically impossible. I have no training or experience in investigative methods and techniques. I have no special skills in finding missing witnesses. My communicative skills are not geared towards infiltration of the criminal element where the likes of Randy Bowman thrive.

10. That Mr. Stockton was prejudiced by the lack of a proper investigation of his case is without question. Mr. Stockton's prior and present post-conviction counsel (who are, incidently, affiliated with law firms of the highest calibre, competence, quality and reputation) have obtained information that the Commonwealth's key witness against Mr. Stockton, Randy Bowman, has admitted to at least three others that he (Randy Bowman) killed Kenny Ardner and he has made statements

denying his trial testimony concerning whether he heard a man named Tommy McBride offer Mr. Stockton $1,500 to kill Ardner.

Respectfully submitted this 19th day of September, 1995.

Philip G. Gardner

Philip G. Gardner, Esq.
GARDNER, GARDNER, BARROW & SHARPE, P.C.
Fourth Floor, First Union Bank Building
231 East Church Street
Martinsville, VA 24112
703-638-2455
Virginia State Bar #12951

Subscribed and sworn to before me this 19th day of September, 1995, by Philip G. Gardner, Esquire.

Carolyn M. Maydian
Notary Public

My commission expires: 5-31-99.

Exhibit
17

JUL 25 1995

COMMONWEALTH of VIRGINIA

J.D. Netherland
Warden Senior

Department of Corrections
Division of Field Operations
Mecklenburg Correctional Center
P.O. Box 500
Boydton, Virginia 23917-0500

Phone: (804) 738-6114

July 24, 1995

Mr. Steven D. Rosenfield
Attorney at Law
917 East Jefferson Street
Charlottesville, Virginia 22902

Dear Mr. Rosenfield:

This correspondence is in reference to your previous request to have a legal and media visit with inmate Dennis Stockton #134466 on Friday, July 21, 1995. Per information received from my staff as well as my conversation with you on July 20, 1995, your request to visit with inmate Dennis Stockton was approved; however, the polygraph was denied. Insofar as, during our conversation you did not advise me that you wanted to cancel your appointment, arrangements were made to accommodate your visit and you were expected. This was an inconvenience because another visit was postponed and rescheduled for July 24, 1995.

In the future, please notify the institution in the event that you would not be able to keep your appointment as previously scheduled.

Sincerely,

J. D. Netherland, Warden

JDN/JR/tba

cc: File

Exhibit
18

Frank Batten Jr.
President and Publisher

Bruce Bradley
Vice President and General Manager

Cole C. Campbell
Editor

KEY WITNESS RECANTED TESTIMONY

Should Stockton die?

Because a key witness has changed his story, we can no longer be certain that condemned inmate Dennis W. Stockton murdered Kenneth Wayne Arnder, 18, in 1978, and did it for money.

We probably will be kept from certainty by a Virginia law requiring that new evidence be introduced within 21 days of conviction. No other state affords defendants so little time to introduce new evidence of innocence – even evidence suppressed by the prosecution.

Staff writers June Arney and Joe Jackson wrote that the law has "led experts to call Virginia the worst state in the nation for both unfair trials and a lack of due process protection – even when considerable doubt concerning an inmate's guilt is found."

No other state affords defendants so little time to introduce new evidence of innocence.

Stockton was convicted a dozen years ago of capital murder – a jury was certain then – and his execution date probably will be set soon, whether or not his guilt is in question.

Although Randy G. Bowman, a key witness at Stockton's trial, recently recanted his testimony, the 21-day deadline for new evidence was past by more than a decade. Similarly, two former sheriff's officials' affidavits that Bowman thought he would receive favors in exchange for his testimony against Stockton cannot be introduced now, because of the deadline.

What made Arnder's murder punishable by death was Bowman's testimony that he heard Stockton agree to commit the crime for pay. Without that testimony, even if Stockton had been convicted of murder (and he might not have), he would not have been sentenced to die. Only Bowman said the murder was for hire.

Stockton never claimed to be an angel. There's an outstanding warrant against him for a second murder. (A trial on that charge would have been pointless, since he was sentenced to die in the Arnder case.)

Still, it is wrong to execute a man whose guilt is in question. An October 1993 U.S. House Judiciary Committee report said that 48 innocent men had been freed from death rows across the nation since 1972. Twenty-five of the men "were convicted on the basis of perjured testimony or because the prosecutor improperly withheld exculpatory evidence," the report said. It added, "Innocent persons are still being sentenced to death, and the chances are high that innocent persons have been or will be executed."

On Wednesday, Stockton's lawyers filed papers asking the U.S. Supreme Court to review the trial records to determine if there were irregularities in the Stockton case. The chances the court will say yes are slim. The public mood is to execute criminals sooner, not later, and the court is aware of the public's position.

Whether Stockton committed capital murder or not, he was found guilty of it, and who can tell which time the witness lied – then or now? He has no reason to lie now.

In 1994, Del. Clifton A. Woodrum, D-Roanoke, introduced a bill to change the 21-day rule to allow introduction of evidence up to 60 days before execution, but the bill was defeated. Had it passed, the new evidence in Stockton's case could have been heard before a judge in open court, and Bowman, the key witness, could have testified under penalty of perjury.

The bill should have passed.

As things stand, if Stockton is executed, as seems ever more likely, the state of Virginia may have participated in a miscarriage of justice.

Exhibit
19

KEY WITNESS CHANGES STORY SECOND TIME 7/18/95

Should Stockton die? (2)

A witness whose testimony led to Dennis W. Stockton's death sentence has changed his story a second time.

In 1983 Stockton was sentenced to death for the murder of a teenager in Southside Virginia. Randy G. Bowman testified at Stockton's trial that he had heard Stockton agree to commit the murder for money. Murder for pay is a capital offense.

In an interview on April 20 in Bowman's apartment in Mount Airy, N.C., Bowman told Virginian-Pilot staff writer Joe Jackson that he, in fact, did not hear Stockton discuss the murder. In a story that ran April 26, Jackson wrote that Bowman had recanted his testimony against Stockton.

Jackson has been a methodical and dependable investigative reporter for many years and has won numerous journalism awards.

But in a sworn statement signed on May 8 and made public this week, Bowman said, "I didn't tell the reporter I was changing my testimony. I did not tell the reporter that I didn't hear Stockton say 'I will do it. I need the money.' "

Stockton said, "The law's gotten to him and threatened him. . . . They've told him they'll give him X number of years for perjury if he sticks by what he said" on April 20.

We are not dealing here with nuns. Stockton and Bowman both have ample reasons to lie – Stockton for his life and Bowman to avoid a perjury charge.

Despite the increasing murkiness of the picture, it remains clear that a Virginia law stinks – the one requiring that new evidence of innocence be introduced within 21 days of conviction, even when the prosecutors have suppressed evidence. Three weeks is a laughably short time when lives are at stake. No other state has such a Draconian restriction. In cases carrying a penalty of death, provisions should exist for open hearings to consider new evidence whenever new evidence arises.

Partly because the 21-day restriction kept other possibly exculpatory evidence from being presented, Stockton probably will be executed this summer. It is no longer clear beyond a reasonable doubt that he deserves to die.