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

AN APPLICATION FOR

EXECUTIVE CLEMENCY

FOR

LONNIE WEEKS, JR.

Scheduled to be Executed on
Thursday, March 16, 2000

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"Please take into consideration the feelings my brother and I have in this matter. . . . I do not agree with the death penalty in this case. . . . Lonnie, I forgive you for what you have done. Unfortunately, we, as victims, do not have a strong hand in the judicial process."

- Leslie Cavazos-Almagiá, adult daughter of Virginia State Trooper Jose Cavazos, the victim of Lonnie Weeks' crime.

"I do not believe that executing Lonnie Weeks is just!"

- Trevor Cavazos, adult son of Trooper Jose Cavazos.

"I urge the authorities to spare his life."

- Beatrice Hayward, juror who sentenced Weeks to death.

"I continue to feel that a more appropriate sentence for Mr. Weeks would be life in prison without eligibility for parole."

- Sherrie Richardson, juror who sentenced Weeks to death.

"I do not feel hate for Mr. Weeks."

- Linda Cavazos, widow of Trooper Jose Cavazos.

March 10, 2000

The Honorable James S. Gilmore, III
Governor of the Commonwealth of Virginia
State Capitol
Richmond. Virginia 23219

Dear Governor Gilmore:

Lonnie Weeks seeks clemency. The following questions are pertinent to any clemency decision, and in Lonnie Weeks' case, the answers compel a grant of clemency:

1. Did the offender:
   express sincere remorse?
   quickly accept responsibility?
   attempt to make amends?
   rehabilitate?[1]

2. Are the needs and views of the victims' family relevant to a Governor's clemency decision?[2]

3. Is there an unacceptable risk that the jurors did not consider Lonnie Weeks' innumerable good qualities?[3]

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[1]In his written letters immediately following the crime and his testimony, Mr. Weeks took responsibility for his criminal conduct, he expressed remorse, and he empathized with the victim's survivors. No credible person has seen anything but sincerity in these actions.

[2]Victims rights experts and activists recognize Lonnie Weeks' post-offense actions to be unprecedented and exemplary. No offender can do more than Mr. Weeks has done and is still doing to provide solace for the victims' survivors.

[3]The Supreme Court has held that there was such a risk in this case. Five Justices could tolerate the risk; four dissenters could not. There is new proof that the risk was far greater than the Justices knew.

4. Would the execution of Lonnie Weeks be a detriment to the Commonwealth?[4]

5. Can any person who is guilty of the murder of a law enforcement officer receive clemency?[5]

Because the answer to all of these questions is "yes," we urge you to grant clemency for Lonnie Weeks.

I. Remorse, Responsibility, and Rehabilitation

You will not find a more remorseful person than Mr. Weeks. His testimony is unlike any you are likely to see again:

- "I apologize for what I have done. I feel that I took an innocent man's life."
- I also know that what I have done, it was very – it's very wrong, is hurting, because I know what it feels like to lose somebody that you love."
- "I've hurt my own family, as well as his family. Sometimes I actually feel like I can't live with myself, but that, now that I'm back with the Lord, He give[s] me the strength."
- "I pray for my family and his family every night."
- " I feel very ashamed and low. . . . Hearing those things [the victim's qualities, and the pain caused], every time I hear someone talk about Mr. Cavazos, I begin to cry because it hurts me. It hurts me so bad into my heart that sometimes I actually feel like I could die from that pain."[6]
- "I guess I felt like I didn't need [the Lord] any more, and so, to myself I say, well, I'm

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[4]Mr. Weeks is, like us all, both saint and sinner. He is, however, different from all other death row inmates in this Commonwealth, and perhaps in this nation. He is different in that from the moment of his offense he has been committed to doing no more harm and to providing limitless opportunities for healing and helping others. The quality of mercy in the Commonwealth would be diluted with Mr. Weeks' gratuitous execution

[5]If any such offender can receive clemency, Lonnie Weeks should. A National Police Organization with 35,000 members has requested clemency for Mr. Weeks.

[6]This testimony was in response to a question by defense counsel regarding how it made Mr. Weeks feel to hear the Commonwealth's evidence in aggravation which had focused on the victim's good traits, and the impact of his death on his colleagues and family.

paying for – by my turning my back on Him, I obviously have an indecent mind." [7]

Experts employed by the Commonwealth recognize Mr. Weeks' sincerity. In December of 1993, Gorden R. Hefner, a probation officer, conducted the presentence investigation for the court. He noted that

> ***When discussing the impact of his actions, Mr. Weeks expressed regret and concern for the victim's family before addressing the impact on his own family and lastly himself.***

In January 1994, Mr. Weeks was interviewed twice en route to Death Row at Mecklenburg by Douglas F. Hough, Ed.S., the senior psychologist. Dr. Hough observed "there was no denial as to his criminal actions" and "no avoidance of material nor hostility presented . . . ." The Psychological Evaluation reported Mr. Weeks' emotional state:

> ***Presently, Mr. Weeks experiences considerable remorse for his shooting this officer, has asked the forgiveness of the family, and understands their withholding of it. He acknowledges depression for his killing this innocent man, the pain it is causing the officer's family, the distress he has caused his own family, and his being away from his two children.***

Mr. Weeks remains close to his grandmother and his younger brother, DeAngelo. According to Coach Stephen Clingan, Mount Olive College, DeAngelo also "shows outstanding promise as an athlete" and is now pursuing the dream that Mr. Weeks left behind. Coach Clingan, who had tried to recruit Mr. Weeks many years ago, was also instrumental in placing DeAngelo in a basketball program at Arizona Western. Coach Clingan observed:

> ***It is my understanding that Lonnie has kept DeAngelo focused on bettering his future through communications from prison. If Lonnie could be a positive***

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[7]Those who actually know Lonnie Weeks are not at all surprised or skeptical about this testimony. John F. Briggs, of the C & Adams Street Church of God in Fayetteville, has known Mr. Weeks since he was 14 years old and traveled from Fayetteville to attend his capital trial:

> ***I was in attendance at his trial and I was impressed (not surprised) by Lonnie's honesty and candor regarding the events of the shooting of Trooper [Cavazos]. Lonnie's remorse was genuine, as is his Christian experience with his Lord and Savior Jesus Christ. . . . I am writing in hopes that you may take a personal interest in this case, and perhaps take the chance to know what was once a quality young man, and see that the same attributes he held as a child, and teen are still evident in his life today.***

influence on his brother's life, even from prison, I feel that Lonnie's value as an individual is immeasurable.

Mr. Weeks remains an active father to his two young sons, D'Angelo and Jamaiz, aged nine and eight. In spite of his situation, he makes every effort to be a positive influence on them.

II. The Needs and Views of the Victims

Mr. Weeks case became all the more extraordinary yesterday when he spoke at length with the victim's daughter, and, through her, to the rest of the victim's family. This event was truly unique and is deserving of unique consideration. Howard Zehr, Associate Professor of Sociology and Restorative Justice at Eastern Mennonite University, was a facilitator in this reconciliation; he supports clemency for Lonnie Weeks and has been deeply moved by Lonnie Weeks' character and sincerity.

The adult children of Jose Cavazos want Lonnie Weeks, the man who murdered their father, to live. They believe that commuting his sentence to life imprisonment without the possibility of parole punishes Mr. Weeks sufficiently and appropriately while sparing them the trauma of another killing.

Trevor Cavazos, the grown son of Jose Cavazos, has provided a written statement which contains his request that the Governor grant Trevor's request that Mr. Weeks not be executed. Trevor Cavazos is 23 years old and continues to live in Virginia. Every day, he thinks of his father and of the man who killed him. Trevor Cavazos recently passed the same age as Mr. Weeks was when the shooting occurred. As a 16 year-old boy at the time of his father's death, Trevor Cavazos recall that he could only respond with "pure hate." Now, he believes he has "grown up a lot since then." He has forgiven Mr. Weeks and asks that he not be executed:

At the time of my father's death I personally would have loved to harm Lonnie Weeks, but that was pure hate, and I've grown up a lot since then. Now I know that forgiveness is better than vengeance, and that love is better than hate. . . .

[A]ll I can say is that everyday our society is fighting violence, or better yet the violent cycle of life. Please, break this cycle by sparing Lonnie Weeks life, and show that the state is compassionate, kind, forgiving, and truly loving, and not vengeful, hateful, inflexible and above all that the state is not "God."

This young man wants no further killing to occur in retribution for what was done to his father and asks to meet personally with the Governor to discuss his wishes. Trevor Cavazos does not want vengeance to be associated with his father's name. Instead, he asks the Governor to break the cycle of violence, and to demonstrate that the state "is compassionate, kind, forgiving, and truly loving, and not vengeful, hateful, inflexible, and above all, that the state is not 'God.'" These are strong words, shaped by emotion, but words which express a man's passionate desire

that in this case the state might honor his wishes and not, even indirectly, forever link a second killing to the loss of his father.

Likewise, Leslie Cavazos Almagiá, Jose Cavazos' grown daughter, has requested in writing that the Governor commute Mr. Weeks' sentence. She wrote to Mr. Weeks to forgive him. At the time of her father's death she also felt anger toward her father's killer. Yet, today, as a mature 26 year-old woman, she, too, has concluded on her own that Mr. Weeks "should live out the rest of his days in prison."

Jose Cavazos' daughter's statement is particularly heartfelt in its expression of her desire that Mr. Weeks' crime and the pain it has caused not provide a justification for a second killing. She asks:

> ***Will [Mr. Weeks'] death bring my father back from the dead? Will it set the record straight? Will I, his child, feel less grief? The answer to these questions is 'no.'***

However, Mrs. Almagiá's desire that Lonnie Week's life be spared is not confined to consideration of her own interests: "***Will society benefit directly in any way? I don't believe so.***"

Trooper Cavazos' widow, Linda Cavazos, has also spoken with us regarding Lonnie Weeks' impending execution. She has chosen not to be involved directly with the clemency process. She has done so because she feels that she has finally begun her life anew and has no desire to return emotionally to matters involving the death of her husband. She told us, *"I do not feel hate for Mr. Weeks."* She has stated publicly that she loves her children and respects their wishes. For herself, she does not crave Mr. Weeks' death; she asks only that whatever decision you reach, you not act on her account.

The Governor should consider Trevor Cavazos' objection that his words were misapplied by Mr. Weeks' prosecutors in their efforts to persuade Mr. Weeks' jury to impose the death penalty. Trevor feels that the death sentence was imposed in part based upon a statement he made which was used in a manner which he did not intend. After learning of the crime, Trevor could not understand why no second trooper was present for the traffic stop, particularly when the stop evolved into a search: "*At the time of the event I instantly had so many questions about everything. I wanted to know, why didn't my dad have backup or a partner?*"

Trevor hoped that, as a result of his father's death, there would be a change in traffic stop procedures followed by the State Police. He told others that he did not want his father's death to be a waste, and perhaps it might provide a reason for instituting life-saving changes to police procedures. At sentencing Mr. Weeks' prosecutors twisted that statement and argued to the jury that Mr. Weeks should die because "[Trevor Cavazos] wants one thing; he doesn't want his father's death to be a waste." Mr. Cavazos has informed Mr. Weeks' representatives that he

continues to feel pain and frustration that such a statement was made to the jury in his name when he never appeared in support of a death sentence for Mr. Weeks. Commuting Mr. Weeks' sentence would alleviate some of the lingering burden which Trevor Cavazos feels about being used in this manner.

You have the opportunity to allow the Cavazos the reconciliation they seek. First, Trevor Cavazos and Leslie Cavazos Almagiá have made clear that they do not wish that the name of their father be invoked in the pursuit of retribution:

> ***Please take into consideration the feelings my brother and I have in this matter. We have thought about this very carefully. In our hearts, we have forgiven all that has been done to our family. We want to set an example for society.***

To execute Lonnie Weeks affords no dignity to Trooper Cavazos or his children. Indeed, in the face of their considered and expressed desire to "break the cycle of violence," Lonnie Weeks' execution will only "create a higher level of animosity in [their] lives."

The execution of Mr. Weeks would deprive two more innocent children of their father. The children of Trooper Jose Cavazos do not want that to happen. Mr. Weeks has two children. His oldest boy, D'Angelo, was named after Mr. Weeks' younger brother. D'Angelo is almost ten. Mr. Weeks' youngest son is named Jamaiz, and he will turn nine after Mr. Weeks is scheduled to be executed.

In spite of his incarceration, Mr. Weeks has remained actively involved in his children's lives. Mr. Weeks was raised by his grandmother, Ms. Evelyn Leach, after his own father died when Mr. Weeks was ten years old. Ms. Leach visits Mr. Weeks and often brings one of his children on the visits. Mr. Weeks is also able to speak with his children during weekly telephone calls.

Mr. Weeks' children do not comprehend that their father is under a death sentence. They still ask when he will come home. If clemency is not granted, they will lose their father's guidance and support.

The parallels between Mr. Weeks' children and Jose Cavazos' children are inescapable. Jose Cavazos' children have grown to adulthood without their father. They have wondered how their father died and likely have caught themselves from time to time dreaming of their father's return. Still, Trevor Cavazos writes:

> ***I never want to see anyone in my lifetime ever go through what I have, and currently the state is about to make another child fatherless. Yes, I mean Lonnie Weeks children will never have the chance to make contact with their father late in life, and later in life is when its so necessary. Take it from someone who knows.***

Likewise, Leslie Cavazos-Almagiá writes:

> ***I agree that Lonnie Weeks, Jr. should live out the rest of his days in prison. I do not agree with the death penalty in this case. I worry that his children will suffer and be angry. Possibly, they will be more inclined to repeat their father's life out of anger and frustration.***

These are the sincere concerns of persons who have grown to adulthood without the presence of a father and are best situated to weigh the costs of increasing the number of fatherless children in this case.

Leslie and Trevor are proud of their father, particularly proud of his success as a state trooper. They understand the dangers and pressures that state troopers and other police officers face. Yet, these staunch supporters of police officers also appreciate that the same trauma done to them can be done to the children of Mr. Weeks, who are equally innocent.

The children of Jose Cavazos have foregone the invitation to call for Lonnie Weeks' life in recompense for their father's. They have done so in part out of their sense of a need for proportionality between society's expression of outrage in the name of the victims of Mr. Weeks' crime and the impact of the manner of that expression. Under no circumstances do they wish for two more children to be rendered fatherless in the wake of Mr. Weeks' crime.

The Governor should respect the wishes of Jose Cavazos' adult children and recognize that he can commute Mr. Weeks' sentence to life without the possibility of parole and still respect the wishes of those who demand a strong sanction against anyone who would kill a law enforcement officer.

III. Jurors Have Expressed the Preference for a Life Sentence and Have Explained How Juror Confusion Led to a Death Sentence, Confusion Which Can Never Arise Again Under Amended Model Juror Instructions

A. Mr. Weeks' Character Traits: Christian Athlete

The evidence in mitigation presented to the jury was, summarily, this: The offense occurred when Lonnie Weeks, Jr., was just twenty years old. Mr. Weeks was an African-American man who had been raised in a poor, violent neighborhood. Yet in spite of his surroundings, at age eighteen, Mr. Weeks was (1) the star, captain, and leader of his high school basketball team, (2) a devout Christian and constant church-goer, and (3) a peaceful, non-criminal, non-violent, productive member of his community. Colleges recruited Mr. Weeks with athletic scholarships.

Mr. Weeks then made a fateful decision. He turned the scholarships down because his

girlfriend was pregnant and he felt an obligation to remain with her. After graduation from high school, he left his grandmother's home and moved in with his girlfriend. Thereafter, without school, church, and the support of his grandmother, Mr. Weeks entered the world of poverty and crime around him. He made a series of awful decisions, and his life quickly unraveled, culminating in his theft of a car and the shooting of the law enforcement officer who flagged it down while he was riding in it as a passenger. When it was over, Weeks looked back in horror and disgust at what he had done.

With more texture:

1. *A Promising Start in Precarious Circumstances*

The story of Lonnie Weeks' short life was told at sentencing. His family moved to Fayetteville, North Carolina, from Washington, D.C., when he was seven years old. (J.A. at 158.)[8] His father died when he was ten. Mr. Weeks was raised by his grandmother, Evelyn Leach, because his mother had become "caught up in drugs" and was not able to care for him. (J.A. at 167, 143-44.)

Ms. Leach lived in a "horrible area" with "drugs, weapons, shootings, killings," (J.A. at 134-35), and she was in a "very, very hard situation economically." (J.A. at 138.) But she was a hard-working, church-going, strict "parent," and Lonnie Weeks thrived under her influence. He was polite, well-behaved, well-mannered, industrious, respectful, and religious. (J.A. at 143-47, 154, 168.) His grandmother "never got no calls from school, never got no calls from the principal, teachers or nobody like that about Lonnie." (J.A. at 168.)

Other responsible adults also helped Lonnie Weeks to stay out of trouble, for example, his basketball coach, Bennie House. Coach House had a great deal of contact with Lonnie Weeks, almost daily, for three years. (J.A. at 133.) Mr. Weeks had no disciplinary record at school, and, in sports, had "[n]ever a fight; never a technical; always – always handled himself real well." (J.A. at 136.) Mr. Weeks "developed into a very fine basketball player" and "had to shoulder a lot of responsibility" as a senior, but, "unfortunately, we lost him in January with grades. That was the only thing negative I can say ... As much as I talked and encouraged his grades, he still came up short in two courses [at mid-term]." (J.A. at 135.) But "he came back strong and, of course, he graduated in ' 91 at 71st High School." (J.A. at 135-36.)

Another person who "saw a lot of potentials in Lonnie" was Sergeant Major Bryant (retired from the Army) who was a neighbor. Bryant came to know Lonnie Weeks "after he had that traumatic moment with his father . . . so I kind of took up on him." (J.A. at 152.) Bryant was hopeful about "the potentials I saw in Lonnie going to college and his ambition for wanting to go to college, I wanted him to make his decision, his mind up which direction he wanted to

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[8]The "J.A." references are to the trial transcript, which will be provided upon request.

go." (J.A. at 153.)

Donny Dees also knew Lonnie Weeks well for over a decade. Dees testified that "from 1979 to 1991, I served as his Youth and Christian Education Director, and his sophomore, junior, and senior year in high school, I was his Sunday School teacher" at the C and Adams Street Church of God. (J.A. at 163.) Dees was also a counselor in the Fayetteville public schools, and knew Mr. Weeks "through church, and from church through school . . . ." (J.A. at 162.) According to Dees, "[y]ou could almost count on [Mr. Weeks] being [in church] every Sunday." (J.A. at 163.) Mr. Weeks "would participate in [Sunday School] class" and was "sensitive from the standpoint, a lot of times in class he would weep and cry over – from the standpoint of – from the lesson." (J.A. at 164.) Dees encouraged Mr. Weeks to go to college. (J.A. at 163-64.) Upon Mr. Weeks' graduation, Dees moved to a new church and did not see Mr. Weeks anymore. (J.A. at 165.)

2. *A Support System is Dismantled*

Mr. Weeks' grandmother, school, and church had insulated him from his "horrible" neighborhood.[9] After a very short period of time he found himself without this support system in an environment that presented unfamiliar problems and bad temptations. He did not do well on his own.

First, Mr. Weeks moved out of his grandmother's house and in with his girlfriend. (J.A. at 171.) According to Mr. Weeks' grandmother, "she came up with this baby after Lonnie graduated from high school and said that it was Lonnie's baby, and that's all I knew, and Lonnie accepted the baby as his baby." (J.A. at 175.)

Second, Mr. Weeks graduated from high school and did not continue on to college. Sergeant Major Bryant explained that Mr. Weeks did not go to college because of his girlfriend's baby. "He was a kid that was from a broken home, and I guess he didn't want to see that happen to his kid." (J.A. at 153.) Mr. Weeks testified that he did not take advantage of his college athletic scholarships because "I was involved with a young lady . . . and she was pregnant and . . . I didn't want to leave her by herself." (J.A. at 107.) "My grandmother was encouraging me to go to college . . . [b]ut, at the time, I was thinking that I was doing the right thing by being by her side and waiting to go to college later." (J.A. at 107.)

Third, Mr. Weeks stopped going to church. (J.A. at 108.) He was well known as a

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[9] Mr. Weeks testified that, before he graduated, "I really couldn't have gotten in trouble because I was so busy with basketball during the school time and, in the summertime, I was at basketball camp, and I was going to church and my life just felt like it was right. The trouble was – I wasn't around anyone who really got into trouble – I just wasn't around any trouble." (J.A. at 129.)

superb athlete and people wanted to talk to him about that, but

> I was depressed about my life because everywhere I went, strangers [sic] that I knew, they always say, "Why you not in college? What are you doing?" . . . My family and friends, they used to just always tell me that I need to go to college, and I became very depressed. I felt like I let everybody down; and that I was depressed, I guess I really didn't try to focus on being back with the Lord, so I can get my life back right.

(J.A. at 130.)

Mr. Weeks worked a series of menial jobs, but never earned enough money even to have a car. (J.A. at 109-11.) Other young men in the neighborhood appeared to make a lot of money selling drugs, (J.A. at 112-13), and Mr. Weeks finally started hanging out with this "bad medicine." (J.A. at 153) (Sergeant Major Bryant's testimony); *see also* (J.A. at 150) ("wrong crowd")(Juaneza Vivian, another neighbor.) Mr. Weeks testified that "[w]e was kind of struggling, so I thought I'd just take the easy way out." (J.A. at 111.) He started selling marijuana with several other persons, all of whom had criminal records. (J.A. at 89-91.) Mr. Weeks was arrested, pleaded guilty, and received a three year sentence, suspended, and five years probation. (J.A. at 111-12.) It was his first offense. (J.A. at 93.)

3. *Events Preceding the Murder of Trooper Cavazos*

The series of events that culminated in Trooper Cavazos' murder began with a suggestion by Luther J. Waddell. Luther J. Waddell went to high school with Lonnie Weeks but graduated first and started serving prison sentences. (J.A. at 74.) After he got out of prison in 1992, he lived in Mr. Weeks' neighborhood, and they became associates. (J.A. at 74.)

They sold marijuana together.[10] Another drug seller in the neighborhood (Dutlow) did not want them selling there so he hit Mr. Weeks in the head with a pistol and threatened to kill him – "[h]e kept saying he was going to kill me if he saw me or kill Luther if he saw him." (J.A. at 115, 78.) Mr. Weeks had agreed to "hold" a pistol for a friend,[11] and "once the threats [from

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[10]The state contended that Mr. Weeks was also selling crack cocaine, but the police found none when he was arrested for his first offense. (J.A. at 92.) Mr. Weeks testified that he wanted to sell cocaine, but that he never could get enough money together to do so. (J.A. at 113.) Luther J. Waddell testified that he sold cocaine, and suggested that Mr. Weeks did also, (J.A. at 79), but Mr. Weeks testified that Waddell was lying. (J.A. at 184.) Waddell was in prison at the time of his testimony. (J.A. at 73.)

[11]The friend asked Mr. Weeks to keep the pistol for a while because it had been used in a shooting. (J.A. at 113.) Mr. Weeks agreed to help his friend out, and he took the pistol and hid it

Dutlow] started getting worse, I felt that I had to have it." (J.A. at 113, 115-16.)

Luther learned that a neighborhood house was going to be unoccupied because the occupant was in jail. (J.A. at 75.) Luther planned to burglarize the house, and asked Mr. Weeks to go with him. (J.A. at 117.) Mr. Weeks talked with his girlfriend about it, and she said, "'[T]hat's not you. Don't go.'" (J.A. at 117.) As Mr. Weeks testified, "I didn't – you know, I didn't break into houses or think about doing things like that, I guess, until – until Luther came along. I started hanging out with him, I'd say, about two months – two months. . . . I kind of felt like my life was going down the drain. I missed opportunities that I had. I was having really some problems." (J.A. at 130.) "But," Mr. Weeks testified, "I was being more and more tempted by Luther, you know, to get some money." (J.A. at 117.) They went to the house in Luther's girlfriend's truck. (J.A. at 75.) They broke in and took electronic equipment. (J.A. at 76.) Mr. Weeks found car keys; the keys fit a car outside, and Mr. Weeks took it. (J.A. at 77.)

Mr. Weeks said he took the car because "right then that moment I was kind of excited to have – to be able to have a car that maybe I could drive that I never had." (J.A. at 117.) He decided to drive the car to visit some family members the next day in Washington, D.C. (J.A. at 118.) His cousin, Eric Baker, went with him as far as Richmond, Virginia, and then Mr. Weeks went on to Washington, D.C. (J.A. at 119.)

Mr. Weeks stayed several days, and then Baker telephoned him and asked him to drive down to Richmond to pick him up. (J.A. at 119-20.) Mr. Weeks protested because of the late hour but ultimately agreed. (J.A. at 120.) Mr. Weeks was going to go alone, but his uncle, Louis Dukes, said "it was kind of late and you need someone with you." (J.A. at 120-21.) They agreed that Dukes would drive on the way to Richmond, and Mr. Weeks would drive on the way back. (J.A. at 121.)

4. *The Murder of Trooper Cavazos*

Mr. Weeks testified that Dukes was speeding on the interstate on the way to Richmond. (J.A. at 121.) A police car came up behind them, and Dukes pulled over near the ramp to Dale City, on or near an overpass or bridge. (J.A. at 121-22.) Mr. Weeks was very nervous because he was on probation, and because the car was stolen. (J.A. at 122.) The officer told Dukes to step out of the car, and he did. Mr. Weeks was told to step out, and he looked down and saw the pistol his friend had asked him to hold. (J.A. at 123.) He intended to grab it and throw it over the rail of the bridge as he got out of the front seat. (J.A. at 123.)

Mr. Weeks explained as best he could what happened next:

[M]aybe a Christian or a person who believes in God and the devil will

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under the house where he stayed. (J.A. at 115.)

> understand what I'm about to say. And, as I stepped out of the car, it was just like something had just took over me that I couldn't understand. It was like something – I felt like something – the best way I can describe it is like something – I can't say something. I knew what it – well, to me, I felt like it was evil – evil spirit or something. That's how I feel. That's the best way to describe it.
>
> In my body, I just – I mean, I couldn't hear nothing, and I just remember afterwards, not at the time, that I started firing the gun. And, once it stopped, I remember my ears popping. My hand came back and it was like something just left me, like left me just standing there, and I couldn't-- I was standing there looking at the trooper, and I was just in a daze, couldn't believe what just happened.
>
> I didn't want to believe what just happened, but I knew that I had done it, because it just was in my hand. But I still couldn't believe it, so I was standing there, and I looked at my uncle, and he almost looked, maybe as a ghost or something.
>
> He had a lot of fear in his face, and I guess he figured – I mean, he knowed [sic] that I had never even attempted to do anything violent before . . . .

(J.A. at 123-24.) Dukes came around to the passenger side of the car and told Mr. Weeks to get in. "I still couldn't move and he had to push me." (J.A. at 125.) They drove away, and then Mr. Weeks ran back to the scene. Emergency personnel were there: "I wanted to say something, but I was just too scared to; I couldn't. I know the good in me wanted to, but I guess the bad in me just wouldn't let me." (J.A. at 126.)[12]

5. *Responsibility and Remorse*

Lonnie Weeks testified at length about the remorse he felt for the crime. See Section I, above.

B. The Jurors' Express Confusion

After hearing the evidence, the jurors were instructed according to the following pattern instruction, referenced as "Instruction No. 2."

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[12] Mr. Weeks' family members and friends expressed shocked disbelief when they learned that he had committed this crime. (J.A. at 147 ("shocked . . . really shocked"); 165 ("I couldn't believe it. . . . I thought she had the wrong person."); 147-48 ("[I]t was just totally out of character for Lonnie . . . I was just horrified, to tell you the truth."); 172 ("I couldn't believe this was Lonnie . . . ."))

> You have convicted the defendant of an offense which may be punished by death. You must decide whether the defendant shall be sentenced to death or imprisonment for life and a fine of a specific amount, but not more than $100,000.00. Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt at least one of the following two alternatives:
>
> > 1. That, after consideration of his history and background, there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society; or
> >
> > 2. That his conduct in committing the offense was outrageously or wantonly vile, horrible, or inhuman, in that it involved depravity of mind or aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder.
>
> If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt either of the two alternatives, and as to that alternative you are unanimous, then you may fix the punishment of the defendant at death or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the defendant at life imprisonment or imprisonment for live [sic] and a fine of a specific amount, but not more than $100,000.00.
>
> If the Commonwealth has failed to prove beyond a reasonable doubt at least one of the alternatives, then you shall fix the punishment of the defendant at life imprisonment or imprisonment for live [sic] and a fine of a specific amount, but not more than $100,000.00.

(J.A. at 193, 200-201.) The jurors were given a written copy of the instructions as well as the verdict finding forms to take into the jury room with them, and they retired. (J.A. at 189, 225.) Eighty minutes later, the jurors sent out a written question asking whether a sentence of life imprisonment would include the possibility of parole. (J.A. at 222, 225.) The trial court refused to answer this question, instead advising the jury that it should "impose such punishment as you feel is just under the evidence, and within the instructions of the Court. You are not to concern yourselves with what may happen afterwards." (J.A. at 225.) The jury returned to its deliberations.

> After almost three more hours of deliberation, the jury sent out a second written question: If we believe that Lonnie Weeks, Jr. is guilty of at least 1 of the alternatives, then is it our duty as a jury to <u>issue</u> the death penalty? or must we <u>decide</u> (even though he is guilty of 1 of the alternatives) whether or not to issue the death penalty, or one of the life sentences? What is the rule? Please clarify.

(J.A. at 223, 229-30) (emphases in original.)

Defense counsel "ask[ed] that Your Honor instruct the jury that even if they find one or both of the mitigating factors – I'm sorry, the factors that have been proved beyond a reasonable doubt, that they still may impose a life sentence, or a life sentence plus a fine." (J.A. at 231.) The trial court denied this request. Instead, the trial judge wrote on the bottom of the jury's inquiry: "See second paragraph of Instruction #2, (Beginning with 'If you find from . . .')." (J.A. at 223, 230.) The jury then returned to its deliberations.

A little over two hours later, the jury fixed Lonnie Weeks' sentence at death based on the sole aggravating factor that the crime was outrageously or wantonly vile, horrible or inhuman. (J.A. at 235, 232-33.) The transcript records that "a majority of the jury members [were] in tears" as they delivered their sentence. (J.A. at 233.)

C. Jurors Did Not Consider Mr. Weeks' Good Qualities, and Now Believe that Life Imprisonment is Proper

Two of Mr. Weeks' jurors have come forward to declare under oath that they did not believe during the trial that Mr. Weeks should be executed and do not now believe that Mr. Weeks should be executed. Each of these jurors has executed an affidavit stating their respective reasons for wanting Mr. Weeks to receive clemency.

One juror, Beatrice Hayward has stated under oath that she and another juror wanted to sentence Mr. Weeks to life in prison. However, other jurors believed Virginia law *required* them to sentence Mr. Weeks to death[13]. Submitting to this incorrect understanding of Virginia law, Ms. Hayward felt powerless to vote for the sentence she believed appropriate for Mr. Weeks -- life in prison. She abandoned the sentence which she felt was just and fair, and followed the mistaken jurors; "I felt it was useless for me to continue to ask for life in prison against the strong feelings of the other jurors."

A second juror, Sherrie Richardson, has declared under oath that she, too, wanted to sentence Mr. Weeks to life in prison. Like juror Hayward, she felt she had no choice but to vote for the death penalty in view of the other jurors' understanding of the law.

These two jurors have come forward to tell the Governor that they felt and continue to feel that life in prison is the appropriate sentence for Mr. Weeks. At the time of their verdict, instead of maintaining their conclusion that, based upon the evidence, Mr. Weeks did not deserve the death penalty, the two jurors set aside their independence and acquiesced in a verdict which was not their own and was based on an incorrect understanding of the law. If either juror had maintained a correct understanding of the law or independent judgement, Mr. Weeks would not have been sentenced to death.

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[13]These jurors misunderstood the instructions. Virginia law never "requires" jurors to sentence a defendant to death.

According to the sworn affidavits of jurors Hayward and Richardson, ***the majority of the jurors thought they were required to sentence Mr. Weeks to die solely because they had found an aggravating factor in his crime.*** After debating the jury instructions and the verdict for several hours during deliberations, the jurors sent their note to the trial court asking whether they were required to impose the death penalty upon finding an aggravating factor or whether they could still consider mitigating evidence. The trial judge refused to answer this simple question. Left to interpret the instruction without meaningful guidance of the court, the majority of Mr. Weeks' jurors concluded erroneously that the presence of an aggravating factor required them to impose the death penalty.

D. Because Many Jurors Are Confused By the Instructions Given Here, The Instructions Have Been Amended; Only The Governor Can Correct the Injustice Retroactively

A recent study of juror comprehension of the Virginia Pattern Instruction conducted by Cornell Law School and William & Mary Law School demonstrates that these mistaken jurors are not alone. This evidence has not been considered by any Court because it developed so recently.

A previously unavailable and as yet unpublished article–Stephen P. Garvey, Sheri Lynn Johnson, and Paul Marcus, *Correcting Deadly Confusion: Responding to Jury Inquiries in Capital Cases*, 85 Cornell Law Review 101 (forthcoming March 2000)(draft Attached hereto)(hereinafter "Cornell Study")–"examine[s] how well jurors who are given the sentencing instructions actually used in *Weeks* understand the relevant constitutional principles." Cornell Study at 102. The authors "also examine what, if any, difference it would have made if the judge had given a clarifying instruction, instead of simply telling the jurors to go back and re-read the original instruction." *Ibid.* The results of the Cornell Study show there is an unacceptable risk that Mr. Weeks will be executed without having received the jury's consideration of his substantial mitigating evidence.

In the Cornell Study, the jurors were provided with the jury instructions actually given in Mr. Weeks' case and with a synopsis of the evidence. They then were asked question one:

> After hearing the instructions, did you believe that the law required you to impose a death sentence if the evidence proved that Mr. Weeks' conduct was heinous, vile, or depraved?

Id. at 110. The jurors were then asked a second question which was the same as the first, but with "future dangerousness" as the aggravator.

The jurors' answers were inconsistent with the law:

Altogether, fifty-nine percent of the 154 jurors answered the first question "no,"

> which is the correct response. Capital jurors are as a matter of law *never* required to impose a death sentence, no matter how heinous the crime or dangerous the defendant. *But forty-one percent gave the wrong answer: "yes."* Much the same goes for the second question. Sixty-two percent of the jurors answered "no," which is again the correct response. But that still leaves *thirty-eight percent who answered the second question incorrectly*. Both results are troubling.

Id. at 111 (footnote omitted; emphasis added).

> Reasonable jurors, according to the *Buchanan*[14] Court, would not have thought Instruction No. 2 required them to impose a death sentence if they found the defendant was death-eligible because the state had proven either heinousness or dangerousness. But that's exactly what thirty-eight to forty-one percent of our mock jurors *did* believe. *Buchanan* would call these jurors unreasonable. The alternative conclusion, of course, is that these jurors were simply confused.

Id. at 111.

The judge in this case simply referred Mr. Weeks' confused jurors back to the original instruction. The Supreme Court majority concluded by one vote that this solved any problem with confusion. Slip opinion at 8-9. However, according to the Cornell Study, referring jurors back to the original instructions actually *exacerbates* the problem:

> simply directing the jurors to reread the pattern instruction *did nothing* to improve their comprehension. **Jurors who heard the real jury's question and who were directed to look at the original instruction were at least as likely to believe they were required to impose a death sentence if they found an aggravating factor as were jurors who heard the instruction only once. Indeed, simply referring jurors back to the original instruction actually resulted in a five percentage point *increase* in the number of jurors who thought they were required to impose death if the evidence proved Weeks' conduct was heinous, vile, or depraved, which was in fact the aggravating factor the real *Weeks* jury ended up returning.**

Id. at 114 (emphasis added).

Answering the jurors' question, rather than simply referring the jurors back to the original instructions, *improved* juror comprehension:

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[14]*Buchanan v. Angelone*, 522 U.S. 269 (1998).

> Among jurors who received a clarifying instruction,[15] only twenty-four percent continued to believe a death sentence was mandatory if they found the defendant would be dangerous in the future. In other words, a clarifying instruction would have corrected the misunderstanding among forty percent of the otherwise confused jurors. Moreover, *these results are statistically significant under traditional measures*. Differences this extreme are very unlikely to be the result of chance.

Id. at 115 (emphasis added).

These results seriously undermine confidence in the result reached by the Courts in this case. The Courts were unaware of this empirical evidence (which was unavailable) when deciding whether there was an intolerable risk that the sentencers believed they could not consider Weeks' mitigating evidence. As the authors of the Cornell Study put it:

> The jurors who sentenced Lonnie Weeks to death did not understand the law. They asked the trial judge for help. Based on our mock study, the answer he gave probably did precious little good. Consequently, when the jurors voted to condemn Weeks, some of them probably still didn't understand the law, continuing to think that they had to vote for death.

Id. at 121.

No other jurors will face this error in the future. Virginia's Model Jury Instructions Committee has changed the language of the Capital Sentencing Instruction to clarify precisely that language that was the source of confusion for Weeks' jurors. The relevant part of the instruction now reads:

> If you find from the evidence that the Commonwealth has proved beyond a reasonable doubt both [or either] of these circumstances, then you may fix the punishment of the defendant at death. But if you nevertheless believe from all of the evidence, ***including evidence in mitigation***, that the death penalty is not justified, then you shall fix the punishment of the defendant at:

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[15]One of the groups of jurors in the study "was presented with and read the question asked [of the judge by the jurors] in *Weeks*, only this time the jurors were presented with and read the following reply, which we crafted from the actual defense request (requested-reply group) at trial: 'Even if you find that the State has proved one or both of the aggravating factors beyond a reasonable doubt, you may give effect to the evidence in mitigation by sentencing the defendant to life in prison.'" The Cornell Study, at 109. This is the "clarifying instruction" referred to above.

(1) Imprisonment for life; or

(2) Imprisonment for life and a fine of a specific amount, but not more than $100, 000.

Virginia Model Jury Instructions: Criminal (1999 Supp.)(emphasis supplied).

IV. What is the Quality of Mercy in the Commonwealth?

This is a difficult case. A law enforcement officer was murdered; an offender who is decent, remorseful, rehabilitated, thoughtful, caring, giving, and needed in the world is scheduled to be executed.

The jurors who sentenced Mr. Weeks were troubled and crying. They have not seen Mr. Weeks since sentencing, but the Governor has. Lonnie Weeks has steadfastly continued on the path of reconciliation and hope rather than futility and despair. He has helped all those around him, and those who are free. ***We urge the Governor to speak with prison guards, chaplains, wardens, and other prison personnel to determine whether anyone in the institutional setting has anything negative to say about Lonnie Weeks adjustment and adaptation to prison.***

But most importantly, the jurors did not know that Lonnie Weeks would reach out to the victims' survivors in this case and try to set their minds at ease. He has answered every question the survivors asked fully and completely. He has not shirked his responsibility, and he has not minced words about his horrible failings and the needless pain and suffering he caused. And his commitment to this reconciliation truly helped the victims.[16]

In short, unless someone convicted of killing a law enforcement officer simply cannot get serious clemency consideration, there is nothing more that Lonnie Weeks could do, there is no better person that he could be, to be deserving of clemency. There is no mercy in the Commonwealth if Lonnie Weeks is executed.

V. Can The Murderer Of A Police Officer Receive Clemency?

Yes, if the offender is as deserving as Lonnie Weeks. Would clemency negatively affect law enforcement and the safety of law enforcement officers? Not in this case.

First, of overarching concern to law enforcement is the protection of victims and the

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[16]Leslie, the victim's daughter, states that "Having some questions answered, to actually hear it from that person . . . I can visualize what happened. Now it's time to go on." She states that "I do not agree with the death penalty in this case . . . . Let the state seek all the vengeance in the world. I don't want to be a part of that." Washington Post, March 10, 2000.

enforcement of the rights of victim's survivors. The victim's survivors in this case have explained that life imprisonment is their preference. The victim's survivors have sought and been provided with reconciliation with Lonnie Weeks, and concern for the rights of the survivors counsels in favor of clemency.

The safety of law enforcement officers is a paramount concern of any sovereign. This concern can be met in this special case without Mr. Weeks' execution. The National Black Police Association, a national law enforcement organization, joins the requests of Trevor Cavazos and Leslie Cavazos Almagia that the death sentence of Lonnie Weeks, Jr., their father's killer, be commuted to life imprisonment without the possibility of parole. The NBPA's statement follows the public declaration by Mr. Weeks' prosecutor that no state troopers had requested clemency for Mr. Weeks. Ron Hampton, Executive Director of the NBPA, declared in a written statement:

> **We believe in and support the rights and request of the children to meet and talk with Mr. Weeks. Furthermore, the National Black Police Association believes Mr. Weeks should be granted clemency. Nothing will be achieved by killing Mr. Lonnie Weeks, Jr. He is already in prison. We believe the family of his victim should be involved in the process even if they don't want the execution to be carried out and believe in mercy for the convicted killer.**

The NBPA has approximately 35,000 members and includes many state troopers, and the NBPA's statement demonstrates that even police officers and state troopers from across the country recognize that the proportional response to Mr. Weeks crime which shows support for the law enforcement community while avoiding traumatizing the surviving victims and linking their father's memory to another death is to commute Mr. Weeks' sentence to life imprisonment without the possibility of parole.

CONCLUSION

For the foregoing reasons, we request that the Governor exercise his executive clemency authority to commute the sentence of death to one of life imprisonment without possibility of parole. If there is additional information we could provide which would be helpful to the Governor in making his decision, we are more than willing to provide or obtain such information.

Respectfully submitted,

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