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December 29, 1999

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

Re: Petition for Clemency for Steve Edward Roach

Dear Governor Gilmore:

I represent Steve Edward Roach, a prisoner currently held in Sussex I State Prison in Waverly, Virginia. Roach is scheduled to be executed on January 13, 2000. I write this letter on his behalf, to ask that you exercise the authority vested in the Governor by Article V, Section 12 of the Constitution of the Commonwealth, and Virginia Code § 53.1-229 *et seq.*, and commute the sentence of death to one of life imprisonment without parole.

Steve Roach was convicted of the unprovoked murder, at point-blank range, of his elderly neighbor, Mary Ann Hughes, near Stanardsville, Greene County, Virginia, on December 3, 1993. He was tried as an adult, and was sentenced to death because the jury found beyond a reasonable doubt that he constituted a future danger to society.

At the time of the killing, Steve Roach was 17 years old. When he was first moved to death row in 1995, he was its youngest inhabitant.

This Petition is divided into sections, for convenience of reference, as follows. After some introductory thoughts, Section I presents the chronology of the judicial procedures in this case, including the trial, appeals, collateral review, and subsequent proceedings. Section II discusses the crime and its victim, Mary Ann Hughes. Section III is about the trial. In Section IV, I attempt a sketch of who Steve Roach is, and how he came to be on death row. Section V presents the final arguments of law and policy that, in our respectful submission, militate against permitting the scheduled execution of this Petitioner to go forward.

Introduction

Virginia is one of but 16 States in this country that permit capital punishment for crimes committed as a juvenile. In the 1990s, only six nations in the world have executed juveniles:

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Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen . . . and the United States of America. Yemen, incidentally, has since abandoned the practice. In the entire decade, in the entire world, fewer than 20 people have been judicially executed for crimes committed before their eighteenth birthdays. Ten of those were Americans: one was a Virginian.

I recognize that you personally are not a categorical opponent of the death penalty, and I certainly respect the reasoning behind your views, which appear to be shared by a majority of our fellow citizens. But the execution of young people, if it is to be carried out at all, surely should be reserved to those truly horrible crimes and truly unredeemable individuals who represent the farthest reaches of moral depravity.

Steve Roach is not such an individual, nor was his crime – as horrible as it was, and as destructive of life as well as of trust and of public order – one that by its nature suggests that its perpetrator is beyond redemption. He submits not that he is innocent, which he is not, but that he is not a hardened criminal likely to commit other acts of violence. He was an impetuous and troubled young man when, in a single instant, he effectively ended two lives for no apparent reason. His own life, both before and since that instant, has demonstrated no reason for writing him off as a societal mutant, unremittently evil and therefore deserving of society's harshest punishment.

As I explain in greater detail below, before the single-shot, motiveless, but also unpremeditated murder of Mary Hughes, the record discloses not one violent act committed by Steve Roach against another human being. He simply had no prior record of criminal violence: his entire criminal record consisted of two car thefts and a burglary. And his murderous act on December 3, 1993, involved none of the awful, gratuitous behavior that fills any rational observer with loathing and dread. There was no assault, no taunting, no threats, no making the victim beg for her life. Mary Hughes, according to the record of this case, knew fear of her terrible fate, if at all, for only a moment before it befell her.

What is more, Steve Roach voluntarily returned to Virginia after three days of flight, surrendered to the Office of the Sheriff of Greene County, waived his *Miranda* rights, and confessed to the crime. It is true, as the Commonwealth's attorneys regularly pointed out during the litigation of this case, that he first gave the Sheriff a false account, and confessed only after the inconsistencies in his story were presented to him. But in fact, the made-up story that was his first statement to the police was so transparently false (he claimed not only that a friend and not he not pulled the trigger, but that he had been with the friend all day, when his whereabouts had been witnessed by literally dozens of people) that it reflected not a reasoned effort to evade responsibility, but a frightened kid's last hope. Very little pressure during interrogation elicited the true story.

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Since the reinstatement of the death penalty in Virginia in 1977, no defendant sentenced to death on the basis of future dangerousness has had anywhere near as scanty a record of criminal violence as Steve Roach.¹ Nor has any crime involving less violence than this, the minimum necessary to its terrible end – that is, no additional hostility, and no violence directed against others than the murder victim – resulted in its perpetrator being executed in Virginia.

While the United States Supreme Court has made clear that there is no Federal constitutional right to a proportionality analysis, comparing defendants and their acts with others similarly situated, Virginia law does impose the requirement that such a comparison be made, to determine whether the death sentence “is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.” Virginia Code, § 17-110(C)(2). I respectfully submit that the death penalty for Steve Roach cannot withstand a proper proportionality analysis.

Rather than a calculated, deliberate, vile act of hatred, Steve Roach’s murder of Mary Hughes was clearly the result of a severe inability to restrain juvenile impulses. That does not, of course, make it less reprehensible in an absolute sense, and it does not lessen the immediate physical pain it caused its victim or the lingering emotional pain it caused her survivors. But it does, we argue, suggest that condemnation of Steve Roach and his crime should not call forth the strongest, most irreversible punishment that is within society’s arsenal.

For these reasons, and for all of the additional reasons set out below, Steve Roach humbly asks that his life be spared.

I. The Chronology of Judicial Procedures in the *Roach* Case

Steve Roach was convicted by a jury of capital murder on March 2, 1995, and was sentenced to death by the Circuit Court of Greene County, Virginia. The basis for the death sentence was “future dangerousness,” as that term is used in Code of Virginia, § 19.2-264.2(1). The conviction and sentence were upheld on direct appeal by the Commonwealth Supreme Court. *Roach v. Commonwealth*, 468 S.E.2d 98 (Va. 1996), Exhibit B. The United States Supreme Court denied certiorari. *Roach v. Virginia*, 117 S.Ct. 365 (1996).

A State habeas corpus petition was unsuccessful, with the Commonwealth Supreme Court rejecting it in an unpublished opinion on April 30, 1997. The U.S. Supreme Court again declined review. *Roach v. Angelone*, 118 S.Ct. 713 (1998).

¹ An analysis of the salient facts of every other future dangerousness death sentence since 1977 – which we take to be the “similar cases” referenced in the statute, is attached to this letter as Exhibit A.

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Chief Judge Samuel Wilson of the United States District Court for the Western District of Virginia, on July 28, 1998, refused to issue a Federal habeas corpus writ, although not without expressing four times in his opinion that he was troubled by the apparent disproportion in the sentence. Exhibit C. His decision was affirmed on appeal by the Fourth Circuit. *Roach v. Angelone*, 176 F.3d 210 (4th Cir. 1999), Exhibit D. When reconsideration and en banc review of the panel decision in the Fourth Circuit were denied without opinion on June 1, 1999, the Greene County Court convened a proceeding for the establishment of an execution date, and decreed that Roach would die on August 25, 1999. The United States Supreme Court denied the petition for a writ of certiorari on November 1, 1999. *Roach v. Angelone*, 120 S. Ct. 401 (1999).

Meanwhile, on June 11, 1999, the Virginia Supreme Court issued its opinion in *Commonwealth v. Baker*, No. 982102 (*per curiam*), establishing that a juvenile defendant has a right to have both of his parents provided actual notice of his proposed certification to stand trial as an adult, and holding that convictions obtained in violation of that right are not voidable but void. Roach argued that his parents had not been properly notified of his transfer. On August 6, 1999, the Supreme Court of Virginia accepted the appeal in *Roach v. Commonwealth*, Record No. 991817, consolidated it with a successor habeas corpus petition filed *sub nom. Roach v. Director*, Record No. 991816, and stayed the sentence of death. The case was briefed and argued, and on November 5, 1999, the Court entered an opinion rejecting the two petitions. Exhibit E.

After the time for seeking reconsideration of that opinion elapsed, the Attorney General asked the Circuit Court for Greene County to reestablish an execution date, and this was done after a brief telephone hearing, on November 15, 1999. The date set was January 13, 2000: the date on which Steve Roach will be executed unless he is granted executive clemency.

II. The Murder of Mary Ann Hughes

Mary Ann Hughes was a widow over 70 years of age. She lived by herself in a small house set back farther from the road and across a small stream from the Roaches'. She knew and was known to everyone in the community, and she readily received the support and help of local young people, including Steve Roach, in tasks (such as chopping wood and cutting grass) that were beyond her physical ability. Steve spent a great deal of time with her, some of it playing the game Yahtzee, which apparently was Ms. Hughes's favorite pastime (a Yahtzee board, set up and ready to play, was found on her dining table the morning after her death: it is not known with whom she anticipated playing). She was one of the very few people in the world - Donald and Mamie Estes were two others - who Steve Roach felt cared for and about him.

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There were only two witnesses to the interaction between Mary Ann Hughes and Steve Roach during the evening of December 3, 1993. The record of events set out in Steve Roach's confession to the Greene County Sheriff, and in his trial testimony at the punishment phase, is stark and lacks detail. Yet certain things can be inferred beyond much doubt.

It is known² that Roach, who was taken out of school by his parents at age 14 and had little to do with his days, spent most of December 3 with Donald and Mamie Estes, an older couple who lived down the road from him. He frequently passed time with the Estes, who appreciated his help in small chores and just in being company. Mamie Estes was the sister of Mary Hughes, and they lived a few hundred yards apart.

Among the chores Steve did that day was accompanying Donald Estes to Charlottesville to pick up medicine for Mamie's heart. While they were there, Donald and Steve took two detours: one to cash Donald's Social Security check, of nearly \$1,000, and the other a stop at Steve's grandmother's house. His grandmother gave him some money, as "an early Christmas present."

The record shows that, during the rest of the day, Steve made himself useful around the Estes house. He helped with grocery shopping, and made dinner for the three of them. After dinner, he washed the dishes, and folded and put away the elderly couple's laundry. When the Estes sat down to watch a video, at around 9 p.m., Steve left, and headed in the direction of his own house.

Steve's father, John Edward Roach, a sometime undercover informant for the Commonwealth Alcoholic Beverage Control Board, had not been at home that day. His mother, Shirley, was not living at the house, having left her family (itself a frequent occurrence) right around Thanksgiving. Rather than going to his empty house, therefore, after leaving the Estes' some time around 9 p.m., Steve apparently went to visit his neighbor, Mary Ann Hughes, who lived alone.

He had his shotgun with him, as he had all day. He had been carrying the gun when he first went to the Estes' home around 9:00 that morning, and it was in the back of Donald's car during the trip to Charlottesville. At one point during the day, Steve excused himself from the Estes, and went off in the woods "to hunt rabbits." Donald Estes testified that he heard a single shot, before Steve returned empty-handed.

Apparently, carrying a firearm is not at all a remarkable thing in rural Greene County. Although Steve Roach was on juvenile probation for his breaking-and-entering offense, and the terms of

² The factual account in these pages is taken from the trial transcript. Where the particular words a witness used are especially important, I attach those excerpts from the transcript as Exhibit F.

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his probation forbade any involvement with guns, no one considered his possession of that shotgun to be worthy of note. Indeed, a week before, there was a rumor in town that a shotgun had been stolen, and Steve brought his gun to the Sheriff's Office to show them that it was not the stolen one. A Deputy, Christian Stoddard, checked it out, determined that it was not in fact stolen, and returned it to him on December 1, two days before the murder of Mary Hughes.

Exactly what happened as Steve Roach approached Mary Hughes's house that night is, of course, not knowable. In his confession, Roach stated that he looked through the window of the house from the small bridge separating Ms. Hughes's property from his father's, and saw her counting her Social Security money. It is known that he knocked at the door of Ms. Hughes's house, and it is known that he killed her, right there in the doorway, with a single shotgun blast. Hit in the center of her chest, Mary Hughes was in all probability dead before she crumpled to the floor. Steve Roach then entered the house, took her purse, an ATM card, and car keys from the table, left the house, and drove off in Ms. Hughes's Buick. He headed south, eventually reaching places in North and South Carolina where his location was ascertained by evidence presented at the trial.

I can tell you, having myself walked the path from the Roach home, over the bridge, and to Mary's house, that it is not remotely possible to see into the house from the bridge, much less to make out what someone sitting at the table is doing. Nor do I believe for a moment that this murder was committed for money. Steve had been alone with Donald Estes during the day, and held nearly \$1,000 in his hands that Donald asked him "to count" (according to Mr. Estes's testimony, his allowing Steve to "count" his Social Security money was simply a way of giving a 17-year-old some excitement; Mr. Estes surely never even considered the possibility that Steve might steal money from him or anyone else). Indeed, Steve declined the Estes's offer of a few dollars for the chores he had performed that afternoon and evening.

At various points in the litigation, the Commonwealth has suggested that Mary Hughes had hundreds of dollars on her table, having cashed her check that day. But the evidence makes it clear that that is not true. While Ms. Hughes's check, received on the third day of the month, was in the amount of \$505, she deposited some \$440 in the bank on that very day. She could not, therefore, have had more than \$65 from her Social Security check. She may well have had less if, for example, she did her grocery shopping while she was in town to make her bank deposit. No testimony or evidence suggested that she had any other money.

Finally, Steve's grandmother had given him some Christmas money that very day. There is no reason to believe that Steve Roach especially needed large sums of cash. He had no expensive needs, tastes, or habits (the record contains no hint that illegal drugs were part of his life). He always had enough spending money, and was never heard to complain. It is not easy to spend a

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lot of money in the small town of Stanardsville, Virginia, especially late on a Friday night. Roach obviously did not have the sophistication to live "on the lam": witness his almost comically inept flight from the law. In all likelihood, if he needed a few dollars for a meal or whatever, Mary Hughes, if no one else, would have lent him what he wanted.

So, if robbery was not the motive, what was? Having worked on this case for two and a half years, I do not know. I do know that my client was a troubled young man, raised in a completely dysfunctional home, with absolutely no sense of self-worth and with no training, love, or support. Not for one second do I suggest to you that however deprived Steve Roach's childhood and youth, his act of murder should be condoned or forgiven. What I am saying, however, is that it was not the embodiment of evil that should be the exclusive province of the death penalty, especially for juvenile offenders.

In any event, Steve Roach killed Mary Hughes at the entrance to her small home, stole property of little value belonging to her, and headed south in her car. Several hours later, he was stopped by a Virginia State Trooper, who let him go. The next day, he attempted to use Ms. Hughes's ATM card in a machine in North Carolina. Steve apparently did not even know that the use of an ATM requires a personal identification code, which of course he did not have. The machine did not give him money, but it did take his picture.

As a fugitive, Steve Roach had several interactions with the police in all three States: Virginia, North Carolina, and South Carolina. But he had no plan and nowhere to go. He did not have the sophistication even to check into a motel. No one (Steve included) has any idea where he spent those 72 hours. At last, on December 6, pursued by a South Carolina Trooper, apparently for speeding, he abandoned Ms. Hughes's car, and hitchhiked back to Virginia. He gave at least one driver who picked him up his true name and home town. He arrived back in Charlottesville (his driver was going to the University, apparently), and called his half-sister from the U.Va. Hospital. She picked him up and took him to her house in Orange. From there he called his father, and announced that he wanted to turn himself in. John Edward Roach drove to Orange, Steve got in his car, and together they went to Stanardsville, so that Steve could turn himself in.

When John Edward and Steve arrived in Greene County, the entire staff of the Sheriff's Office was out establishing roadblocks, looking for Steve Roach. Father and son waited patiently until Sheriff Willie Morris arrived. Steve announced that he had something to say. Both were given *Miranda* rights, and they waived the right to counsel. John Edward excused himself, and Steve

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was interviewed by the Sheriff, in the presence of Clarence Roberts, John Edward Roach's supervisor at the ABC Board.³

At first, Steve Roach told Sheriff Morris a made-up story about having been with a boy named Scott Shifflett,⁴ who supposedly committed the murder. The story was transparently absurd, not least because it had Steve passing the whole day with the fictitious Scott, when in fact (as I explained above) he had been with the victim's sister, who was, to say the least, unlikely to confirm his alibi.

After less than two hours of questioning, which was recorded, Sheriff Morris left the room, stating that he needed to change the tape in the machine. While he was out, Mr. Roberts and Roach had a brief unrecorded conversation. Roberts was later to testify that he simply indicated to Steve that the story he had told was not persuasive, and that he needed to tell the truth. Steve began to sob uncontrollably. When Sheriff Morris returned, Steve Roach confessed to the murder of Mary Hughes.

The murder weapon was never recovered. The Greene County Sheriff's Office never sought a warrant to search the Roach home, although it was no more than 100 yards from the scene of the murder, and although Steve had apparently been considered a prime suspect almost immediately after the body was found. Nor were other basic questions ever answered, such as how it was that Roach's clothes showed no blood stains, when expert evidence was that Ms. Hughes's blood would almost certainly have spattered her killer. The confusion about how much money Mary Hughes had at the time of her death should likewise have been dispelled at once.⁵

³ Clarence Roberts, whose presence during the interrogation has never been explained, is today Chairman of the ABC Board, a gubernatorial appointment. Mr. Roberts has known Steve Roach since the latter's childhood, and testified at trial that Steve had always been polite and respectful to him. He indicated no reason from which it could be inferred that Petitioner is a danger to society, or has shown any propensity to violence.

⁴ Shifflett is apparently one of the most common surnames in Greene County. One of Mary Hughes's three marriages was to a Shifflett, and that is the last name of her eldest son Jimmy, who was to find her body the morning after the murder, and who also testified at the trial.

⁵ I raise these points not to suggest that there is any doubt about Steve Roach's guilt, but merely to indicate that the initial investigation and processing of this crime were hopelessly inept. That Mr. Roberts, an authority figure to Steve Roach (he was his father's boss), but a person without any official capacity, could have been allowed to remain during the interrogation corroborates

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Steve Roach's confession, including both the core of truth and the implausible details, formed the basis of the Commonwealth's case. Daniel Bouton, Esq., Commonwealth Attorney for Greene County, immediately announced that he would seek a transfer from juvenile to Circuit Court for Steve Roach, and that he would seek the death penalty. There had not been a capital murder in Greene County for some five years; the capital prosecution was to be Mr. Bouton's first. Appointed to defend Steve Roach were David Heilberg and Peter McCloud, Esqs., of Charlottesville; the case was their first capital one as well.

III. The Trial of Steve Roach for Capital Murder

As I noted, as soon as Steve Roach was taken into custody, the prosecutor served notice of intent to transfer him for trial as an adult. Under Virginia law in force at the time, such a transfer for a crime as serious as murder required only a demonstration of probable cause that the defendant was the perpetrator. In this case, with Roach's confession in hand, the Commonwealth Attorney could hardly have an easier time satisfying the applicable standard.

That Steve Roach would be tried as an adult - without, incidentally, any judicial determination that he was capable even of understanding the gravity of the offense with which he was charged - did not mean that he would act like an adult in the preparation and presentation of his defense at trial. Although he had confessed, Roach would not permit his attorneys to enter a guilty plea, instead insisting that they put to the jury the impossible story that there had been someone else with him (not, thankfully, the fictitious Scott Shifflett) who actually committed the murder. At the guilt phase, his attorneys were hobbled by this lack of cooperation: they could not put their client on the stand to "humanize" him, since he was as likely as not to undermine his own defense.

Despite this, the trial did not result in any "bombshell" revelations about Steve Roach. The evidence was that he murdered Mary Hughes during the evening of December 3, 1993, stole her car, and fled to South Carolina. The taped statements Steve voluntarily gave the Sheriff were played to the jury, and both Sheriff Morris and Mr. Roberts testified to the circumstances in which they were offered. The guilt phase of the trial lasted from February 28 through March 3, 1995. The jury returned verdicts of guilty on all three offenses charged: capital murder, robbery, and use of a firearm in a homicide.

In the punishment phase, Commonwealth's Attorney Bouton had the burden of proving beyond a reasonable doubt that one or more of the "aggravators" provided by Virginia law was the justification for a sentence of death. He originally proposed to lay before the jury both the

this conclusion. Of course, Roach did have counsel during his trial, and his counsel were not able to develop these points.

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“vileness” and “future dangerousness” aggravators, but Judge Lloyd Sullenberger granted the defense’s request to withhold the “vileness” aggravator. There was, the Judge held, nothing in this crime that made it any more “vile” or awful than what was necessary to achieve its tragic end. The Judge gave very serious consideration also to withdrawing the future dangerousness interrogatory as well, calling the case one “on the far spectrum,” but finally considering, in a clearly half-hearted double-negative, that the fact that there was not a great deal of evidence of the defendant’s future dangerousness “does not mean that it is not a jury question.” See Exhibit F, pp. 1072-73.

Had the future dangerousness aggravator been withdrawn, of course, this case would not have resulted in the death penalty. It was, in the Judge’s openly expressed opinion, a close call as to whether the threshold tests were satisfied. Yet later proceedings demonstrated that there is no judicial basis for reviewing that close call, even though its outcome, if left to stand, will result in the loss of Petitioner’s life.

At the punishment phase, the jury was told that the entirety of Steve Roach’s criminal record before the murder consisted of two joyriding incidents and a breaking-and-entering. Although Prosecutor Bouton attempted to portray a youngster who had “a love affair with guns,” there was no factual predicate for that florid metaphor. To the contrary, the evidence at the penalty stage consisted of the testimony, *inter alia*:

- of John Frey, Steve Roach’s probation officer, to the effect that the three juvenile offenses of which he was found responsible were the entirety of his record, and that his family had either resisted or at least not cooperated with concerted efforts by the juvenile authorities to arrange counseling;
- of Craig Gibson, the owner of one of the two cars Roach had stolen, that its keys had been left in the ignition;⁶
- of Mike Walker, the owner of the home that Steve Roach burglarized in June 1993, including confirmation that his home had been empty at the time;

⁶ This is not to suggest that a car with its keys inside should be seen as properly available for theft, or that the stealing of such a car is not or should not be considered a crime. It is, rather, to reflect the reality that joyriding is not indicative of the kind of criminal mind that could rationally be said to be a continuing danger to society.

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- of Shirley Roach, Steve Roach's mother, concerning the conditions under which Steve was reared, and sadly demonstrating her own inability to act in furtherance of the well-being of her son;⁷
- of John Edward Roach, Steve's father, to the same effect, and with the same (presumably unintentional) clear implications concerning the total dysfunctionality of the Roach household during Steve's formative years;
- of Clarence Roberts, John Edward's supervisor at the ABC Board, who had known Steve Roach for years and had found him an excellent employee at odd tasks and chores, who was always polite and respectful to Mr. Roberts;
- of Tammy Roach Estes, Steve's half-sister,⁸ concerning the good relations Steve had maintained not only with Ms. Hughes but with Mr. and Mrs. Estes, and also about aberrant behavior on the part of their father when Tammy and Steve were younger;
- of Mark Perry, a licensed professional counselor, about Steve's efforts to cooperate with him after his first juvenile conviction;
- of Christian Stoddard, the Greene County Deputy, who testified that it was he who returned to Steve Roach the gun that would kill Mary Hughes, upon determining upon Steve's request that it had not been stolen, and despite the fact that a term of Steve's juvenile probation was that he have no contact with guns;
- of Gary Hawk, a clinical psychologist at the University of Virginia, who had evaluated Steve, and determined, among

⁷ See further Part IV below.

⁸ Tammy had been married to Roger Estes, the son of Donald and Mamie Estes, and therefore Mary Hughes's nephew, although she was no longer married to him at the time of trial.

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other things, that "there was not a pattern of violent behavior in this young man's life," and that, before the shooting, he believed that Steve did not intend to harm Mary Hughes;⁹

- of Rev. Wendell Lamb, pastor of Bethel Baptist Church in Stanardsville, whom Steve considers to be the most important influence on his religious development, and who testified about the numerous good deeds Steve did for him and his church;
- of Margie Sacra, secretary and treasurer of Bethel Baptist, corroborating Rev. Lamb with respect to Steve's help in remodeling of the Church building; and
- of Luanna Rogers, Steve Roach's grandmother, with additional evidence of the problems Steve's family had when he was growing up.

Of these witnesses, not one characterized Steve Roach as dangerous. Not one described him as violent, or impetuous, or profoundly antisocial. Not one reported acts of criminal violence that he had committed against others. Not one suggested that he had an unhealthy attraction to guns or to other weapons. Not one gave a reason for thinking that he was habitually disloyal to his friends, or disrespectful to them. Not one testified that he or she was afraid to be alone with Steve Roach. And not one hinted that the murder of Mary Hughes had been anything other than most dramatically, and inexplicably, out of character for him.

The other witness who testified was Steve Roach himself. Having read that testimony many times, I find it impossible to discern just what his lawyers thought they were doing when they put him on the stand. He was taken on direct not by his lead counsel, Mr. Heilberg, but by the second-chair, Mr. McCloud. The testimony elicited was that he was 17 at the time of the shooting - which had not been in doubt, of course. He testified briefly about the crime and its

⁹ See Exhibit F, pp. 1037, 1039. Dr. Hawk was the only psychological professional to testify at the trial, and his testimony went un rebutted. I am enclosing all of the transcript of his testimony at Exhibit F, pp. 1026-50, because it reflects the only professional assessment of Steve Roach's maturity and capacity for responsibility for his actions ever made a part of this record, and suggests in the strongest terms that he does not pose a future danger of committing additional acts of criminal violence.

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aftermath, and about his confession, including the initial lies to Sheriff Morris. And he said he did not know why he had committed the murder. With that, his counsel passed the witness.¹⁰

Dan Bouton, the Commonwealth's Attorney for Greene County, is an excellent trial lawyer, and he took full advantage of the opportunity presented to him. He caused Steve to admit that numerous elements of the first confession were lies, and that the version presented by the Commonwealth to the jury at the guilt stage was true. He got him to admit that he frequently carried a gun with him, and that he enjoyed having it. In short, he made Steve Roach look, if not like a dangerous sociopath, at least like an arrogant, evasive young punk. Steve did not have the maturity, nor did his lawyers apparently have the courtroom skills, even to counter this impression with a fair representation of his dysfunctional upbringing, his attempts to contribute to the community, and his avoidance – until that fateful moment in December 1993 – of serious trouble with the law.

The testimony of Steve Roach was catastrophic for his defense. He was the prosecution's best witness: indeed, it is no exaggeration to say that he was the prosecution's only witness. And on that basis, enhanced by Mr. Bouton's closing argument, the case for Steve Roach's life was presented to 12 citizens of Greene County.

Judge Sullenberger, narrowly deciding as I noted above to deny the motion to strike the future dangerousness aggravator, instructed the jurors about the law regarding the death penalty in Virginia. He told them that they had two options, death and life, and that the Commonwealth had to prove beyond a reasonable doubt the premise of the aggravator. The Judge then told the jury:

if the Commonwealth has failed to prove that circumstance beyond a reasonable doubt, then you shall fix the punishment of the defendant at, one, imprisonment for life, or two, imprisonment for life and a fine for a specific amount, but not more than \$100,000. **Any decision you make regarding punishment must be unanimous.**

¹⁰ I am enclosing the transcript of all of Roach's testimony. Exhibit F, pp. 995-1018. I do not fault Mr. Heilberg for putting Steve Roach on the witness stand – indeed, in retrospect, I think it was clear error not to have him testify at the guilt phase. But surely the agenda once his client had been convicted of capital murder and was facing possible execution was making him seem a likeable human being with feelings, seeking to build a window into his thinking, and eliciting statements of remorse. No such line of questioning was pursued on direct examination. It is not that Steve Roach did not show remorse: he was never asked the questions from which an expression of remorse might flow.

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Emphasis added. But this was a misstatement of the law. Under the statute, the jury had to agree unanimously only on a death sentence: on a failure of unanimity, the sentence would be life. Va. Code § 19.2-264.4(E).

We argued to the Federal courts that the instruction that “[a]ny decision you make regarding punishment must be unanimous” is absolutely unfounded in the law of Virginia, and is an error of Constitutional dimension. That argument was unsuccessful, not because we were wrong on the law, but because, in the opinions of the Federal judges, the State law question was foreclosed from Federal review.

This is not the time or place to reargue our legal submission regarding the impropriety of the trial Judge’s instruction. I raise it here, however, only to make clear what the jury thought were its choices. Life without parole was not an option for capital juries in 1995, as it is today. And so the jurors were led to believe that they were required to find unanimously not only that Steve Roach deserved to die, but that he deserved to live, which could mean that he would be walking the streets in the foreseeable future.

Justice Blackmun wrote for the Supreme Court in *Mills v. Maryland*, 486 U.S. 367 (1988):

The decision to exercise the power of the State to execute a defendant is unlike any other decision citizens and public officials are called upon to make. Evolving standards of societal decency have imposed a correspondingly high requirement of reliability on the determination that death is the appropriate penalty in a particular case. The possibility that petitioner’s jury conducted its task improperly certainly is great enough to require resentencing.

486 U.S. at 383-4. The “possibility” to which Justice Blackmun alluded in *Mills* is here a probability, since jurors were instructed that to find mitigation they had to be unanimous.

On a correct reading of the law, a lone juror favoring life imprisonment knows that, if she can withstand the arguments and pressures of fellow jurors who favor death, the sentence will be life. But on Judge Sullenberger’s reading, that juror was told that she had to bring all of the rest of the jury around to her view. Obviously, faced with the apparently Herculean task of persuading eight or nine or ten other people, many a juror will, if reluctantly, join the majority.

It is well established that the general public does not understand the concept of life imprisonment. Studies have shown that many people believe “life” to mean a short period of years. There are empirical data available to show how much more likely it is that a jury will let a

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defendant live if there is no chance of his emerging from prison anytime soon.¹¹ Here, however, there is an additional reason to conclude that the jury might well have sentenced Steve Roach to life without parole if that had been an option at the time.

Shortly after the jurors began to deliberate at the sentencing phase, one of them sent a note to the Judge, which was read aloud by the judge to counsel, in the absence of the jury: "Does life in prison mean with no chance of parole or truly life in prison, or is he eligible for parole?"

The jurors then returned to the courtroom, and the Court further instructed them as follows:

The question, does life in prison mean with no chance of parole, or truly life in prison, or is he eligible for parole? The additional instruction to you. Having found the defendant guilty, you 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.

Essentially, the Court refused to answer the juror's question. Even putting aside the legal questions concerning whether this refusal was consistent with Virginia law, or with the Federal Constitution, it can be inferred from the very fact that the question was asked that at least one juror recognized that a decision concerning the penalty of death, turning on evidence of future dangerousness, depended upon a premise which was left unspoken and ambiguous: what would be the conditions of Petitioner's life were he allowed to live? That juror would likely have "held out" for life, had he or she known that that was an option, and that his or her single vote would be enough to ensure it. And surely at least that juror would have favored life without parole, had the sentencing scheme permitted such an outcome.

While it was not available to the jurors at Roach's trial, the option of imposing a sentence of life without parole is open to you, the Governor, in the exercise of your Executive clemency.

¹¹Public support for the death penalty drops by as much as half when imprisonment with a long period of parole ineligibility is the alternative. Bowers, Vandiver, & Dugan, "A New Look at Public Opinion on Capital Punishment: What Citizens and Legislators Prefer," 22 Am. J. Crim. L. 77 (1994). A substantial portion of the jury-eligible population of the Commonwealth apparently believes that rigorous sentences are routinely reduced or waived, and that "life" sentences are actually very brief. Note, "The Meaning of 'Life' for Virginia Jurors and Its Effect on Reliability in Capital Sentencing," 75 Virginia Law Rev. 1605, 1636 (1989).

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A Postscript on the Appeals and Collateral Review

I have gone on at such length about the trial not in order to persuade you that Steve Roach's constitutional rights were violated: those arguments were raised on appeal and on both State and Federal habeas corpus, and were rejected in reasoned opinions. My point, rather, is to show that the key determinants that should be in place before the State's most serious penalty should be exacted were not, in fact, part of this record. There was no professional, expert evidence describing this Petitioner as violent or dangerous, much less as sociopathic or homicidal. There was no competent presentation of his family or personal history. There was no effective, and surely no first-hand, expression of his remorse.

The performance of Steve Roach's appointed counsel at trial did not sink to the level of constitutionally ineffective assistance. They did, in gross outline, what lawyers are supposed to do: they conferred with their client; they conducted investigations; they raised and argued objections; they introduced evidence and called witnesses; they addressed the jury. But they did not do any of those things in a way likely to succeed on their client's behalf. Whether this was their fault, or the fault of their uncooperative client, is a purely academic question now. The fact is that their defense, including a plea of not guilty, followed by the devastating testimony of the defendant himself at the punishment stage with no evocation of remorse, was doomed to failure.

On collateral review, the quality of the case presented for Steve Roach deteriorated further. His State habeas counsel spent over one-fifth of his space-limited brief before the Supreme Court of Virginia arguing for reversal because Roach had appeared before the jury in handcuffs and shackles, which was said to be unfairly suggestive. A clever argument this, which suffered from a single small flaw: its premise was not true. Roach's own trial counsel executed an affidavit stating that in fact his client had not been restrained. Again, in all likelihood the responsibility for this lay with Steve Roach and not his counsel. But the conclusion to be drawn from this is further support of the claim I make in this letter. He was a frightened teenager, hardly competent to understand the charges against him or the seriousness of the punishment he was facing, and surely not able to assist his attorneys in crafting a strategy with any realistic chance of success.

Even so, at oral argument on direct appeal, Justice Barbara Milano Keenan, who was later to write the opinion affirming the death sentence, indicated that she felt the death sentence here for a 17-year-old with no record of violent crime, convicted of a single unaggravated murder, "pushes the envelope." The legal prerequisites may have been satisfied, the Justice apparently felt, but there was another kind of consideration for which this case cries out. It was not, perhaps, within the purview of an appellate judge to perform this function. But it is the province of the Governor, in the context of executive clemency.

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The question presented to you as Governor is not whether it is legally permissible for the Commonwealth of Virginia to execute Steve Edward Roach on this record. That question has been answered in the affirmative by a variety of jurors and judges. The question, not within the jurisdiction of any of those, is whether it is right.

My team and I assumed the representation of Steve in the summer of 1997, through arrangements made with the American Bar Association's Post-Conviction Death Penalty Representation Project. Our first step was the filing of a Federal habeas corpus petition, which was assigned to Chief Judge Wilson of the U.S. District Court for the Western District of Virginia. Judge Wilson, at oral argument, expressed sentiments similar to those of Justice Keenan. He asked the Assistant Attorney General rhetorically in open Court how it was possible to determine, beyond a reasonable doubt, that a 17-year-old without any appreciable criminal record constituted a future danger to society. The answer – and I surely do not suggest it was an improper one – was essentially that the proper role of the Court is not to ask how such a conclusion had been reached, but simply to respect the empirical fact that it had been.

Judge Wilson found that a number of the constitutional challenges raised on Steve's behalf had been procedurally defaulted by his counsel at trial and on appeal. He found others to be precluded by binding precedent. Some of his critical arguments, therefore, going to the fairness of the procedures that may cost Petitioner his life (including such important points as the jury-unanimity issue discussed above, or Roach's contention that the Virginia juvenile transfer statute unconstitutionally denied him the right to an individual assessment of his capacity for legal liability), could even be reached on the merits.

Yet none of this prevented the Chief Judge from expressing four times in his opinion that he was troubled by the death penalty in this case. He called Petitioner's arguments against the death penalty in this case "persuasive" (Exhibit C, p. 2). He acknowledged that "[t]his court might not have reached the same conclusion" as the jury (*id.*, p. 11). He admitted that "[t]his court may view this matter differently" (*id.*, p. 13). And he described the death sentence in this case as "disturbing" (*id.*, p. 21). Nevertheless, Judge Wilson felt that he could not substitute his reactions, however strong, for those of the Greene County jurors. He therefore declined to alter the sentence. His job, in other words, in his view, was not to determine whether the death sentence was appropriate for Steve Roach: it was only to review that sentence already handed down for constitutional error, in the narrowly-framed context of Federal law.

Again, the point here is not to suggest that Judge Wilson was legally wrong (although we did argue before him that he was obligated to perform the review function that he held was outside his competence). It is to urge that in his most important holding he was right: this case does cry out for review by someone required to determine not what is authorized as a matter of law, but

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what is correct as a matter of policy. Under the Virginia Constitution, that person is the Governor.

And it is on that basis that Steve Roach appeals to you for clemency: not now to argue that his execution would be unconstitutional and therefore may not be carried out, but to urge that it would be unwarranted, and therefore should not be.

IV. Steve Edward Roach, the Petitioner

You will be familiar by now with descriptions of Steve Roach's murder of Mary Ann Hughes, from various sources, including his own words. I have also summarized briefly above some of the testimony presented at his trial concerning certain aspects of his earlier life.

I wanted to say a few additional words, however, about the young man scheduled to die in Greenville on January 13, 2000.

A. Steve Roach's Childhood and Upbringing

It is not contended here that Steve Roach suffers from mental retardation, or that he is disabled with any mental illness. The point is not to argue that his misconduct should be forgiven because he was of diminished responsibility; it is to portray accurately a life in which such an inexplicable lapse – for such was the moment in which he murdered Mary Hughes, a person he loved – can at least be put into some kind of context.

When Steve Roach was born, in the spring of 1976, his mother Shirley was about 15 years old, and had been married for a year to a man named Junior Thomas. Junior Thomas was not, however, Steve's biological father, nor was Shirley living with Thomas at the time Steve was born. Steve's father was John Edward Roach. Shirley evidently first started dating John Edward Roach in 1973, when she was 13 years old and he was 35.¹² By the time Steve was born, Shirley and John Edward Roach were living together. They married in 1988, when Steve was twelve.

Steve was the oldest of John Edward and Shirley's four children, although John Edward Roach has apparently fathered a total of 12 children between his two marriages. As an undercover informant for the Commonwealth's Department of Alcoholic Beverage Control, John Edward

¹² John Edward Roach was actually prosecuted for sexual abuse of a minor in connection with the relationship that produced Steve, but the case was dismissed, because the question of whether the couple had ever had sexual relations within the borders of the County in which it was prosecuted could not be resolved.

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was frequently away from home as many as 15 hours per day. His responsibilities consisted of going to various communities around the Commonwealth, arranging to buy illegal drugs and alcohol, and then turning in the sellers to the authorities and testifying against them in ensuing criminal prosecutions. Shirley Roach also worked sporadically as an undercover ABC informant, and when Steve's parents were both away from home, the children fell to the care of Shirley's father or one of John Edward's sons by his previous marriage.

When Steve was about five or six years old, he and his younger brother Timmy witnessed a shotgun accident at close range, in which their father was seriously injured. There is some question as to whether what the children saw was a genuine accident, or whether instead they saw their father fail in a suicide attempt. Steve and Timmy should have received counseling to help deal with this trauma, but they never did. As a result of that shooting incident, John Edward spent six months in the hospital, where he contracted hepatitis C. Over the years, he has remained in poor health, and has been in and out of the hospital. He has had a stroke and a heart attack, and has been on various medications, including some that are experimental. He admits that the medications have an effect on his mental health, and attributes to them his having been extremely hard on his family.

The relationship between Shirley and John Edward Roach has been tempestuous, punctuated by a great deal of fighting. Steve's maternal grandmother, who had been living with the family, moved out because she could not stand the constant conflict. The family moved at least four or five times during Steve's childhood. In addition to subjecting their children to the significant stress of moving from place to place, John Edward and Shirley also frequently separated from each other, during which times Shirley left Steve and his younger siblings with John Edward. The first separation occurred when Steve was very young, and it was during this period that John Edward Roach shot himself. Shirley and John Edward frequently fought about their children, and Shirley says she took the children's side. Although she knew her children were being mistreated, she said, she regularly left home and abandoned the children to John Edward.

Significantly, Shirley and John Edward had separated for the fourth or fifth time approximately one month before Mary Hughes was killed. At the time she left, John Edward Roach was in the hospital. When he was discharged, rather than recognizing that his wife had left him again, he believed that she had been kidnapped, and the ensuing search for her was reported by the local media as a matter of some notoriety. During Steve's trial, John Edward testified that life became worse for his children when Shirley was gone, and that he did not supervise the older boys appropriately. Specifically, John Edward stated that during separations, he took to drinking, "running around to the truck stop," and bringing young girls (including one of Shirley's cousins) into the family home to have sexual relations with him.

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John Edward Roach took his marital and health problems out on his children, but especially on Steve. At one point, John Edward suspected that Shirley had left him to become romantically involved with Roger Estes, who was at that time married to John Edward Roach's daughter, Tammy. At the time, Roger Estes was a close friend of Steve's, so John Edward confronted Steve about his suspicions regarding Roger and Shirley. The discussion turned into a confrontation, and ended in a full-scale fist fight, with John Edward physically beating Steve to the point where he had blood running down his face. Steve ultimately went to the house of Donald and Mamie Estes, from which he called for help from the police.

In what may well have been his only real way to communicate with his son, John Edward taught Steve to use guns and to hunt at an early age. John Edward kept guns in the house routinely, and testified at trial that Steve would have had free access to any gun in the household. Steve bought the shotgun that was to become the murder weapon - ironically, from Mary Hughes's grandson - during hunting season, in November 1993, and right up to the day before the shooting took all responsible steps with regard to that gun. The barrel was bent, so he sawed it off (but to a length that was legal), and purchased a sight that he and Donald Estes then fitted to the gun.

A pattern is abundantly clear in Steve's childhood and adolescence: he received no support or guidance from either of his parents, and he turned in desperation to other adults for role models and for approbation. When Steve was 14 years old, his parents withdrew him from school. Shirley Roach, his mother, stated that she knew Steve had some general problems, but she did not know what they were because she was not paying attention to him or to them. It is important to note that Steve himself did not choose to leave school: instead, it was his parents who took him out. At trial, Dr. Hawk pointed out that in removing him from school, his parents also eliminated the primary if not the sole source of structure and learning for their son.

Once he was out of school, as I noted, Steve spent his time working and doing odd chores for his family and neighbors. Over the course of four years, Steve was with Donald Estes on a daily basis, helping him around the house and outside. It was clear that he had an extremely close relationship with the Estes couple, who looked on him almost as a son. By all accounts, Steve was a conscientious worker, particularly skilled mechanically, who could work well either independently or side-by-side with others.

One of the most significant relationships in Steve's life was with the Reverend Wendell Lamb, the pastor of Bethel Baptist Church and the leader of Children's Bible Ministries. Rev. Lamb first met Steve as a six- or seven-year-old youngster, and he drove Steve and his younger brother Timmy Roach to Sunday school every week until the family moved out of the area. When the Roach family returned, Steve renewed his acquaintance with the minister, and worked closely and regularly with him. Rev. Lamb operated a church summer camp for children in a nearby

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National Forest, and Steve helped him with the physical labor of getting the facility ready for campers and then closing up at the end of the season. Steve also attended the Bible camp as a camper. Rev. Lamb and Steve also worked together in the remodeling of the old church building itself, inside and out, from top to bottom, on a daily basis. According to the minister, the church work was all volunteer, and he and Steve would buy each other lunch when one or the other had cash. Together, they would do roofing and renovations for other people, and Steve would help Rev. Lamb with properties the minister owned. Rev. Lamb stated that Steve was a good worker and that he had never had trouble with the boy.

Several months before the shooting, according to the minister, Steve stopped going to church and stopped helping him out, although there is no suggestion that he stopped doing his other usual chores for his family and neighbors. Unfortunately, the disruption in his relationship with the church and its minister appears to have occurred at approximately the same time that Steve began to exhibit some troublesome behavior and, significantly, at about the time that the relationship between John Edward and Shirley Roach had begun to deteriorate again.

During the three-month period between May and August 1993, Steve got into trouble with the police for the first time in his life. In juvenile proceedings, he was found guilty of an auto theft that occurred in May 1993, when he discovered that someone had left a car on the street with the keys in the ignition. He was also found guilty of reckless driving and failure to stop for police in connection with that incident. He was convicted of breaking and entering a private residence on June 11, 1993. Although nobody was in the home at the time, and therefore no one was hurt or even threatened, Steve stole a pistol. He was found guilty of a second auto theft that took place on August 2, 1993, again when he found a car with the keys still in it. Dr. Hawk, the expert neuropsychologist who evaluated Steve prior to trial, characterized the two auto thefts as no more than "joyriding," and while they were certainly criminal, there is no evidence to suggest that they constituted anything more significant.

Among other conditions of the probation regarding his juvenile convictions was the requirement that Steve and his family attend counseling provided by the Commonwealth. To comply with that order, Steve immediately went to make arrangements for counseling, but he was told that the actual sessions could not begin immediately because of the overwhelming caseload. On the few occasions when the Roach family met with the Department of Probation prior to the shooting, the escalating hostility between John Edward and Shirley, rather than Steve's activities, were the focus of the probation officer's attention. In fact, Steve's maternal grandmother even attempted to file a petition for custody to remove him from his parents, but was told she could not do so.

The "big picture" of what was happening at the time Steve Roach shot Mary Hughes is therefore abundantly, if sadly, clear: this was a young man, a 17-year-old, who lacked any parental guidance

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(even to the point of having been removed from the structured environment and foundation for a better future that schooling would have provided), and spent his life in search of adult role models. As the relationship between his mother and his father grew significantly worse (and as he was forced into the middle of that situation by his father's monumentally poor judgment), and at an age when, as the oldest child in the family, he would have been expected to act particularly adult, he began to lose his bearings. He broke off ties with the church that had previously been a major positive influence in his life. He engaged in incidents of petty criminal behavior.

Finally, shortly after his parents actually separated, he committed an act of extreme violence -- his first -- against an elderly lady who was his friend. Once the horror and shock he had caused subsided, however, and he was able to see what needed to be done, he returned to Virginia on his own initiative. He contacted the Sheriff of Greene County, waived his *Miranda* rights, and submitted to questioning by the Sheriff and by Clarence Roberts, his father's supervisor. In the course of that interview, he made a full confession, and that confession formed virtually the entire basis for the Commonwealth's case against him.

B. Steve Roach in Prison

Steve Roach has lived in custody since December 7, 1993, over a quarter of his life. During that time, his tenure in prison has been characterized by two things: a record of cooperation with the authorities, with no serious disciplinary violations; and a profound commitment to religion.

I myself have remarked to the guards at Sussex One that they seem to treat Steve especially respectfully and fearlessly. They are, of course, a corps of professionals, and they are trained to respect every prisoner who has not through his own conduct sacrificed the right to respect. Yet they are visibly at great ease with Steve Roach, an inmate who they know poses no threat or danger, who obeys the rules and does what he is supposed to do. Steve Roach's few encounters with discipline derived not from rioting or from violence, and all of his issues have been resolved. He is not resentful of the authorities, adding, again, to their apparently special ease in dealing with him.

Governor, you are well aware of the old adage about how "there are no atheists in foxholes," and it would not be cynical to add, "or on death row." I am sure that professions of religious faith are a routine part of every petition for executive clemency. Yet I ask you to consider seriously what Steve Roach's dedication to his faith has meant in his life, as it has been recognized by people who have known him both before and since his incarceration.

Steve has long been involved with the Rutherford Institute, headquartered, as you know, in Charlottesville. It was through a network arranged by a Rutherford publication that he began

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corresponding, in 1996, with a young woman named Elasa Krause, who lived in Woodbridge, Illinois.

Steve and Elasa quickly realized that they have more than their Christian commitment in common. She is no anti-death penalty activist, or worldly campaigner for causes. She is a small-town girl brought up in an intensely religious household, taught to believe in the uniqueness of every individual and of the common sanctity of human life. Their relationship changed from one of sharing religious views to sharing all of their thoughts and feelings. It is fair to say that Elasa is the first person who has ever loved Steve without qualification, just as himself. In May of this year, Steve and Elasa were married, on death row.

I have spent a good deal of time speaking with Elasa since the wedding, and getting to know her. I have wondered, as many would in these circumstances, what could make an attractive, intelligent young woman want to marry a condemned man. What I have learned is that there is absolutely no hidden agenda or "deeper" meaning here. This relationship is truly a triumph of simplicity, in the Biblical sense, over complexity. There is no other way to sum this up: Elasa loves him.

Elasa Roach will be writing to you in the coming days, adding her voice to those seeking clemency for her husband. She will, I am sure, express her views in her own words more eloquently than I could ever paraphrase them.

People far wiser than I in this area seem taken with the commitment and sincerity of Steve's religious beliefs. Three Christmases ago, Steve gave an interview to a Rutherford Institute newsletter concerning the Holidays on death row (a copy of the proof version of the article is Exhibit G). John Whitehead, the organization's Founder and President, was sufficiently impressed with the piece and its author to write a testimonial letter for him. See Exhibit H. And he has written a much longer letter to you more recently, appealing for clemency on Steve's behalf. A copy of that letter is Exhibit I.

Steve's commitment to religious study has resulted in his being awarded a number of certificates of achievement by the Source of Light Schools, the External Studies Program of the Colonial Baptist Church, and a number of other correspondence-based biblical study programs. Copies are attached as Exhibit J. What these certificates reflect is not only a measure of competence and dedication, but a serious investment of time. Steve Roach is not someone who is mouthing profession of a lately-found religion in order to appeal to the Governor or anyone else as a fit candidate for mercy. He is following the faith that has filled his days in prison, because he believes that its tenets are true, and that they represent salvation for him.

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Steve's own account of his religious views, and the influence they have on his thinking, will be the subject of a letter he will shortly be sending to you as well. We do not suggest that a religious Christian man on death row deserves treatment better than that accorded to a Muslim, a Jew, or an atheist. What we are saying, however, is that Steve's devotion to his religion is an indication of his sincerity in the belief that the act that put him on death row was wrong, that it was unforgivable, but that it was a human failing. It does not mark its perpetrator as beyond hope, beyond redemption, in this life.

In this connection, Steve has asked me not only to let you know of the letter that he has written to the family of Mary Hughes, begging their forgiveness, but to provide a copy of the letter to you. It is attached as Exhibit K. We do not know, at this point, how the family will respond, if they respond at all. Some members of the extended family have corresponded with Steve while he has been in prison; others refuse to have anything to do with him. The letter is, I think, all the more poignant because it was late in coming. As Steve wrote, he felt that he had no way to express what needed to be said. It is not a rehearsed, ritual apology: it is a heartfelt expression of true remorse to the living victims of his crime.

Steve Roach's religion makes him believe that he can, if he is allowed to live, be a force for good, by his example, by his advocacy, by his rehabilitation. It is not necessary to share his religious views to join in his confidence that he may yet, if permitted, make a positive contribution to society.

V. Additional Reasons for Granting Clemency

In the course of this letter, I have already set out most of the reasons why, in our respectful submission, Steve Roach's life should be spared. We are hopeful that the views expressed here will be ratified and repeated by many citizens of the Commonwealth, and of the Nation, and of the world, who we anticipate will be asking you to spare the life of a young man who committed his heinous crime before his eighteenth birthday.¹³

¹³ Many of the letters you will be receiving will link the cases of Steve Roach and Douglas Christopher Thomas. Obviously, the similarities between them include the ages of the Petitioners, the fact that by all accounts neither was a career criminal, and the scheduling of their executions in the same week in January 2000. Some of the arguments I make here are equally applicable to Chris Thomas. Although I personally am hopeful that you will decide to commute both death sentences, it has been your position since the beginning of your Administration that clemency petitions are to be decided on their individual facts. Although this may be unnecessary, therefore, I want to make it clear that this Petition is submitted only on behalf of Roach.

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As a lawyer, I am heartened by the support for clemency for Steve that has been expressed to you by the President of the American Bar Association, William G. Paul, Esq. (a copy of the letter is at Exhibit L).

I am glad to see also that the Roman Catholic Church has redoubled, of late, its efforts against the death penalty in general. In his December 12 Angelus address to the faithful, His Holiness Pope John Paul II called upon the entire world to abandon this practice, and an initiative to bring about that result will be part of the Holy Year 2000 celebration.

I recognize that the Commonwealth of Virginia as a matter of law and of policy does not -- yet -- share these views. It does seem, however, more than a little sad that, in a world in which fewer than a score of juveniles have been executed in the past decade, the Commonwealth proposes to begin the new Millennium with the execution of a 17-year-old offender.

Conclusion

This should never have been a death case. It is true that Steve Roach committed a murder in cold blood; it is also true that the murder was not premeditated, that it was not planned, and that even the young man who committed it cannot give a consistent account of what brought it about. Mary Hughes did not deserve to die, when her friend Steve Roach for unknown reasons ended her life. But that crime, however abhorrent, is not at the level at which it can be said to a moral certainty that its perpetrator does not deserve to live. Indeed, had life without parole been a sentencing option at the time of the Roach trial, it is hard to imagine that the death penalty would have been sought, and even harder to think that it would have been given.

If anyone can be said to deserve capital punishment, it is someone whose record and whose crime demonstrate that he merits the ultimate expression of society's condemnation, or someone whose execution might actually act as a deterrent for others similarly situated. Petitioner had no record of criminal violence before or since the single moment in which he committed a most horrible murder. Steve Roach is not a violent beast unfit to live in society. To say that is not to undermine the severity of his crime, or the pain he has inflicted on Mary Hughes or her family. It is simply to recognize what many of the judges who have reviewed this case have seen clearly.

Judge Sullenberger very nearly did not let the death penalty question go to the jury. Once he did so, no court has found it within its power to consider whether that punishment fits this crime and this criminal. For a combination of reasons, having to do with technical questions such as preservation of issues and the division between Federal and State law, one key matter has disappeared from view. That is the question whether the execution of Steve Roach is the proper, the right, thing to do.

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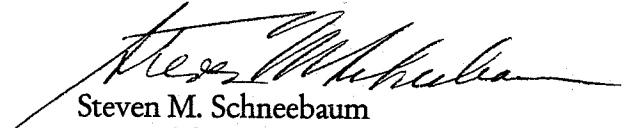
For all of the reasons set out in this letter, on behalf of Steve Edward Roach, I most respectfully ask that you, the Governor, to whom this awesome responsibility was assigned by the drafters of the Constitution of the Commonwealth of Virginia, spare this young man, and commute his sentence to life in prison without parole.

Please let Steve Roach live.

I will be pleased to answer any questions that you or your staff may have. I have scheduled an appointment in your Office for Wednesday, January 5, 2000, at 11 a.m.; I will be available both before and after that time to supply any additional material you may require.

Finally, Steve has expressly asked me to convey for him his deepest thanks -- to which I add my own -- to you for your careful attention to this Petition, and the enclosed Exhibits.

Yours sincerely,



Steven M. Schneebaum
Counsel for Steve Edward Roach

Subject: STATEMENT BY GOVERNOR GILMORE REGARDING THE EXECUTION OF STE

Date: Thu, 13 Jan 2000 23:16:00 -0500

From: FGreen@timesdispatch.com

To: jgivens@vcrrc.org

COMMONWEALTH of VIRGINIA
Office of the Governor

James S. Gilmore, III
IMMEDIATE RELEASE
Governor
January 13, 2000

FOR

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Internet: <http://www.state.va.us/governor>

STATEMENT BY GOVERNOR GILMORE REGARDING THE
EXECUTION OF STEVE EDWARD ROACH

"On December 3, 1993, while on probation, Steve Edward Roach brutally murdered Mary Ann Hughes during the course of a robbery. A jury convicted Roach of capital murder, robbery, and use of a firearm in the commission of murder, and sentenced him to death. Upon review of the case, the trial judge imposed the jury's sentence. The convictions and death sentence were upheld on multiple appeals.

"Mrs. Hughes was a 70-year-old grandmother who lived alone and had befriended Roach, who was her neighbor. Roach admits that he shot Mrs. Hughes in the chest at point-blank range with a shotgun, walked past her body, and proceeded to steal her purse and car. The Virginia Supreme Court carefully considered the case and concluded that Roach's case presented substantial aggravating factors justifying the death penalty. The Court considered the fact that Roach had been found guilty of four felonies in the seven-month period prior to the commission of this offense, carried a gun in violation of the terms of his probation, and that all rehabilitative efforts had failed.

"Upon a thorough review of the Petition for Clemency, the numerous court decisions regarding this case, and the circumstances of this matter, I decline to intervene."

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----- Forwarded -----

From: "pressoffice" <SMTP:pressoffice@gov.state.va.us> at RICHMOND
Date: 1/13/00 7:53PM -0500
To: Francis J. Green at RTDNEWS_PO
Subject: STATEMENT BY GOVERNOR GILMORE REGARDING THE EXECUTION OF STE

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Date: Thu, 13 Jan 2000 23:16:00 -0500

From: FGreen@timesdispatch.com

To: jgivens@vcrrc.org

COMMONWEALTH of VIRGINIA
Office of the Governor

James S. Gilmore, III
IMMEDIATE RELEASE
Governor

FOR

January 13, 2000

Contact: Mark A. Miner
Phone: (804) 692-3110
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Internet: <http://www.state.va.us/governor>

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