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August 11, 2011

Via Facsimile (804-371-6351) & U.S. Mail

The Honorable Robert F. McDonnell  
Office of the Governor  
Patrick Henry Building, 3rd Floor  
1111 East Broad Street  
Richmond, Virginia 23219

Re: Clemency for Jerry Terrell Jackson

Dear Governor McDonnell:

While your experiences as a former prosecutor, member of the General Assembly, member of the Virginia State Crime Commission and attorney general have clearly contributed to your belief that “state government must retain the ability to apply the ultimate punishment for the most violent of crimes,”<sup>1</sup> I fear they have unduly prejudiced your views about the death penalty.<sup>2</sup> Indeed, in your present role as governor of the Commonwealth of Virginia, you are doing a great disservice to those whom you have been charged to represent—particularly those elements of our society who are most in need of reformative justice.

Thus far, your staunch support for the death penalty has resulted in your repeated refusal to grant clemency and intervene in the executions of Teresa Lewis<sup>3</sup>, Paul Warner

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<sup>1</sup> Joanne Kimberlin, “McDonnell and Deeds give personal takes on social issues,” *Virginian-Pilot* (Oct. 12, 2009), <http://hamptonroads.com/2009/10/mcdonnell-and-deeds-give-personal-take-social-issues>.

<sup>2</sup> As quoted in Joanne Kimberlin, “McDonnell and Deeds give personal takes on social issues,” *Virginian-Pilot* (Oct. 12, 2009), <http://hamptonroads.com/2009/10/mcdonnell-and-deeds-give-personal-take-social-issues>.

<sup>3</sup> Maria Glod and Anita Kumar, “Virginia Gov. Robert McDonnell won't stay execution of Teresa Lewis,” *The Washington Post* (Sept. 18, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/09/17/AR2010091706699.html>.

Powell<sup>4</sup> and Darick Demorris Walker<sup>5</sup>. Now once again the Commonwealth is preparing to administer the ultimate punishment, this time to 30-year-old Jerry Terrell Jackson<sup>6</sup>, who is scheduled to be executed on August 18, 2011, for the 2001 rape and murder of 88-year-old Ruth Philips of Williamsburg, Va.

### **Jerry Terrell Jackson**

“Imposition of the death penalty is arbitrary and capricious. Decision of who will live and who will die for his crime turns less on the nature of the offense and the incorrigibility of the offender and more on inappropriate and indefensible considerations: the political and personal inclinations of prosecutors; the defendant's wealth, race and intellect; the race and economic status of the victim; the quality of the defendant's counsel; and the resources allocated to defense lawyers.”— Gerald Heaney, former appellate judge

The case of Jerry Terrell Jackson is a multi-faceted and complex issue which requires the utmost consideration. There is no doubt that he committed a heinous crime. Jackson is an extremely disadvantaged individual, not only due to the societal disadvantages of being a poor black man, but due to his extremely traumatic childhood. His criminality and lack of moral compass can be traced back to the abuse he experienced as a child. This does not excuse his actions, but it suggests that Terrell Jackson has the potential to be rehabilitated while being secluded from society. Such a punishment would provide respect for his humanity while also providing for the safety of society. Additionally, carrying out the death penalty is not a fiscally responsible policy. It provides no deterrent effect on violent crime. Furthermore, it erodes the United States' standing on the international stage.

### **Child abuse**

“In the US the overwhelming majority of those executed are psychotic, alcoholic, drug addicted or mentally unstable. They frequently are raised in an impoverished and abusive environment. Seldom are people with money or prestige convicted of capital offenses, even more seldom are they executed.”—George Ryan, former Illinois Governor

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<sup>4</sup> “Gov. McDonnell: 'decline to intervene' in execution,” NBC 12 (March 12, 2010), <http://www.nbc12.com/story/12132404/gov-mcdonnell-decline-to-intervene-in-execution?Call=Email&Format=HTML&redirected=true>.

<sup>5</sup> Staff reports, “Governor on Darick Demorris Walker's Execution,” *Appomattox News* (May 17, 2010), <http://www.appomattoxnews.com/2010/governor-on-darick-demorris-walkers-execution.html>.

<sup>6</sup> “Appeal for Va. inmate facing execution,” *The Washington Post* (Aug. 6, 2011), [http://www.washingtonpost.com/blogs/crime-scene/post/appeal-for-va-inmate-facing-execution/2011/08/06/gIQAtPmQyI\\_blog.html](http://www.washingtonpost.com/blogs/crime-scene/post/appeal-for-va-inmate-facing-execution/2011/08/06/gIQAtPmQyI_blog.html).

Clearly, the facts of Jackson's harsh life indicate the need for restraint in his punishment. As a child, Terrell Jackson faced extreme physical and emotional abuse at the hands of his father. When he was 2-years-old, his father broke his arm. Throughout his elementary school years, his father stripped him naked and beat him with a belt. Jackson's father took some of his rage out on Jackson's mother, but Terrell intervened, directing his father's rage back on himself. The pain Terrell has faced since being a mere child is startling.

In fact, the background of extreme abuse indicates that Jackson was being pushed toward a path of violence and criminality from a very early age. Indeed, the violence which Jackson wrought was in great part learned from his father. Had the defense counsel questioned Jackson's siblings—which he failed to do, the jury would have heard stories of their mother's abuse at the hands of their father as well as how they themselves were beaten “for the slightest thing.”<sup>7</sup> They would have heard about how Jackson was stripped naked before being hit with a belt 75 times or forced to do jumping jacks and push ups.<sup>8</sup> Jackson's brother would have testified that the beatings were not isolated incidents but rather almost daily abuse for minor offenses such as walking in front of the television.<sup>9</sup>

While Jackson's history of childhood abuse at the hands of his father does not excuse his crime, it does, however, indicate that his views of violence and morality were greatly distorted from a very early age. Indeed, the National Institute of Justice has reported that “abused and neglected children were 11 times more likely to be arrested for criminal behavior as a juvenile, 2.7 times more likely to be arrested for violent and criminal behavior as an adult, and 3.1 times more likely to be arrested for one of many forms of violent crime (juvenile or adult).”<sup>10</sup> The correlation between abuse and later criminal activity should give one pause when considering what the proper response to an abused person's criminal behavior should be.

### **Attorney negligence**

“I have yet to see a death case among the dozen coming to the Supreme Court on eve-of-execution stay applications in which the defendant was

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<sup>7</sup> *Execution Alert: August 18<sup>th</sup> – Jerry Terrell Jackson*, VIRINIANS FOR ALTERNATIVES TO THE DEATH PENALTY, <http://www.vadp.org/alerts/execution-alerts/execution-alert-august-18th---jerry-terrell-jackson.html> (last visited Aug. 5, 2011).

<sup>8</sup> *Execution Alert: August 18<sup>th</sup> – Jerry Terrell Jackson*, VIRINIANS FOR ALTERNATIVES TO THE DEATH PENALTY, <http://www.vadp.org/alerts/execution-alerts/execution-alert-august-18th---jerry-terrell-jackson.html> (last visited Aug. 5, 2011).

<sup>9</sup> *Execution Alert: August 18<sup>th</sup> – Jerry Terrell Jackson*, VIRINIANS FOR ALTERNATIVES TO THE DEATH PENALTY, <http://www.vadp.org/alerts/execution-alerts/execution-alert-august-18th---jerry-terrell-jackson.html> (last visited Aug. 5, 2011).

<sup>10</sup> Child Welfare Information Gateway, *Long-Term Consequences of Child Abuse and Neglect*, US DEPARTMENT OF HEALTH AND HUMAN SERVICES – ADMINISTRATION FOR CHILDREN & FAMILIES, [http://www.childwelfare.gov/pubs/factsheets/long\\_term\\_consequences.cfm#behav](http://www.childwelfare.gov/pubs/factsheets/long_term_consequences.cfm#behav) (last visited Aug. 5, 2011).

well represented at trial... People who are well represented at trial do not get the death penalty.”—Ruth Bader Ginsburg, U.S. Supreme Court Justice

Unfortunately, the horrors of Jackson’s childhood were omitted from discussion during his trial due to alleged negligence on the behalf of his lawyer. The jury never got the chance to hear about his traumatic childhood. Indeed, defense counsel failed to interview Jackson’s siblings or introduce evidence that he and his siblings were abused as children.<sup>11</sup> Although the Court of Appeals in Jackson’s case ruled that introducing such evidence would not have altered the punishment given,<sup>12</sup> this starkly contrasts the U.S. Supreme Court’s specific holdings that the graphic description of a defendant’s abusive childhood might well influence a jury’s appraisal of the defendant’s moral culpability.<sup>13</sup> By the Supreme Court’s definition, Jackson’s lawyers were ineffective in attempting to mitigate their client’s sentence.<sup>14</sup>

### **Racial and economic inequality**

“The reality is that capital punishment in America is a lottery. It is a punishment that is shaped by the constraints of poverty, race, geography and local politics.”—Bryan Stevenson, death row lawyer

An abusive childhood was not Jackson’s only disadvantage in life. As a poor black man, he faced a much different experience in the criminal justice system than a wealthy white person. The racial disparities in sentencing are well known. For example, there are 1,371 blacks on death row (42% of the total death row population) despite the fact that blacks only make up 12% of the U.S. population.<sup>15</sup> Indeed, blacks are 40% more likely to be sentenced to death than a white defendant who has committed the same crime.<sup>16</sup> Being less fortunate in terms of wealth, Jackson was unable to afford his own attorney. In fact, almost all death row inmates could not afford their own attorney at trial<sup>17</sup> and there is a significant disparity in wealth between murderers who live and those who are executed.<sup>18</sup>

### **Moral imperative to protect life**

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<sup>11</sup> Jackson v. Kelly, Nos. 10-1, 10-3, 2011 WL 1534571 at \*13 (4th Cir. Apr. 25, 2011).

<sup>12</sup> Jackson v. Kelly, Nos. 10-1, 10-3, 2011 WL 1534571 at \*13 (4th Cir. Apr. 25, 2011).

<sup>13</sup> Williams v. Taylor, 529 U.S. 362, 415 (2000); Penry v. Lynaugh, 492 U.S. 302, 323 (1989).

<sup>14</sup> Williams v. Taylor, 529 U.S. 362, 415 (2000); Penry v. Lynaugh, 492 U.S. 302, 328 (1989).

<sup>15</sup> Deborah Fins, *Death Row USA*, 1 (NAACP Legal Defense and Educational Fund, 2010).

<sup>16</sup> RICHARD C. DIETER, *THE DEATH PENALTY IN BLACK AND WHITE: WHO LIVES, WHO DIES, WHO DECIDES*, <http://www.deathpenaltyinfo.org/death-penalty-black-and-white-who-lives-who-dies-who-decides#The Raw Data> (1998).

<sup>17</sup> Amnesty USA, *Death Penalty and Arbitrariness* <http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts/death-penalty-and-arbitrariness> (last visited Aug. 5, 2011).

<sup>18</sup> Jeffrey L. Johnson, Colleen F. Johnson, *Poverty and the Death Penalty*, *JOURNAL OF ECONOMIC ISSUES* (2001).

“If... non-lethal means are sufficient to defend and protect people's safety from the aggressor, authority will limit itself to such means, as these are more in keeping with the concrete conditions of the common good and more in conformity to the dignity of the human person.”<sup>19</sup>— Catechism of the Catholic Church

In matters of life and death, it is often most prudent to admit that the complexities of human beings are beyond the understanding of any legislator and any judicial body. That is not to diminish the importance or necessity of those institutions but merely to recognize that each human life consists of more than a few arguments made in a courtroom. It takes great humility to refrain from doling out death and judgment when a heinous crime begs for violent retaliation. It also requires a heart willing to recognize that a guilty human being is deserving of pity and mercy. True justice demands that we do not look at a man and his crime and simplify his entire existence to that single evil he committed. Instead, we must do our best to empathize and understand his actions in view of his life experience.

It is our responsibility as members of a democratic and free society to avoid harming our fellow citizens. If there is a possibility for rehabilitation or simply seclusion without the taking of life, that path must be pursued rather than the sentence of death. In fact, execution declares the man hopeless and states that neither human skill nor the grace of God can do anything for him.<sup>20</sup> As imperfect beings, to make such a declaration is arrogant and ignorant.

In addition to your duty to uphold the law, you have the duty to pursue moral policies and follow your own conscience. Many human rights groups and religious institutions have determined that the death penalty is an immoral practice that promotes violence in society while doing very little to prevent future violent crime.

### **Budgetary concerns**

“[f]or what it costs to execute one person - in North Carolina, the most recent estimate is more than \$2 million - Virginia could educate hundreds of children. It could fill potholes. It could shore up public safety and crime prevention efforts.”—*Virginian Pilot*<sup>21</sup>

Rejection of the death penalty arises from many practical considerations as well. As a fiscally responsible individual, you can appreciate the importance of saving money

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<sup>19</sup> U.S. CATHOLIC CHURCH, CATECHISM OF THE CATHOLIC CHURCH, §2266-68 (Doubleday Religion, 2nd ed. 2003).

<sup>20</sup> JOHN W. WHITEHEAD, TO KILL OR TO CURE, 2, (The Rutherford Institute, 1998).

<sup>21</sup> Editorial, *Is an Execution Worth the Price?*, *Virginian-Pilot*, Dec. 11, 2009, <http://hamptonroads.com/2009/12/execution-worth-price>.

to fund public works programs to reduce poverty and child abuse, or simply to reduce taxes and put more money in the pockets of Virginians. The death penalty, however, costs the state a great deal of money. Some studies estimate that states spend 48% to 300% more prosecuting cases in which the death penalty is an option versus cases in which it is not.<sup>22</sup> Moreover, in these tough economic times, there are a myriad of ways to better utilize the money presently being spent on prosecuting, sentencing, and appealing death penalty cases.

### **The death penalty is not a deterrent**

“I have never heard a murderer say they thought about the death penalty as consequence of their actions prior to committing their crimes.”—Gregory Ruff, police lieutenant in Kansas

Some argue that the death penalty is a deterrent in that it prevents future violent crimes from occurring. However, there is no convincing evidence to support that claim. Indeed, 67% of U.S. police chiefs do not believe that the death penalty significantly reduces the numbers of murders.<sup>23</sup> One study determined that there was no appreciable difference in murder rates before and after states had either reinstated or abolished the death penalty.<sup>24</sup> Due to the slow process and infrequent occurrence of death sentences being carried out throughout the United States, most regression analysis studies are unable to prove the efficacy of the death sentence.<sup>25</sup> The numbers promoting the idea that the death sentence makes society safer are simply not there.

### **Restoring our place in the world**

“It can be argued that rapists deserve to be raped, that mutilators deserve to be mutilated. Most societies, however, refrain from responding in this way because the punishment is not only degrading to those on whom it is imposed, but it is also degrading to the society that engages in the same behavior as the criminals.”—Stephen Bright, human rights attorney

Additionally, the policy to continue executing prisoners places the United States in bad company on the international stage. The United States is fifth in terms of number of executions throughout the world, right behind regimes such as China, Iran, North

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<sup>22</sup> *Death Penalty Cost*, AMNESTY INTERNATIONAL, (last visited August 8, 2011) <http://www.amnestyusa.org/our-work/issues/death-penalty/us-death-penalty-facts/death-penalty-cost>; JOHN ROMAN ET. AL. *THE COST OF THE DEATH PENALTY IN MARYLAND 2* (Urban Institute, 2008); DEATH PENALTY INFORMATION CENTER, *SUMMARY OF THE KANSAS DEATH PENALTY COST REPORT BY DPIC* (last visited August 8, 2011) <http://www.deathpenaltyinfo.org/node/1080>.

<sup>23</sup> Hart Research Associates poll of police chiefs, (1995), Quoted in "*Facts about deterrence and the death penalty*," at: <http://www.essential.org/dpic/deter.html>.

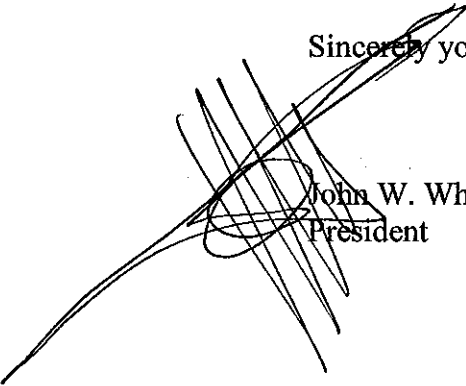
<sup>24</sup> T. Sellin, "*Capital Punishment*," (1967).

<sup>25</sup> R. Berk, "New Claims about Execution and General Deterrence: Déjà vu All over Again?," *Journal of Empirical Legal Studies* (2005).

Korea, and Yemen.<sup>26</sup> Meanwhile, our Western allies have abolished the death penalty.<sup>27</sup> The continued practice of execution in the United States weakens us diplomatically. Indeed, prior to the execution of Teresa Lewis in Virginia last year, the president of Iran, Mahmoud Ahmadinejad, used it as an opportunity to criticize America. Countering Western criticisms of Iran's decision to execute a woman convicted of adultery by stoning, Ahmadinejad accused the United States of hypocrisy in the lack of attention on Teresa Lewis' execution.<sup>28</sup> Incredibly, Virginia has the unfortunate distinction of being the runner-up to Texas in the total number of prisoners executed by the Commonwealth since 1976.<sup>29</sup> It is an embarrassment for the country and for the Commonwealth of Virginia to be placed in the same category as repressive regimes such as Iran.

Considering all of these factors, I respectfully ask that you commute Jackson's sentence to life in prison and reconsider Virginia's policy on the death penalty. As you weigh these many considerations, I would urge you to consider carefully what Governor George Ryan noted: "[I am] haunted by the demon of error—error in determining guilt and error in determining who among the guilty deserves to die." It is my hope that you will agree that whether or not Jerry Terrell Jackson deserves to die, that particular judgment should be left in the hands of God and not the already powerful secular state.

Sincerely yours,



John W. Whitehead  
President

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<sup>26</sup> Hess, Amanda. "Weighing the Death Penalty vs. Life Without Parole." July 11, 2011. <http://www.good.is/post/weighing-the-death-penalty-vs-life-without-parole/> (accessed August 9, 2011).

<sup>27</sup> "Abolitionist and Retentionist Countries." <http://www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries> (accessed August 9, 2011).

<sup>28</sup> "Iran claims double standard in Teresa Lewis case." September 21, 2010. <http://www2.timesdispatch.com/news/virginia-news/2010/sep/21/iran-claims-double-standard-teresa-lewis-case-ar-516967/> (accessed August 9, 2011).

<sup>29</sup> "Number of Executions by State and Region Since 1976." July 29, 2011. <http://www.deathpenaltyinfo.org/number-executions-state-and-region-1976> (accessed August 9, 2011).