

**AN APPLICATION
FOR EXECUTIVE CLEMENCY
FOR DWAYNE ALLEN WRIGHT**

**Scheduled to be executed on
Wednesday, October 14, 1998**

SUMMARY OF THE REASONS WHY DWAYNE WRIGHT SHOULD NOT BE EXECUTED ON OCTOBER 14, 1998

- 1. If Dwayne Wright is executed, he will be the first juvenile offender executed by the Commonwealth of Virginia in over 60 years.***
- 2. There is substantial and well document evidence of Dwayne Wright's long history of serious mental illness and organic brain dysfunction.***
- 3. Although Dwayne Wright had a trial, it is clear that evidence of Dwayne Wright's mental illness and organic brain dysfunction was never presented to his jury or the court.***
- 4. If Dwayne Wright's jury had heard the evidence of Dwayne's mental illness and organic brain dysfunction they would not have sentenced Dwayne to death -- but instead would have sentenced him to life in prison.***

Given the foregoing factors, no decision should be made with an eye toward expediency rather than an eye toward fairness. For this reason, we have requested a 60 day reprieve, to assemble and present the Governor with a meaningful application for clemency.

Introduction

The Governor should exercise his powers of executive clemency to commute Dwayne Allen Wright's sentence from death to life without parole. This action is appropriate because of Dwayne's youthful and neglected life at the time he committed the crimes for which he faces death, and because of Dwayne's profound mental disabilities, including brain impairment, mental illness and mental retardation, which were never accurately described to jurors. Commutation of Dwayne's death sentence

also is warranted in this case to prevent the return to the Commonwealth the abhorrent practice of executing exclusively children of color.

Unfortunately, counsel is forced to admit that this petition for clemency is itself evidence of the inadequate treatment Dwayne has received regarding his mental status. On Tuesday, October 6, 1998, Harvard Law School Professor Charles J. Ogletree, Jr., was asked and agreed to represent Dwayne in clemency proceedings. In the early and mid-1980s, Professor Ogletree practiced and supervised attorneys at the D.C. Public Defender which represented Dwayne as a juvenile. Professor Ogletree asked the Governor for a sixty day reprieve to assemble and present the Governor with a meaningful clemency petition to assist in the Governor's determination regarding clemency in this case.

Counsel for Dwayne have been extremely limited in their ability to provide to the Governor a comprehensive and meaningful statement to assist the Governor in his clemency review. Dwayne's lead attorney, Douglas Fredericks of Norfolk, has been representing a client appointed to him by the federal court in a federal capital murder trial since the beginning of September and has been unable to assist in the development of clemency at all. In a cruel twist of irony, it is quite likely that Fredericks' *trial* client would hear the verdict in his case on the same day Fredericks' death-sentenced client faces execution. Co-counsel Rob Lee of the Capital Resource Center in Richmond has been directly involved in the representation of four inmates scheduled for execution since the end of July and unable until recently to devote adequate time to Dwayne's clemency. Professor Charles J. Ogletree of Harvard Law School in Cambridge, Massachusetts, who formerly practiced with the D.C. Public Defender's office where attorneys once represented Dwayne as a juvenile, became involved in the case only last week.

Although counsel has worked diligently to assemble this petition, it is, quite frankly, only the "tip of the iceberg" of evidence the Governor should review in order to make an accurate and fair decision in this case. In order to provide the Governor with a comprehensive petition, under the unique circumstances of this case, counsel has requested that the Governor grant a sixty day reprieve to allow time to assemble the appropriate materials for the Governor's review. Counsel believes that this will provide the Governor a far greater sense of confidence and fairness that his ultimate decision is just.

Despite the incomplete nature of this petition, counsel also believes that even the partial evidence we have been able to assemble to date provides powerful support for the exercise of executive clemency to commute Dwayne's death sentence to one

of life without possibility of parole. We urge the Governor to do so.

I. Stepping On To The Wrong Side Of History

The Commonwealth Should Not Re-Institute the Practice Of Killing African-American Children By Killing This Brain Damaged And Retarded Child

For more than sixty years the Commonwealth has avoided the practice of executing people for crimes they commit when children. This same period saw vast changes in the criminal and juvenile justice system as well as in the quality of services provided to troubled youths and troubled families. Through it all, the Commonwealth never saw fit to execute children. As it has in the past, the Commonwealth today faces important issues of criminal and juvenile justice. In very recent years, the Commonwealth, with the Governor acting as a leader, has addressed the specific issues of the accountability, care, and treatment of children who commit adult crimes. Nothing that Commonwealth has done in the past sixty years, and nothing in the course set by the Commonwealth today, is inconsistent with a decision not to execute Dwayne Wright. From the day he was arrested he stated his responsibility for the crimes he committed. He cooperated with authorities. The only serious question in his case was whether he would be sentenced to prison for life without parole or to death.¹

The Commonwealth should refrain from re-instituting the execution of juveniles in this case because it is unnecessary and inappropriate. It also would be against the Commonwealth's commitment to human rights and dignity, and to fairness, and would mark a return to an abhorrent practice rejected throughout the better part of this century. In practice, the Commonwealth only executes children of color. According to Professor Robert Sheppard at the University of Richmond School of Law, all of the children put to death by the Commonwealth have been African-American. To our credit, this practice ceased more than sixty years ago, the vestige of a time in which Virginians struggled over whether the rights and dignities afforded in the Commonwealth would extend fairly to all of its citizens. For many

¹As the Governor may be aware, Dwayne argued at trial that the appropriate alternative to death in his case was life without parole. It was the Virginia Supreme Court which found that under Virginia law, a life sentence for Dwayne would include parole eligibility.

reasons the struggle was hard fought. Although much perhaps remains to be done, no Virginian would today dispute that the detestable practices of a bygone era which were rejected or eliminated, exemplify some of the greatest achievements of our State. The citizens of Virginia, and history, entrust these achievements to our moral and political leaders. Manifest in this trust is that these leaders will not, in the interest of the expediency of the moment, take us backward in our societal evolution, so that we will again be forced to endure the struggles already endured by our forbearers, simply to achieve what their efforts have already achieved. The execution of Dwayne Wright risks the achievements of Virginia history.

Dwayne Wright Has Been A Neglected Child Long Enough

Dwayne's death sentence should be commuted to life without parole not only because his life prior to the crime was so short and his development so retarded compared to that of a normal child, but because the short life he had prior to this crime was so horrific and detrimental.

Dwayne Wright was born with the cord wrapped tightly around his neck and in "distress." He has remained that way throughout his short life.

Dwayne's parents met in the hospital. His mother was there seeking treatment for a gunshot wound she had received from her abusive boyfriend. His father, Allen Wright, was on parole living in a halfway house, and had been sent to the hospital for a routine checkup.

For the first four years of Dwayne's life, Allen Wright he was rarely around. When Dwayne was four years old, Allen Wright went to prison for Robbery. He remains there to this day. Dwayne has seen him once.

Dwayne's mother, Susan Wright did not really want another child. She drank through her pregnancy, saturating Dwayne's development with alcohol. She already had four other sons, from prior relationships, all much older than Dwayne. One of Dwayne's brother's, David, was picked up wandering the streets of Baltimore, incoherent. He is diagnosed as schizophrenic. Two of Dwayne's uncles and one of his aunts are also schizophrenic.

Susan Wright, like most of her siblings, was mentally ill. She suffered from severe depression and schizoid symptoms. Because of her illness she had extreme difficulty forming relationships with other people. She had difficulty holding a job. Her reaction to the ever present stress in her life was to withdraw. She withdrew from her son.

Susan would take off for days or weeks without explanation. Sometimes she left young Dwayne with her family. Sometimes she didn't bother. Dwayne's grandmother admits, "You know, Susan never really had much interest in her babies."

When Dwayne was a small child, his grandmother already knew there was something wrong

with him. He seemed slow. He could not listen. He would not sit still. She told her daughter over and over again, "Dwayne's just not right." She begged Susan to take him to a doctor. But Susan didn't want to take Dwayne anywhere. She had her own problems.

Dwayne's neighbors could see he had problems too. They saw Dwayne at six, seven, eight years old; they saw him being chased home by other kids. They saw the other children throwing rocks at Dwayne. They called him, "Dumb Dwayne." They saw Dwayne wasn't like the other children. They told Susan to get Dwayne help. She did not.

The nurses at Children's Hospital knew Dwayne needed help. Dwayne stayed there for two weeks when he was 10 years old. He was withdrawn and not like other children his age. The hospital staff urged Susan Wright to take Dwayne to see a psychiatrist. She did not.

The teachers at Kingsman Elementary school knew Dwayne had serious problems. Dwayne was academically far behind the other children his age. He failed first grade once and third grade twice. He never completed a year beyond the fifth grade. He never learned to read.

He had constant behavior problems. His teachers and counselors and the principal agreed Dwayne could not keep up with the regular curriculum and needed to be placed in special education classes. They believed Dwayne's academic disabilities were the cause of his behavior problems. They could tell that his limitations made him frustrated and angry.

The "only obstacle" in placing Dwayne in special education was his mother. In spite of repeated urging of the school, Susan failed to consent to the testing required for the placement. The school gave up. No consent - No testing - No special ed. Dwayne was getting too big for elementary school anyway. At 11 years old Dwayne was over 6 feet tall.

There was one ray of hope in Dwayne's life: his older brother, Daniel. Daniel did his best to try to fill the void left in Dwayne's life by an absent father and an absent mother. Daniel was Dwayne's lifeline. He helped Dwayne decipher a world that Dwayne was clearly unable to navigate alone. He was the one person Dwayne could talk to. He was the one person who could get through to Dwayne. Doctors later explained that Dwayne's verbal abilities were so poor that he could not meaningfully communicate even with himself. Daniel served as a link through whom the world could be explained to Dwayne and through whom Dwayne could try to articulate his "inner" dialogue with himself. Doctors described this dialogue as an "essential human function." Daniel played a vital role in compensating for Dwayne's diminished ability to perform this function.

By the time Dwayne started school Daniel was living with Gwendolyn Williams, his high school sweetheart. They had two children of their own. Gwendolyn remembers that Daniel tried to make Dwayne part of his own young family. When Dwayne was being picked on by the other kids and could not take it, he went to Daniel. When Dwayne got in trouble in school he went to Daniel. "Daniel just knew how to talk to Dwayne." Daniel didn't know exactly what was wrong with Dwayne but it did not matter. He paid attention to Dwayne. He took the time.

One day Susan Wright got an hysterical phone call from Gwendolyn telling her Daniel had

been shot in their home. Dwayne rushed over to the house, only a few blocks a way. Dwayne clung to his brother as he bled to death on the floor. Dwayne was 11 years old.

Shortly after Daniel's death Dwayne began getting in trouble with the law. His first arrest was when he was 11 years old: he put a hose in someone's mailbox. The charges were dismissed.

A few months later Dwayne was arrested again. This time, he and another boy broke into a store late at night to steal food. This time the juvenile court assigned a juvenile probation officer, Mary Ann Portner, to advise the court what to do with Dwayne.

It took over six months of repeated phone calls and letters from Ms. Portner before Ms. Wright finally showed up with her son to meet Ms. Portner. Even then, Susan Wright was two hours late, "non-communicative and basically uncooperative."

When Mary Ann Portner finally met Dwayne, like Dwayne's Grandmother, neighbors, principles, teachers and counselors, she could see this child had serious problems that needed to be addressed.

Ms. Porter could see it was "obvious that Dwayne lacked adequate verbal skills." He had "significant difficulty expressing himself." He had difficulty understanding and comprehending "very easy and basic questions." When he was unable to answer Ms. Portner's questions, he became "significantly frustrated and tense."

Dwayne was 12 years old. When asked what he wanted to do, he told Ms. Portner that his only chance in life was to play basketball. He believed he was already an accomplished player. He proved incapable of telling Ms. Portner any more about himself than this. He could not find the words.

Ms. Portner believed Dwayne's behavior problems, poor impulse control, and aggression were caused by Dwayne's obvious yet unremediated cognitive limitations, and the failure of his mother to even acknowledge, let alone try to solve, her son's problems. Ms. Portner recommended Dwayne be tested to determine his disabilities. He could then be placed in a structured program that addressed his needs. Portner was the first person to make this recommendation. She would not be the last.

Unfortunately, months later, Ms. Portner was still trying to arrange an educational assessment of Dwayne and still trying to find a program that could accept Dwayne. Meanwhile, at home Dwayne continued to get in trouble. He was eventually sent to a The Children's Receiving Home, a juvenile detention center.

While at the Receiving Home Dwayne began hallucinating. Predatory animals were chasing him. Severely depressed, suicidal, agitated and psychotic, Dwayne was committed to St. Elizabeth's Hospital.

At St. Elizabeth's, Dwayne had another 4-day psychotic episode. The doctors diagnosed him

with psychotic depression. They gave anti-psychotic and anti-depressant medication. The treatment worked. Dwayne began to improve.

The doctors at St. Elizabeth's also tested, evaluated and examined Dwayne. The psychiatrists, neurologist, neuropsychologist and the therapists all agreed: Dwayne's brain was impaired. An EEG showed diffuse abnormalities in the left hemisphere of his brain. A neuropsychological examination confirmed the Dwayne had profound cognitive deficits that severely impaired his ability to express or comprehend written or spoken language.

The medical doctors, psychiatrists, psychologists and case worker all agreed that Dwayne's severe cognitive deficits, his overall limited intellectual abilities, his psychiatric problems and his neglected and chaotic home life left Dwayne "an extremely vulnerable young man." He needed structure. He needed psychiatric care. He needed special education. He needed treatment to help him overcome his profound disabilities. "The need for residential placement is obvious." Dwayne was 13 years old.

Dwayne didn't get the prescribed treatment. He did not get special education. He did not get psychiatric care. He did not get the structure of a residential placement. Over the next three years a series of case workers and juvenile public defenders tried to find a suitable residential treatment facility that had room for Dwayne. Meanwhile, Dwayne was warehoused at various juvenile detention centers -- the Receiving Home and Cedar Knoll - both of which were shut down by the courts for deplorable conditions. From 1987 to 1989, he was incarcerated at one of the worst juvenile detention centers in the county -- the Oak Hill Youth Detention Center.

Described as "A local Devil's Island" Oak Hill was "infested with snakes, mosquitoes, gnats, mice and roaches, and indoor temperatures were above 100 degrees" in August of 1988. Snakes were found in the residents beds. Due to the shortage of teachers, when kids got in trouble they were not permitted "educational services." "These children are being irreparably injured," said the D.C. Superior Court judge that asked to intervene. By this time Dwayne had been at Oak Hill awaiting a more suitable placement for over a year.

In late 1987, Dwayne finally made it to the top of the waiting list for placement in "The Brown School," a residential treatment center in Texas that could meet Dwayne needs. All Oak Hill had to do was fill out the necessary paperwork. They did not. They lost the paperwork, and Dwayne lost the spot they were holding for him at the Brown School. Dwayne had to go back to the end of the line.

In May of 1989 -- nearly four years after it had been conclusively determined that Dwayne desperately needed psychiatric care, special education, treatment and structure in order to overcome his disabilities -- Dwayne was sent home, right back where he started. No psychiatric care. No special education. No treatment. No structure. Dwayne was then 16 years old.

In less than 6 months, Dwayne was arrested and charged with capital murder.

Before they decided to try Dwayne as an adult, the court sent a psychologist Dr. Mauer to

see Dwayne. Dr. Mauer did not have Dwayne's records from St. Elizabeth's. He did not talk to any of the other doctors who had previously evaluated and tested Dwayne. He decided that because Dwayne was only "borderline" mentally retarded, he could be tried as an adult. But he noticed that Dwayne's intellectual functioning was still "well below average" and that Dwayne had extreme difficulty communicating. He advised the court and Dwayne's attorney they would have to use "simple and concrete words and examples" in order for Dwayne to understand what was happening to him in his court case. A review of the record shows this never occurred.

The Commonwealth Should Not Stand In The Company Of Notorious Human Rights Abusers Who Execute Children

If Dwayne Allen Wright is executed, it will mark a moral low-point in the modern history of the Commonwealth of Virginia. The execution of a brain-damaged, African-American child, will take its place alongside accounts of Virginia slave holders grabbing African-American slave babies from their mother's arms and selling them "down the river," another practice once legal and morally acceptable in the Commonwealth. According to Professor Robert Sheppard at the University of Richmond School of Law, the only children put to death by the Commonwealth have been children of color. But this practice should remain only a nightmare of a bygone era, and one which the Commonwealth and the nation have thankfully put behind us. New life should not be breathed into a practice which took so long and such effort to defeat.

The re-institution of the execution of children in Virginia puts the Commonwealth in very bad company. Virginia will march in lock-step with nations of the World renown for their conscience-less abuse of fundamental human rights: Iran, Nigeria, Yemen, Pakistan, Saudi Arabia. It cannot go unnoticed how "out of step" the state-killing of children is with the modern-day commitment of the Commonwealth to lead the nation and beyond in promoting the quality and sanctity of life.

The execution of persons for crimes they commit as juveniles also puts the Commonwealth in violation of international law and out of step with nearly every other nation. The International Covenant on Civil and Political Rights (ICCPR), which states that "sentence of death shall not be imposed for crimes committed by persons below eighteen years of age."² Many of the nations which have steadfastly rejected executing juvenile are the same nation's from which the Commonwealth

² The United States government signed the ICCPR in October 1977 - thereby binding itself not to do anything which would defeat the object and purpose of the treaty, pending a decision whether to ratify it. Article 18 of the United Nations Convention of the Law of Treaties (Vienna, 1969). When it ratified the ICCPR, the federal government made clear its intention to continue this practice by explicitly reserving the right to impose the death penalty for crimes committed by those under 18. The reservation reads: "*The United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.*"

seeks to encourage the development of cooperative business ventures and industry in the Commonwealth. We should take our place alongside these partners who share our commitment to a quality of life and human dignity rather than alongside the handful of nations which count the execution of juveniles among their profane practices. Even Ethiopia, the country Saba Tekle fled to escape repression, is committed to the international prohibition of the execution of juveniles.

Secretary of State, Madeline Albright, has said of our nation, "We are the indispensable nation. We stand tall and we see further than other countries into the future." Since the beginning of the nation, the Commonwealth has played an "indispensable" role in its history. Although the federal government has imposed "an exception" for itself in the worldwide prohibition of the execution of juveniles, the Commonwealth should not embrace the exception. By joining with our fellow nations in their commitment not to execute juveniles we will further the interests of the Commonwealth in protecting its citizens, families, and the quality of life.

II. *Killing, Or Caring For, The Most Vulnerable Among Us?*

Dwayne Wright's Profound And Severe Mental Disabilities, And The Neglect He Has Suffered In Obtaining Effective Treatment, Warrant Commutation Of His Death Sentence

There can be no dispute that Dwayne had an extensive and profound history of mental disability. There is no dispute that he suffers multiple mental disabilities, including mental illness, hallucination, and an abnormal brain. There also is no dispute that this evidence was never presented to jurors in an accurate or meaningful way. Finally, there is no dispute that, had this evidence been presented to jurors, Dwayne would never have been sentenced to death. This last fact has been confirmed by two jurors who served at Dwayne's trial. One implores the Governor not to execute Dwayne in her name and has made the extraordinary request to meet personally with the Governor to make her plea.

One of the most troubling aspects of Dwayne's case is that, despite the severity of Dwayne's mental health history, *no mental health expert* has ever tested Dwayne to assist him in determining the status of his mental condition in the years since the date of his crimes.³ The mental health expert appointed to assist Dwayne at trial conducted no testing whatsoever. All of Dwayne's requests for mental health tests since trial have been refused by the courts.

Fortunately, several of the doctors and other mental health workers who actually treated Dwayne have been located. They explain the severity of their earlier findings. They also indicate that testing would be vital to determining what happened during the four days when Dwayne was involved in the shooting deaths of three people. Unfortunately, the jurors charged with deciding whether death was the only appropriate punishment for Dwayne, never had the benefit of the wealth of insight, expertise, and direct understanding of Dwayne, held by these doctors and other professionals. It is vital, therefore, to understand what these experts say about Dwayne, what they knew about Dwayne at the time of his trial, and what was actually told jurors. The inaccuracy and incompetence of what was told to jurors at trial must also be appreciated.⁴

What the Doctors Say Now

³ At trial, a state expert found that Dwayne was not insane at the time of the crime. He also found that Dwayne was competent to stand trial but instructed counsel, the prosecutor and the court to use very simple sentences, and to take breaks to explain the proceedings to Dwayne. There is not evidence that these directions were followed.

⁴ As late a yesterday, a spokesperson for the Attorney General of the Commonwealth published statements that "numerous mental health experts have determined Wright is not brain damaged." Richmond Times-Dispatch, B4, 10/10/98. This is flat wrong. The only "expert" to make this statement was the prosecution's expert at trial. He was a clinical psychologist, professionally and ethically incompetent to diagnose the existence of brain damage.

The doctors and social workers who saw Dwayne while he was "lost in the [juvenile] system" remember him as an "**extremely vulnerable child.**" They recall that Dwayne desperately needed treatment for his "**profound language deficits,**" **organic brain dysfunction,** "**low intellectual functioning,**" "**serious mental illness**" and "**emotional neglect.**" All believe that **Dwayne would have responded positively had he actually been provide the recommended care.** These doctors and other mental health professionals stated (emphasis supplied):

Dwayne came from an unstable, unsupportive home background. . . . *Dwayne's mother emotionally neglected Dwayne.* . . . Her entire concern was avoiding any kind of personal responsibility and on "maintaining" Dwayne until he was eighteen, at which time she intended for him to leave home.

-Affidavit of Mary Ann Portner (Exhibit 21)

Dwayne suffers from severe learning disabilities, especially in the area of language. . . . *Dwayne's tremendous problems expressing himself made him extremely vulnerable to psychiatric problems* . . . For example, Dwayne's oldest brother was shot and killed in January 1984. Dwayne was very close to his brother (who served as a "father figure" to him), and the shooting devastated him. Because of his disabilities, he was unable to adequately process his grief.

-Affidavit of Dr. William Stage (Exhibit 19)

If left unremediated, the impact of [Dwayne's] very profound reading and language deficits [were] likely to be pervasive. . . . [He would be] unable to track or fully grasp social communication with peers . . . unable to process oral directions or lecture in the classroom . . . very easily led by peers into problematic behavior.

Perhaps more importantly, . . . language [is necessary] to "talk to oneself" about the consequences of behavior, . . . to identify feelings before they become overwhelming, . . . [and] to develop strategies for self-control . . . *This essential human function is impaired for Dwayne.*

- Affidavit of Dr. Susan Van Ost (Exhibit 22)

[Dwayne] was, in my experience, a very needy and very vulnerable young man. . . . He was a follower and was very easily led. He had the unfortunate combination of immaturity, large physical size, and limited intellectual ability that made it easy for others to take advantage of him (which often happened).

- Affidavit of Mary Ann Portner

The level of Dwayne's psychiatric problems required him to be placed on anti-psychotic and anti-depressant medication. Dwayne showed substantial improvement

from these medications.

-Affidavit of Dr. William Stage

On March 11, 1987 and again on June 8, 1987, I was called by Dr. Slayton, a psychologist at Oak Hill regarding Dwayne Wright. He requested that I provide telephone consultation regarding Dwayne's need for treatment. . . . Dr. Slayton informed me that Dwayne appeared to be paranoid and delusional. ***Dwayne was complaining that he boys in his unit were putting glass in his bed, that the glass was being absorbed into his body, and as a result he believed he could not eat.*** Dwayne was not on any medications at the time, contrary to his hospital evaluation and discharge recommendations.

-Letter of Dr. William Stage (Exhibit 32)

Dwayne was observed to be psychotic by the doctors and staff of three separate institutions over a 20 month time period. There is ***no question*** that he was seriously mentally ill at the age of 13 and 15. ***In addition to his mental illness***, it has been well documented by multiple independent psychiatric, mental health professionals, that has ***borderline mental retardation, extreme learning disability, brain dysfunction as evidenced by abnormal EEG and neuropsychological studies.*** It is my understanding that none of this was reported at trial as mitigating factors in his sentencing. It is hard to imagine that these factors would have been overlooked by his defense team had they made even a rudimentary attempt to look into his history.

-Letter Dr. William Stage

The special education and therapeutic services which could have improved Dwayne's chances for normal development were never delivered. Dwayne Wright's neurologically based language deficits should have resulted in his receiving intensive special educational service from earliest elementary school. These were not provided, placing this youngster at high risk for emotional and behavioral problems. In 1985, when Dwayne was age 13, intensive therapeutic and educational intervention was again recommended to treat this client's language and emotional deficits. These services were again never provided.

-Letter of Dr. Susan Van Ost (Exhibit 33)

Despite his psychological problems, Dwayne never displayed any violent tendencies toward or around me. ***It was my professional opinion at the time that Dwayne was a decent person, and that he would respond positively to proper treatment at a residential facility which could pay close attention to his psychiatric problems and address his severe language disability, and I recommended that he be placed in such a setting upon discharge.***

- Affidavit of Dr. William Stage

The Dwayne Wright I knew was not a cunning, cold-blooded random killer; rather he was an immature, neglected, easily led young man of very low intelligence who was often vulnerable to the manipulation of his peers. . . ***Based on my knowledge of Dwayne and my extensive experience in juvenile social services, I believe Dwayne could be rehabilitated with the appropriate guidance and help available in the corrections system.***

- Affidavit of Mary Ann Portner

Dr. Stephen Golding, a principle drafter the American Psychological Association's professional and ethical standards for forensic psychologists, which establish procedures to ensure the reliability of the testimony of forensic psychological experts. As an expert on the professional and ethical obligations established by psychologists nationally, Dr. Golding found that the state's expert at Dwayne's trial, Dr. Arthur Centor, repeatedly "***misled***" and "***misinformed***" the jury and the court in violation of these standards:

Dr. Centor's failure to adequately review and integrate the finding from Mr. Wright's Saint Elizabeth hospitalization in 1985 ***may have led*** the trier of fact to believe that Mr. Wright had no psychiatric disability (***when, in fact***, he may very well have had a recurrent history of psychotic depression, as well as impulse control difficulties stemming from very early childhood).

Dr. Centor's failure to adequately review and integrate the finding from Mr. Wright's Saint Elizabeth hospitalization in 1985 ***may have led*** the trier of fact to believe that Mr. Wright had no history of organic brain damage (***when, in fact***, he was consistently diagnosed as have developmental disorder, diffuse cerebral dysfunction and severe learning disabilities)

Dr. Centor ***misled the court*** with respect to the basis for his conclusion that there were "no indications" that Mr. Wright had brain damage. He either ***misread, failed to read or misinformed the trier of fact*** in respect of their conclusions with regard to Mr. Wright's organic difficulties.

Dr. Centor ***mislead the trier of fact*** in respect of the "sensitivity" of the variant of the neuropsychological screening test he employed. The procedure he employed is well known to have a high false negative rate (i.e., it very often misses organic involvement); moreover, Mr. Wright had shown positive signs of organic involvement on the tests used at St. Elizabeth's Hospital, which are the commonly employed and relied upon methods for assessing neuropsychological involvement.

Dr. Centor was quite aware of the difficulties in assessing future dangerousness and . . . the need to disclose the scientific limits of that methodology to the . . .

sentencing body in a death penalty adjudication. He *did not inform the trial of fact* of any of the well-known limitations of [this type of testimony], much less his substandard methodology.

- Affidavit and Report of Dr. Stephen Golding(Exhibit 31)

Dr. Golding and Dr. Michael Perkins, a clinical psychologist, also reviewed the testimony of the defense expert, Dr. Stanton Samenow. They concluded Dr. Samenow's testimony in this case was "*ethically and professionally irresponsible*" and that there were "*numerous influential factors in Mr. Wright's case which were never presented to the jury*" which would have had a "substantial influence" on their sentencing decision:

Dr. Samenow's views, as expressed in his books, television appearances, . . . are clearly *outside the mainstream* of psychological teaching or the customary evaluation procedures adopted by the juvenile justice system in the Commonwealth of Virginia. . . . Dr. Samenow's views represent an *extreme viewpoint* not shared by the vast majority of psychiatrists and psychologists practicing in the field today.

- Affidavit of Dr. Michael Perkins (Exhibit 18)

In light of the fact that Dr. Samenow is well known for his firmly held belief that [mitigating mental health and organic] factors do not constitute significant etiological considerations in criminal behavior, it was, in my opinion, *ethically and professionally irresponsible* for him to accept retention as a defense expert. . . . It is against this background that Dr. Samenow . . . [failed] to acknowledge the further (prior) findings of diffuse cerebral dysfunction and sever learning disability. It is also *disingenuous* of him to opine that further neuropsychological testing would be "not indicated" when he had a preformed opinion as to the role of organic mental disorder in criminal behavior.

- Affidavit and Report of Dr. Stephen Golding (Exhibit 31)

There are numerous factors in influential factors in Mr. Wright's case which were never presented to the jury such as the *deplorable environmental-parental situation* which he lived in. . . his *borderline mental retardation*. . . *severe learning disabilities* . . . the *very clear presence of mental illness* . . . and his responsiveness to appropriate treatment . . . [and,] *the very clear medical and psychological evidence of organicity which was minimized and inaccurately ruled out by Dr. Samenow in his testimony for the court*. Relatedly, *there was a failure to appropriately assess the full extent of Mr. Wright's brain damage (by a neurologist and more extensive medical testing such as a CAT scan) including the possibility of epileptic seizure activity or other neurological factors which may have contributed to violent behavior*.

It is my ***strong and unequivocal professional view*** that had this information been presented to the jury in their deliberation regarding Mr. Wright's case, these mitigating factors may have been of substantive influence in the jury's findings and recommendations.

- Affidavit of Dr. Michael J. Perkins (Exhibit 18)

Dr. Samenow now states that he was unaware of the information regarding Dwayne's cognitive deficits in her 1985 Neuropsychological Report. ***Dr. Samenow now frankly admits that he has no reason to refute or dispute the findings of Dr. Van Ost regarding Dwayne's neuropsychological deficits.*** As he stated at trial, he is not an expert in brain damage and he did not test Dwayne at the time of the trial. He also said that, had he known the information in Dr. Van Ost's report at the time of the trial, he would have considered it relevant and told the jury in Dwayne's case. (Exhibit 34)

What Evidence Existed At The Time Of Dwayne's Trial

During the four years prior to his arrest, Dwayne was examined, evaluated and tested by a host of mental health professionals. At the time of his trial, it was well documented that Dwayne had a history of "acute psychotic episode[s]" and "hallucinatory experiences," "extreme depression," "borderline mental retardation," brain dysfunction as evidenced by an "abnormal EEG" and neuropsychological testing and extreme learning disabilities. All agreed he was "in urgent need of special education" and placement in a residential treatment facility:

- "It was obvious that Dwayne lacked adequate verbal skills. He had significant difficulty expressing himself in addition to difficulty understanding and comprehending some very easy and basic questions." (Exhibit 3 -- Social Study by Mary Ann Portner)
- ***"All significant school personnel believe that Dwayne is in need of special education*** and they have been willing to provide those services. They believe that should the Court order an educational assessment, they will not need to involve Mrs. Wright who has been the only obstacle in obtaining this assessment." (Exhibit 3 -- Social Study by Mary Ann Portner)
- Psychologist Dr. Irving Lynn found Dwayne's I.Q. was 76, placing Dwayne in the ***"borderline mentally retarded*** range." Dr. Lynn also found that Dwayne's "performance was extremely poor on all tests of verbal functioning" and considered Dwayne's ***"verbally mentally retarded."*** He suggested a "neurological examination and further testing" to determine whether Dwayne's extreme deficits in this area "were the result of organic damage." (Exhibit 5 - Psychological Evaluation by Dr. Irving Lynn)
- The Children's Receiving Home staff also recognized that Dwayne had "substantial deficits in visual, auditory and written language skills." The Receiving Home advised that ***Dwayne "obviously [] require[s] a structured residential placement which will***

provide him with a program that meets his needs for special education as well as for therapy." (Exhibits 6 - Receiving Home Report for Court Disposition)

- "Dwayne listens very carefully to instructions but has difficulty following verbal instructions. . . . He lacks confidence in his ability to do very minimal tasks, but will try . . . His attitude has changed considerably with his initial success in individual sessions . . . He has been presenting himself in a very courteous manner." (Exhibit 7 - Memo from Art Therapist).
- While at the Receiving Home Dwayne had "***visual hallucinations of predatory animals.***" During this "acute psychotic episode" Dwayne was observed as "extremely depressed," "actively suicidal" and increasingly agitated. "He requires hospitalization. . . . [T]here is a possible family history of paranoia. A neurological basis should be considered." (Exhibit 9 -- Joan Kinlan, M.D. Psychiatric Evaluation)
- Dwayne has "significant deficits in visual motor coordination . . . [he is] slow at abstract spacial reasoning. . . . ***[Testing] suggests a degree of organicity.*** . . . Recommend further testing to determine if there is organic involvement." (Exhibit 10b -Nina Moore, M.S., OTR, Perceptual Motor Evaluation)
- Dwayne has "moderate to severe deficits in expressive language and articulation . . . considerable difficulty expressing ideas, [and]. . . word retrieval deficits. . . . Recommend individualized language and articulation remedial therapy and appropriate academic placement" (Exhibit 10c -Joanne Schevart, Speech Pathologist, Speech and Language Assessment)
- Dwayne's "[a]cademic skills are extremely limited and below basic literacy standards . . . All of his reading skills weak - he has no phonics abilities even at the most basic level . . . He reads by sight up to first grade level . . . ***Dwayne is in urgent need of special education of a highly specialized nature*** . . . He needs one on one tutoring . . . He is not suitable for community school setting at this time." (Exhibit 10d - Kathy Baker, Psychoeducational Evaluation)
- "***A recent EEG indicated left hemisphere abnormalities . . . [Dwayne had] severe difficulties in the area of language functioning*** . . . Dwayne made a concerted effort to deny and hide emotional or psychiatric dysfunction . . . he had difficulty organizing words to express ideas . . . There was evidence of poor reality testing . . . impaired social judgement and a tendency to misinterpret the actions of others . . . He showed a high level of anxiety." Recommend "neuropsychological evaluation." (Exhibit 10f - Dr. Susan Van Ost, Psychological Evaluation and Neuropsychological Screening)
- Dwayne was referred for neuropsychological testing "due to ***extreme language dysfunction and an abnormal EEG.*** The overall test pattern is consistent with dysfunction of the cerebral cortex." It is possible that Dwayne's acting out is "due to his frustration with is inability to achieve and comprehend what is going on around him in

school, as well as a frustration with not being able to verbalize his thoughts and feelings. . . . [I]t is also possible that Dwayne's acting out relates more directly to his neuropsychological impairment. That is, Dwayne's language skills are severely impaired. In addition to the deficits in spoken and written language needed to communicate with others, it is also likely that he lacks the internal language skills needed to 'communicate with himself' and therefore, to control or mediate his own behavior." (Exhibit 10h - Dr. Susan Van Ost, Neuropsychological Evaluation)

- Dwayne "was well behaved on the unit and presented no management problems. . . . **He was noted by several staff members to have hallucinatory experiences** . . . he became out of control . . . he was treated with anti-psychotic medication with substantial improvement. We have gradually come to the opinion that Dwayne has major depression and that his psychotic features are probably a result of his depression." (Exhibit 10i -- Dr. William Stage, M.D., Clinical Case Summary)
- "Dwayne has very severe learning disabilities, particularly in the language area of functioning. These were never properly identified, evaluated, and treated during his six years of schooling. His great problems expressing himself make him vulnerable to a variety of other problems. Dwayne's father was incarcerated and his brother was killed. Dwayne did not have the resources to deal adequately with these stresses and he became depressed. His physical growth has greatly preceded his emotional and intellectual growth. This has led to a variety of peer problems including fighting. **Dwayne is a highly vulnerable child and he will need careful treatment of his various problems.** A residential treatment facility with expertise in severe language problems would be the optimal treatment program for Dwayne. He will need close attention to both educational and psychological issues." (Exhibit 10i -- Dr. William Stage, M.D., Clinical Case Summary)
- Dwayne's "developmental disorder, learning disability, borderline intelligence and possible organic brain syndrome, all mentioned by Dr. Prunier seem present in my opinion. . . . **The need for residential placement is evident.** The facility should encompass structure, supervision, psychotherapy and vocational training. As an interim placement, hospitalization at St. Elizabeth's Hospital is recommended, where he can receive a current neurological evaluation with an EEG. (Exhibit 11 -- Dr. Zelda Teplitz, M.D., Psychiatric Screening Examination)

What Was Told To Jurors At Trial

The jury at Dwayne Wright's trial did not hear from any of the numerous doctors who had examined and tested and diagnosed Dwayne during the four years he floundered in the juvenile system. They saw none of records that documented Dwayne's long history of mental illness. They heard only the opinions of two expert witnesses: Dr. Arthur Centor and Dr. Stanton Samenow. Both Dr. Centor and Dr. Samenow are clinical psychologists. Neither is qualified to prescribe or evaluate the effectiveness of psychiatric treatment. ***Neither Centor nor Samenow***

conducted a neurological or neuropsychological examination necessary to detect organic brain damage, nor were they qualified to do so. Both had Dwayne's history available to them. Both ignored it and told the jury that Dwayne suffered from no mental illness and was not brain damaged.

Excerpts from the trial testimony of the state's expert, Dr. Arthur Centor, regarding Dwayne's intellectual abilities:

- Dr. Centor told the jury Dwayne's extremely low verbal I.Q. scores were "due to a lack of interest in school."
- Organicity, or brain damage, affecting intellectual functioning is contra indicated; is not indicated. It's negative. That is, he doesn't show it.
- During the "short time" Dwayne was at St. Elizabeth's Hospital, "it appears to me that they didn't rule [organicity] out or rule it in. I rule dit out."

Regarding mental illness:

- Dwayne "showed no indication of any emotional disturbance, disorders or any mental disorder or disturbance. That is, he was free insofar as testing was concerned of any signs of mental illness, mental defect, mental disorder, emotional disorder, emotional disturbance."

Regarding future dangerousness:

- Dwayne was likely to be a danger in the future because "the major [mitigating] factors were absent" and Dwayne was "not acting under mental disturbance of any kind."

Excerpts from the testimony of Dr. Samenow regarding Dwayne's intellectual functioning:

- Samenow admits he is "not an expert on brain damage." He nevertheless testifies that Dwayne is not brain damaged.
- Samenow did not seek further neurological testing because it was "highly unlikely" that Dwayne had any organic impairments.
- Dwayne is "in no sense" retarded, "not even close."

Regarding mental illness:

- He believes that “mental illness is not responsible for people committing crimes; that people commit crimes “because they get any with it and live “rather well”
- In Dwayne’s history there has been no finding that he suffers from a mental illness other than “Saint Elizabeth’s raised a question . . . in one of their many diagnoses” about depression with psychotic features. That “was based on some question about whether he was hallucinating. Outside of that. . . Is no assessment that Dwayne Wright was mentally ill.”
- Dwayne is neither "psychotic" nor "neurotic."
- “My answer is that he is not suffering from mental illness”

What Would Have Mattered To The Jurors In Whom The Life Or Death Decision on Dwayne's Life Was Entrusted

Two jurors who sat on the jury at Dwayne Wright’s trial and who voted the should be sentenced to death, ***say that they never would have sentenced Dwayne to death if they knew of his brain damage*** and that problems with his brain affected his ability to control his behavior:

Had I been told the truth about Dwayne during his trial I never would have voted to impose a death sentence. I would have voted to sentence Dwayne to life imprisonment. Given this evidence of brain damage, I would have been unwavering in my decision to sentence Dwayne to life instead of death, and Dwayne Wright would not now be awaiting execution.

Now that I know the truth about him, I wish to do all within my power to stop the execution of Dwayne Wright. I would like to personally address Governor Gilmore before he makes his decision regarding clemency in this case. I implore Governor Gilmore not to allow Dwayne Wright to be executed in my name.

-Affidavit of Pamela Stilton Rogers(Exhibit 20)

We were never told ... Dwayne suffers from organic brain damage.

I consider this very important information, and . . . [h]ad I been told the truth about Dwayne during his trial, I would have voted to sentence Dwayne to life in prison instead of death.

-Affidavit of Wright Juror⁵ (Exhibit 30)

III. Making the Commonwealth Safe

The United States Supreme Court has written that there is nothing in the U.S. Constitution which prohibits the Commonwealth from executing Dwayne solely because he was only 17 at the time he committed the crime for which he faces death. The question posed by this case is whether there is anything in the Commonwealth's commitment to fairness or in the hearts of Virginians committed to the proper care of our children and persons struggling to cope with significant mental health challenges, which counsels against the execution of a brain-damaged, retarded child.

All Virginians have a right to be safe. No one should live in fear that they will be confronted by crime while walking from their car to their home as happened to Saba Tekle the night she was killed. Prevention of crime by persons like Dwayne who are mentally ill or brain damaged is a prime benefit of the mental health system reforms promoted by the Governor. If the reforms envisioned by the Governor and others supporting his efforts are effectively put into place, the vast majority of crime by mentally ill persons will be eliminated because these people will receive effective prescribed treatment and will not be expected to cope with obstacles which are beyond their abilities. Instead, they will be placed in situations appropriate to their abilities.

Were the Governor's anticipated reforms in place when Saba Tekle walked from her car on the night of her death, Dwayne Wright would not have met her in his impoverished mental state. Instead, because he would have received effective prescribed treatment, he would have been well on his way to having his mental health properly restored or maintained.

The question this case presents to us now is whether Dwayne will be made to forever pay for our delay in ensuring that the most vulnerable among us receives adequate care. The Governor has taken the stand that he will not tolerate the kind of systemic neglect which was commonplace in Dwayne's life. Virginians have joined almost universally with the Governor in supporting this commitment. The Governor should not tolerate -- nor do the citizens of the Commonwealth expect him to tolerate -- the state execution of a mentally disabled child who was a victim of intolerable neglect. The Governor should commute Dwayne's sentence to life without parole.

Summary of Relevant Legal Proceedings

The opinion of the Supreme Court of Virginia in this case is found at *Wright v. Commonwealth*, 427 S.E.2d 379 (Va. 1993). The U.S. Supreme Court vacated the judgment of

This juror has granted permission to release the substance of this affidavit but has requested the name not be released to the public. Counsel for Wright have agreed to respect this request.

that Court and remanded for further consideration in light of *Simmons v. South Carolina*, 114 S. Ct. 2187 (1994). *Wright v. Virginia*, 114 S. Ct. 2701 (1994). The Supreme Court of Virginia upheld the sentence. *Wright v. Commonwealth*, 450 S.E.2d 361 (Va. 1994). The U.S. Supreme Court denied certiorari. *Wright v. Virginia*, 115 S. Ct. 1800 (1995).

On March 14, 1996, the Supreme Court of Virginia denied Wright's petition for writ of habeas corpus, as well as his request for an evidentiary hearing. Execution was set for August 23, 1996.

By order of the federal district court entered August 15, 1996, Petitioner's execution was stayed pending further order of the court. Co-counsel originally appointed to the case withdrew and new co-counsel was appointed. The matter was referred to the Magistrate Judge who filed his Report and Recommendation on May 21, 1997. *Wright v. Angelone*, ___ F. Supp. ___ (E.D.Va. 1997). The United States District Court entered its opinion and order on September 11, 1997, denying the petition.

Shortly before oral argument was heard in the case in June of this year, "second" appointed co-counsel was permitted to withdraw and present "third" co-counsel was appointed to the case. The court of appeals affirmed the district court's denial of the writ. *Wright v. Angelone*, 151 F.3d 151 (4th Cir. July 16, 1998).

Without addressing the district court's stay pending further order of the court, the Commonwealth procured an execution date of October 14, 1998 from the state circuit court. Petitioner's lead counsel is required to be in federal district court in a capital trial from early September until the middle of October. Lead counsel had opposed the grant of a continuance from the original trial date in June. Petitioner's newly appointed co-counsel represented four inmates in addition to Wright whose executions were scheduled between the end of July and the third week of September. Three of those executions were carried out; the fourth was stayed and granted certiorari review by the United States Supreme Court.

Based on these extraordinary circumstances, the district court believed that Wright's right to have the assistance of counsel in his appeals would be seriously hampered. The judge exercised his discretion to leave in force his original stay order. The Warden moved to have the district court's order vacated, and the court of appeals granted the request. An application for a stay of execution is before the U.S. Supreme Court on this issue. Even today, lead counsel's federal capital trial is still going on in Norfolk. Counsel has still not yet had the chance to file a petition for writ of certiorari in this case.

Respectfully submitted,

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