VIRGINIA CAPITAL REPRESENTATION
RESOURCE CENTER

2421 IVY ROAD, SUITE 301
CHARLOTTESVILLE, VIRGINIA 22903-4971

(434) 817-2970 TELEPHONE
(434) 817-2972 FACSIMILE

April 13, 2006

Mr. Lawrence Roberts
Counselor to the Governor
Patrick Henry Building
1111 East Broad Street
Richmond, Virginia 23219

Re: April 27, 2006, Execution of Dexter Lee Vinson

Dear Mr. Roberts:

Enclosed please find a copy of the Petition for Executive Clemency on Behalf of Dexter Lee Vinson. As you know, Mr. Vinson is scheduled to be executed on April 27, 2006 at 9:00 p.m. at Greensville Correctional Center, in Jarratt, Virginia.

We ask that you please review and provide the Governor with our Petition and accompanying materials. We will send these materials in a series of emails later today and arrange to have hard copies delivered to your office.

We look forward to meeting with you on Thursday, April 20, 2006 at 1:00 p.m. at your offices. If you have questions in the interim, or if we can be of assistance providing additional material, please let us know. If there are further developments related to our request we will pass them along to you.

We are grateful for the consideration you and the Governor have shown in this matter.

Very truly yours,

Rob Lee

Robert Lee

encl.

Petition for Executive Clemency

On Behalf Of

Dexter Lee Vinson

Execution Scheduled
for Thursday, April 27, 2006
at 9:00 p.m.

Robert Lee
Matthew L. Engle
Deirdre M. Enright
Virginia Capital Representation Resource Center
2421 Ivy Road, Suite 301
Charlottesville, Virginia 22903
(434) 817-2970
(434) 817-2972 (facsimile)

Mark E. Olive
Law Offices
320 West Jefferson Street
Tallahassee, Florida 32301
(850) 224-0004
(850) 224-3331 (facsimile)

I. Introduction

The Virginia Attorney General has asked a circuit court judge to order that Dexter Lee Vinson be executed on April 27, 2006. If this execution is carried out as scheduled, troubling questions about whether Vinson is innocent of the crimes for which he will be put to death will remain unresolved. Based on the facts Vinson has discovered since his trial, there are indisputable doubts about whether his is guilty of the crimes for which he may be put to death.

As formally acknowledged by the Supreme Court,

> Executive clemency has provided the "fail safe" in our criminal justice system. . . . It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible. But history is replete with examples of wrongfully convicted persons who have been pardoned in the wake of after-discovered evidence establishing their innocence.

Herrera v. Collins, 506 U.S. 390, 415 (1993). "Clemency is deeply rooted in our Anglo-American tradition of law, and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted." *Id.* at 411-12.

Mr. Vinson's case justifies exercise of the traditional and critical "fail safe" role executive clemency is expected to play. We hope that after reviewing the facts below, you will join the effort to halt Vinson's execution and allow him a chance to prove his innocence. The unique combination of newly discovered evidence, undeveloped evidence, and singular circumstances of Vinson's case rattle the confidence the Commonwealth must have before taking an irremediable action like execution. As the Supreme Court conceded, "we do not doubt that clemency - - like the criminal justice system itself - - is fallible." In contrast to our fallible systems, however, the death penalty is absolute and irreversible. Before we can exact an absolute and irreversible punishment, we should strive to secure as near absolute confidence as can be achieved. Such confidence cannot be gained in Mr. Vinson's case.

During the week of Dexter Vinson's scheduled execution, a federal court has scheduled hearings to determine what remedies should be provided to exonerated, former death-sentenced inmate Earl Washington, Jr. The actions first of Governor L. Douglas Wilder and later Governor James S. Gilmore in Mr. Washington's case, prevented Washington's execution, allowed him an opportunity to fully present his case for clemency, and ultimately, resulted in Governor Gilmore's decision to pardon him. The case has been celebrated as a testament to the cautious and careful manner in which potentially innocent people are protected from the death penalty. But if Mr. Washington had been forced to make his case within the time frame provided to Vinson – let alone without benefit of any expert assistance or scientific testing – he would have been

executed based on his confession and prior criminal behavior long before the truth about his case came to light.

The Governor should intervene to prevent Mr. Vinson's execution from going forward at this time. He should commute Mr. Vinson's sentence to life without parole in order to avoid the likelihood of executing an innocent person. The Governor also should provide Mr. Vinson access to certain pieces of evidence, discussed below, to further establish his actual innocence of the murder of Angela Felton and perhaps to develop evidence about the identity of the real killer.

The story of his case is jarring for many reasons.

Immediately after Ms. Felton's body was discovered in a vacant house at 575 Freedom Avenue in Portsmouth, a witness came forward to say that she recognized Vinson with Ms. Felton behind the vacant house on the day of her disappearance. This witness, Ms. Priscilla Turner, testified at the preliminary hearing and prosecutors presented the substance of her testimony to the grand jury in order to obtain indictments against Vinson for capital murder. Ms. Turner testified under oath that she watched Vinson assault Ms. Felton and put her unconscious body in the vacant house. **Since the trial, Vinson has learned that Ms. Tuner, in fact, was lying and saw nothing. At best, she was trying to give her version of what her boyfriend's mother told her she saw behind the vacant house on the morning of the crimes. Also after trial, Vinson learned that, before Ms. Turner even knew the identity of the victim, she stated to another witness in the case that she believed that Dexter Vinson committed the crimes.**

Ms. Turner's testimony was not presented at trial. Instead, prosecutors went to the her future mother-in-law, Vertley Hunter, Ms. Hunter's son, Theodore, and threatened to prosecute the son and daughter-in-law unless Ms. Hunter agreed to testify at the trial. **Evidence of these threats was never provided to Vinson's lawyer and was not presented to the jurors who decided his case.**

Ms. Hunter was known to police and prosecutors for *well over a year* before prosecutors bothered to talk to her. Her existence was not made known to Vinson's lawyers during this time. Although police and prosecutors knew about Ms. Hunter, they claim to have made no effort to speak with her or to corroborate the statement of the witness who claimed to be with this person. **Police and prosecutors, without excuse, simply did not even attempt to speak with this reported eyewitness.**

Moreover, Ms. Hunter never identified Vinson as the assailant at the vacant house until the actual trial when Vinson was the only black male sitting at the defense table. She has revealed that Ms. Turner first told her that *Ms. Turner* believed Vinson committed the crimes, and Ms. Hunter saw his appearance on T.V. and in newspapers during the 18 months prior to trial.

In fact, she gave several statements to the police and prosecutors that prove that Vinson was ***not*** the assailant behind the vacant house, which were never provided to Vinson. **Since the trial, Vinson has obtained prosecutor's notes of an interview with Ms. Hunter, recording that she told the Commonwealth that the assailant drove by her house at a time when Vinson, according to other prosecution witnesses, was at work more than 30 miles away.**

Just yesterday, Ms. Hunter confirmed the truthfulness of her statement that she saw the assailant drive by her house at a time when Vinson was out of the area.

A woman named Janice Green also identified Vinson while sitting at counsel table as the man she saw behind 575 Freedom Avenue on the morning of May 19, 1997. This witness never saw Ms. Felton and never heard any noise from the car. Her description of the person she saw differed from the description provided by the other witness, as did her timing, and some of the details of the man's actions. **Since the trial, Vinson uncovered prosecutor's files revealing that this witness initially told police that she didn't know whether she would be able to recognize the man she saw. Prosecutors concealed this statement from Vinson's lawyers.**

Scores of items of physical evidence collected from the crime scene were never tested. Forensic scientists from the State lab explained that human hairs recovered from the crime scene were never tested - or even examined to determine whether they could be tested for DNA evidence – because of a "backlog" at the State lab and a related policy that precluded the testing of hair evidence if there was any DNA evidence in the case.

The only "DNA evidence" in this case was a small drop of blood found on the inside front pocket of a pair of blue denim shorts recovered from Vinson's parents' house matching Ms. Felton's DNA. Mr. Vinson and Ms. Felton were, in the prosecutor's words, "intimately" involved, and lived together for a year and a half before these crimes, so the presence of Ms. Felton's genetic material on Vinson's clothing is hardly surprising. Experts at trial conceded that they could not know how long the drop of blood had been on the shorts pocket.

Police records described the car in which Ms. Felton apparently was murder to be saturated with blood. The fact that the shorts prosecutors claimed Vinson would have been wearing throughout the murder had no trace of blood on the outside is a powerful piece of exculpatory evidence.

More pointedly, an eyewitness who testified about the seeing the assailant wearing "sky blue shorts" – but who prosecutors did *not* show the shorts recovered from Vinson's house – **has now been shown a picture of the shorts recovered from Vinson's house and stated unequivocally that these are *not* the shorts the person she saw behind the vacant house was wearing.**

The only evidence prosecutors presented suggesting that Vinson was ever inside the vacant house where Ms. Felton's body was found was testimony from a local police detective that he considered a latent palm print taken from inside the vacant house to provide a "positive identification" as Vinson's palm print. He came to the same conclusion about a latent print on the outside kitchen window at the vacant house. But the detective gave no testimony about what standard of comparison or other procedures he followed in concluded that the prints provided a "positive identification." Well over 100 other items of forensic evidence collected in the case were sent to the crime lab but never tested, apparently due to a "backlog" at the State lab and a related policy that precluded examination or testing of hair fibers in cases where any DNA evidence was developed.

The sub-text to Vinson's trial was a singular, extraordinary circumstance: one of Vinson's defense counsel was suing the other, and accusing him of racism in his employment practices. Accused counsel defended his refusal to promote his assistant as justified by her undeserving work performance. This is of heightened concern in Vinson's case because the case was awash in racial overtones. Vinson, a black male, was accused of killing a white female. Vinson's "lead counsel" was a white male. The judge said that he appointed defense co-counsel – who accused "lead counsel" of racism in the work place – *because* she was a black female. A federal court of appeals judge complained that, had a judge separated counsel because of the lawsuit, Vinson would then have claimed that removal of a black lawyer also amounted to racism on the part of the judge.[1] Prior to, during, and after trial, appointed "second chair" was suing the State Public Defender Commission and appointed "lead counsel" (the Public Defender) for racial discrimination in the work place. "Second chair" alleged that she was passed over for promotion because she was a black female. She alleged that her white male boss ("lead counsel") feared that promoting her would result in her selection for a "head" Public Defender position and he did not want to diminish the chances of his white female Deputy getting that position. The Public Defender contacted his boss at the State Public Defender Commission who told him not to complain about working with his former assistant on Vinson's case. In state post-conviction proceedings, "Second chair" presented a document she said Vinson signed, explaining that she would leave the case if he wanted. She also said she showed the document to the judge but nothing was filed,

[1] The lawyers claimed to have decided to work separately on different parts of the case, with "second chair" in charge of the "penalty phase of the case should Vinson be convicted. The division was so sharp that "lead counsel" never spoke to the psychologist appointed to the defense to assist in developing evidence about Vinson's social history for the penalty phase. Unfortunately, the psychologist could never in touch with "second chair" counsel, and met with her only in the court hallway during the trial. He said it was clear to him that she did not understand what his testimony was about. The document "second chair" provided to this psychologist to use in analyzing Vinson's history was Ms. Felton's autopsy report! (Att. I (Dr. Schlichter)).

and there was no inquiry made by the court on the record. "Lead counsel" also said he mentioned the lawsuit to the judge who asked whether counsel thought there was a potential conflict. Counsel told the judge that he saw no conflict.

Counsel each gave affidavits in Vinson's state habeas that they worked together without difficulty. In her lawsuit, however, "second chair" presented medical testimony that her anxiety was so severe that it caused her hair to fall out in clumps the size of silver dollars and that she was concerned how her peers would treat her because of the law suit.

This is not how the Commonwealth's criminal justice system is supposed to work. In fact, a U.S. Court of Appeals judge who reviewed the case, asked rhetorically, "Is this indicative of the way that Virginia tries criminal cases?"

It should not be indicative of the way Virginia tries criminal cases and it should not be the basis upon which Virginia carries out executions.

As stated at the outset, the Governor should intervene to prevent Mr. Vinson's execution from going forward at this time. He should commute Mr. Vinson's sentence to life without parole in order to avoid the likelihood of executing an innocent person. The Governor also should provide Mr. Vinson access to certain pieces of evidence, discussed below, to further establish his actual innocence of the murder of Angela Felton and perhaps to develop evidence about the identity of the real killer.

II. Angela Felton's Murder

On May 20, 1997, the body of Angela Felton, age 25, was discovered inside a recently "busted wall" in a vacant house in Portsmouth. Her body was nude and partially covered with a brown blanket; fecal-like material was found on and under her neck. An autopsy performed on Ms. Felton's body showed that she bled to death from deep cuts to both wrists and forearms, as well as her shoulders, neck, and cheek. The cut to the right forearm was two inches deep and severed two main arteries; the left forearm bore a similar wound that cut one artery. According to prosecution experts, Ms. Felton also suffered "blunt force trauma" to her head and did not die instantaneously; it "probably would have taken her a few minutes, several minutes to die," according to the medical examiner. (Att. R).

Ms. Felton's body also sustained a laceration of her inner vaginal lip, massive bruising over her vulva area, and a "massive laceration," which tore the tissue separating the vagina from the anus and which tore around her anus.

III. The Evidence at Trial

As the Supreme Court of Virginia observed, the facts at trial were "virtually undisputed." (Att. R). Ms. Felton and her three children had lived with Vinson in Portsmouth for about a year and a half. About three weeks before May 19, Ms. Felton and her children moved in with another family in Portsmouth. On that morning Ms. Felton and her children were running late so she borrowed her friend's car to rush her children to school, wearing only a "shift-type" robe and underwear. Her friend's 14-year-old daughter, Willisa Joyner, rode with her. (Att. R).

The Abduction

Willisa was the only witness to testify about the abduction. After dropping the children at school, Ms. Felton drove with Willisa to the home she had shared with Vinson in order to "get the mail." Ms. Felton and Willisa got out of the car but, when she saw Vinson pulling up, they both returned to the car and drove away. Vinson followed. He twice rammed the rear of Ms. Felton's car. When Ms. Felton stopped, Vinson walked to the driver's side and "punched" out the window. He grabbed Ms. Felton, hit her in the face and chest with his hand, and "took her out of the car." Willisa said Vinson "snatched" off Ms. Felton's robe, leaving her screaming and bleeding from her nose and mouth. (Att. R).

Vinson put Ms. Felton in his car but, when the car failed to start, the both got into Ms. Felton's friend's car and drove away. Police officers arrived on the scene shortly thereafter.

Vertley Hunter

Vertley Hunter testified that just after she returned home from work, at about 8:00 a.m., she noticed a car drive up that was "wrecked in the back." A woman was driving the car and "pulled off the street and parked behind" a house that had been vacant and boarded up for the past six or seven months. The young "white female" driver was accompanied by a young "black man" in the passenger's seat. The woman sat in the driver's seat with "her hand outside the window to duck off a cigarette that she was smoking." She said that the man wore a "sky blue shorts set," sneakers, and a piece of jewelry. He was a "tall black male" with a lot of hair on his face and gold-rimmed glasses. (Att. A).

According to Hunter, the man "got out on the passenger side of the car and went to the back ... and got a piece of rope out." The man "leaned back into the car" holding the rope. Hunter heard the woman tell the man "to leave her alone so she could go on with her life," and heard her "ask the Lord to spare her life because he was going to kill her." At that time, the man was "[c]hoking her with the rope." Then, the man "grabbed her by the hair from the back seat of the car and pulled her over the seat ... and he pulled the rope from around her neck at the same time." He then "pulled her down in the floor"

and "told her that he was going to kill her." While the woman was still inside the car, the man "slammed the door on her head twice."

Hunter said that she saw the man kick dirt beside the car to cover blood that was on the ground. He then pulled off a board covering a window of the house, raised the window, and climbed inside through the window. Hunter saw the man enter the house twice and wipe blood from his person with a towel. She saw the man leave the brown rope at the edge of the woods behind the house.

Hunter testified that she watched the events for several hours until the man drove the car into the woods behind the house and left the area around 11:00 a.m. She identified Vinson in court as the man she saw behind the vacant house. Vinson was the only black male at the defense table.

Janice Green

Janice Green, who also lived near the vacant house, testified that sometime after 9:30 a.m. on the morning of May 19, she observed a man "messing around" with a car in the yard behind the house. She knew it was not as early as 8:00 a.m. because it was after her children left for school at 9:00 a.m. She saw the man pull a board off the rear door of the house and enter the home twice. The second time, the man "was dragging" into the house from the car "something heavy"; she "thought it was a rug he was pulling." Some time after 10:30 a.m. she saw the man cross the four lane road to a pay phone, and heard him say something about Burger King. Green also identified Vinson in court as the man she saw at the vacant house. (Att. C).

Physical Evidence

Prosecutors presented forensic evidence in support of their case. A witness from the state crime lab said that prints taken from the abandoned car, the kitchen sink of the vacant house, and a pane of glass from the outside kitchen window provided "positive identifications" of Vinson. According to the state's witness, none of these prints came from the same portion of the hand, so it could not be determined that the print on the car was similar to any print inside or on the window of the vacant house. The witness's testimony did not include any information on the standards or degree of similarity used to describe any of the prints as a "positive identification." (Att. G).

Another witness from the state crime lab testified that DNA tests could not eliminate Angela Felton as a contributor of a single drop of blood found inside the front pocket of a pair of blue denim shorts recovered from Vinson's house. (Ms. Hunter had testified that the assailant wore a "sky blue short set." An expert told jurors that the odds that the DNA was from someone other than Angela Felton was one in 5.5 billion.

Well over 100 other items of forensic evidence collected from the crime scene were sent to the crime lab but, at the prosecutor's direction, never tested. (Att. H).

IV. The Evidence Never Presented to Jurors

Vertley Hunter – (Att. A)

Ms. Hunter testified that she never spoke to police or prosecutors until less than two months before the trial, nearly *eighteen months after* the crimes. Prosecutors offered jurors no explanation for her late appearance and none was asked of her.[2]

Since trial, Ms. Hunter has explained that she testified at Vinson's trial because prosecutors threatened to prosecute her son and future daughter-in-law if she did not do so. She also explained that she told prosecutors prior to the trial that she saw the assailant return to the crime scene and ride by her house in a car with two other men at a time when other prosecution witnesses testified that Vinson was at work in Williamsburg, Virginia, a distance of about 50 miles. (Att. A). Prosecutors never told the defense about this information. One of the trial prosecutors admitted that they received this information but said that he recalled the information coming from Ms. Turner rather than Ms. Hunter. (Att. E). Ms. Hunter, however, recently reviewed her earlier affidavit and confirms that her account is true.

Mr. Vinson could not have been the person who returned to the scene. According to prosecution witnesses, Mr. Vinson was picked up at about 12:30 p.m. on May 19, 1997, for a ride to work in Williamsburg. He started work at 2:00 p.m. (Att. M, N (JA 1779-88 (Ernest Williams, who drove Vinson to and from work on May 19, 1997, and reported to police that the normal 35-45 drive was much longer due to "bumper to bumper" traffic); 1788-98 (Donald Hess, who was Mr. Vinson's supervisor and who saw Mr. Vinson at work on May 19, 1997, and who would have known if Mr. Vinson was not present)). When he returned from work in the early morning hours of May 20, he was taken into police custody and has remained in custody ever since. Thus, although a prosecution eyewitness gave Vinson an unshakeable alibi, prosecutors concealed this information from Vinson, his lawyers, the judge and jurors.

---

[2] Prosecutors claimed that no one spoke to Ms. Hunter about the crimes until October, 1998, shortly before the December trial. This is either incorrect or reveals very sloppy investigation. Priscilla Turner testified at the preliminary hearing that she witnessed the assault along with her boyfriend's mother, meaning Vertley Hunter. Ms. Turner's friend, Theo Hunter, was Ms. Hunter's son. Theo Hunter was the person who made the call to police, leading to discovery of Ms. Felton's body. Additionally, Detective Murray reported to Mr. Massie on July 2, 1997, that Theo told him that his mother "saw everything that day" and that he "only got info from his mother[,] Vertley Hunter." Theo also told Detective Murray that he lived with Priscilla Turner. (Att. M).

The idea that prosecutors and police would not have contacted a reported eyewitness to the crimes is unimaginable.

At trial, prosecutors told jurors that Ms. Hunter was mistaken in her testimony about the time she saw events behind the vacant house. (JA 1839). But, in a recent statement, Ms. Hunter again made clear that she was not mistaken that she saw the same man ride by her house in a car with two other men.

Ms. Hunter's report is corroborated by the handwritten notes of the prosecutor, Mr. Massie. Amongst these notes is an entry: "D came by around 3:00 p.m. in different car with 2 other people." (Att. A). Every item in these notes contains information provided by Ms. Hunter. For example, on the first page of the notes, Mr. Massie wrote: "Son & Pricilla came at 5:00"; on the second page, he recorded "told son and Pricilla what saw," "Son and Pricilla came," "Son and Pricilla didn't see man" and "Pricilla didn't see anything." (Att. A). Mr. Massie has claimed that, unlike every other line his notes, the single line about the assailant being seen at a later time came from Priscilla Turner, not Ms. Hunter. (Att. E).

Ms. Hunter flatly refutes this claim. (Att. A) (Mr. Massie's unsubstantiated assertion may be a distinction without a difference, since Ms. Turner received all of her information about the crime from Ms. Hunter.)

In any event, the context of the notes makes Mr. Massie's claim exceptionally suspect. It should be recalled that, when Mr. Massie learned that Priscilla Turner provided perjured testimony at the preliminary hearing – testimony also relied on by prosecutors before the grand jurors – he wrote a letter to defense counsel stating only that Ms. Turner did not actually see the man put the victim's body inside the vacant house.) (Att. A).

Ms. Hunter also reported that prosecutors told her that the only way that she could keep them from prosecuting Priscilla for giving false testimony was for her to agree to testify at trial. Her statement makes clear that she told her information to Mr. Massie and Mr. Bullock. Mr. Bullock has not submitting anything disputing her account.

Priscilla Turner (Att. B)

Priscilla Turner testified under oath at the preliminary hearing and had the substance of her testimony presented to grand jurors who indicted Vinson for capital murder. She swore that she saw Vinson with Ms. Felton behind the vacant house on the day that Ms. Felton disappeared. She testified that she watched Vinson assault Ms. Felton and put her unconscious body in the vacant house. After the indictments were obtained but before the start of trial, the prosecutor wrote a letter to defense counsel stating only that Ms. Turner did *not* see Vinson put Ms. Felton's body in the house. Ms. Turner did not testify at Vinson's trial.

Since the trial, Vinson learned that Ms. Turner's testimony was entirely perjured. She lied about everything. She saw nothing. She apparently was claiming to have witnessed events that were relayed to her by her boyfriend's mother, Vertley Hunter. Ms. Turner admitted that she testified falsely only after she was confronted by prosecutors. Prosecutors claimed never to have spoken with Ms. Hunter before learning of Ms. Turner's deception, but Ms. Turner and her boyfriend had mentioned Ms. Hunter repeatedly to police and prosecutors early in the investigation of the case.

Although the Commonwealth knew that Ms. Hunter was aware of her son's girlfriend's testimony, they never informed Vinson's lawyers of this fact, and never informed them that Ms. Hunter finally agreed to testify against Vinson only after the Commonwealth threatened to prosecute her son and his girlfriend for giving false statements and committing perjury at the preliminary hearing.

Janice Green (Att. C)

Janice Green was the only other person who claimed to see anyone behind the vacant house on the day that Ms. Felton was killed. Ms. Green never saw Ms. Felton, did not witness any assault or other violence, and said the she did not hear voices or other noises coming from behind the house. Her testimony conflicted sharply with Ms. Hunter's on important details. For example, Ms. Hunter witnessed the car arrive at 8:00 a.m., but Ms. Green said she only saw the car in the alley after 9:30 a.m. Ms. Hunter said she saw the man pull boards off a window but Ms. Green only saw him pull boards off the door. Ms. Hunter described the man she saw as a tall black man with a lot of facial hair. Ms. Green testified that the man was 5'8" tall and said nothing about facial hair. In a June 12, 1997, interview with an investigator she said that the man she saw was "wasn't a skinny person." Vinson had been described by co-workers as wiry. The prosecutor conceded that there were irreconcilable differences in the testimony but told jurors that Ms. Hunter simply was mistaken about the time. In fact, he tried to make up the discrepancy by falsely telling jurors that Ms. Hunter and Ms. Green each said they saw the man pull the board off the "same window." (JA 1838). The truth is that Ms. Hunter said the man pulled a board off a window, (JA 1436-37), and Ms. Green said it was a door, (JA 1478).

Like Ms. Hunter, Ms. Green identified Vinson at trial when he was the only black male sitting at the defense table. Since the trial, Vinson uncovered prosecutor's files (not provided to Vinson for trial) revealing that she first told police that she didn't know if she would be able to recognize the man if she saw him again. This statement, especially when coupled with other exculpatory evidence, would have provided powerful impeachment evidence with which to raise doubts about the certainty of Ms. Green's identification. There is no question that Vinson was entitled to this evidence at trial and that prosecutor's were wrong not to provide it to him.

Physical Evidence

Despite enactment of Va. Code § 19.2-270.4:1, requiring circuit courts to transfer all human biological evidence in a death penalty case to the Department of Forensic Science (DFS), none of the evidence in this case was transferred. When Vinson alerted the circuit court to this obligation last summer, the court ordered the evidence transferred. However, when Vinson's lawyers reviewed the record at the circuit court last month, the human biological evidence still had not been transferred to DFS, and was simply kept in envelopes in the clerk's office. Only after Vinson's lawyers made this discovery did the evidence finally get transferred to DFS. Vinson's lawyers have been informed that, while in the custody of DFS, Vinson will not be allowed access to the evidence unless DFS receives an order that he be allowed to do so.

Eighty-eight items collected from the crime scene were sent for scientific testing, (Att. H, JA 1648), but very few items actually were tested. Included in the items recovered from the vacant house were various items of adult and children's clothing, blankets, and paper towels. Items from the interior and trunk of the car were collected, including a discarded condom. Police notes described the car as "saturated" with blood, causing police to believe that Ms. Felton was cut in the car or outside the house and then moved into the house.

Hair fibers ("h/fs") were collected from the victim's left fingernail clipping and imbedded in "dried fecal-like material" found on the victim's neck. At the direction of the prosecutor, these items, as well as 16 additional pieces of hair evidence, were not tested. State witnesses explained that this was due to a "backlog" at the State lab and a related Division of Forensic Science (DFS) policy which precludes such testing if there is any DNA evidence in the case. (Att. H. JA 1646 (testimony of Miriam Vanty)). The decision not to test was made even though none of these hairs was examined to determine whether they contained "tissue on the end of the root" which would allow DNA testing in the State lab. Also, none of the evidence was sent to the FBI lab which could do DNA analysis on hair fiber even if tissue is not attached. *Id.* Physical evidence also was taken from Vinson's home, including shoes, a pair of blue denim shorts, a blue T-shirt, and his eyeglasses. One spot on the shorts and another spot on the T-shirt were subjected to DNA testing. Vinson's eyeglasses were not tested.

No inculpatory evidence was found on Vinson's blue T-shirt, shoes, or glasses. Prosecutors argued that the single drop of blood on a pair of blue denim shorts at Vinson house was proof of guilt because the odds were one in 5.5 billion that the blood came from someone other than Ms. Felton, and Ms. Hunter testified that the assailant wore a sky blue shorts set. Presuming the drop of blood to have come from Ms. Felton, this is not surprising since, as the prosecutor put it, Ms. Felton and Mr. Vinson had known each other "intimately" for some time, (JA 1832), and lived together just prior to the crimes.

Ms. Hunter's testimony, however, makes clear that the condition of Vinson's shorts, T-shirt, and glasses is actually a powerful piece of *exculpatory* evidence. The

prosecutor emphasized to jurors, "Where is all the blood? The blood is in the back seat of the red car. . . . You don't see blood all over that house." (JA 1837). Ms. Hunter said that the man she saw wiped himself off, including his arms, face, and glasses, in the alley. (Att. A (JA 1437)). Ms. Hunter saw the man trying to cover up blood on the ground with his shoes. The idea that a person could have committed the crimes against Ms. Felton without getting blood on the outside of his clothing or glasses (particularly in the crevices of glasses if wiped) is unfathomable. The single drop of Ms. Felton's blood *inside* the pocket of Vinson's shorts pocket, and the absence of blood on the *outside* of his shorts, provides additional proof that he is not the person who murdered Ms. Felton.

In addition to the absence of blood on the shorts support Vinson's claims of innocence, the shorts also *establish* Vinson's innocence when considered along with Ms. Hunter's recent statement upon viewing a photograph of Vinson's shorts that "[t]hese are not the shorts [she] saw the man wearing." (Att. A). Neither Ms. Hunter nor Ms. Green was shown these shorts at trial and there is no evidence they were *ever* shown the shorts the prosecutors claimed the assailant wore during the murder.

Local Portsmouth police personnel testified that, based on his comparison of a latent print on the sink inside the vacant house at 575 Freedom Avenue, he "made a positive identification" of Vinson's left palm. The office never was asked what standard he used to consider the latent a "match" and did not offer any criteria. (Att. G). This was the only piece of evidence suggesting Mr. Vinson ever was inside the vacant house at 575 Freedom Avenue. According to this Portsmouth officer, based upon his comparison of a similar latent print found on the outside kitchen window of the vacant house, he also "made a positive identification" of Vinson's left palm.

The absence of testimony about what if any objective criteria was used to compare the evidence justified further inquiry to determine the quality of the identification. Any identification without reference to criteria upon which the identification is made is worthless. (Att. P (Affidavit of Dr. Simon A. Cole, Ph.D., in State v. Luna (Illinois))). The "fingerprint examiners community" has stressed the need to devise an adequate standard for what constitutes a fingerprint "match." Examiners try to find similarities in location, type, and orientation of what are called "ridge characteristics" and use these to determine whether a "latent" (that is, from a crime scene) print and an inked print from a known source come from the same finger. What no one has developed yet is an understanding of how many of these similarities, or how much similarity, is necessary to accurately say that two prints "match." And experts remain unable to assign a probability to their determination, making it at best an unqualified opinion. In Vinson's case, no inquiry has been made about the quality of the comparison, even though "quality" is increasingly emphasized by those in the practice. Examiners in the United States have moved away from a "points" comparison to the more qualitative "ridge characteristic" examination, acknowledging the need to assess the quality of similarities rather than falsely attribute each "point" as having equal quality. (Att. P).

As a matter of science, it has not been determined that the occurrence and relationship between ridge characteristics is the same for palms as it is for fingers, and no research indicates that palm print patterns have the same "repetitive" character as fingerprint patterns. In short, we simply know less about the friction ridge skin on palms than we do about the friction ridge skin on fingers. As a recent publication by FBI scientists, who are *proponents* of the use of latent print evidence noted, "the vast majority of studies have been performed on the friction ridge skin comprising the first joint of the finger." The article advocates research on the permanence of the friction ridge skin on palms as a "priority project."[3] These FBI scientists appreciate that, even an examiner who is comfortable with fingerprint evidence, should have reason to be less comfortable with palm print evidence.

Vinson's counsel has arranged for the assistance of former FBI forensic expert, Mark Acree, to review the print evidence in his case to determine the quality of comparison of the "positive identification" of the palm print.

Raymond Felton and Jeffrey Anderson

Angela Felton's relationship with Dexter Vinson had caused men to act violently toward her in the past. For example, in August of 1994, Ms. Felton's husband, Raymond Felton, was convicted of attempting to murder his wife. (Att. F). He beat her and cut her hand with a knife, then threatened to kill her if she did not commit suicide with him by overdosing on Prozac, Advil, and some unknown pain medication. A police officer witnessed the start of the dispute that led to the murder attempt. According to the officer, Mr. Felton saw his wife in a car with another man and asked the officer to advise her to go home with her husband. Angela reported that when the got home, Ray Felton beat her and threatened her with a butcher knife. According to Ray Felton's account, the man in the car with his wife that day was Dexter Vinson. Ray Felton also claimed that he was seeing Angela again in the months between his December, 1996, release from prison and the May murder, including the Saturday immediately before the murder.

Before Angela Felton's body was found, police searched the apartment that she had once shared with Dexter Vinson at 2922 Barclay Avenue. The police found a large portrait photo of Angela Felton, ripped into four pieces, as well as a photo of a young female child, also ripped up. A fingerprint was obtained from the ripped photograph of Angela Felton. The print was submitted to AFIS and identified Jeffrey Antonio Anderson.

There is no indication in any records that current counsel have reviewed that either the prosecutors or the defense attorneys investigated Jeffrey Anderson's

---

[3] Bruce Budowle et al., *Review of Scientific Basis for Friction Ridge Comparisons as a Means of Identification: Committee Findings and Recommendations,* 8 Forensic Science Communications (2006).

relationship with Angela Felton. He has a documented criminal history in Norfolk, Virginia, and was arrested on April 9, 1997, on a "habitual offender" indictment. Records show that he was not tried for that charge until June 23, 1997, at which time he pled guilty. It is unknown to counsel whether or not he was free on bail in the interim.

V. Second Chair Sues Lead Counsel for Race Discrimination

In addition to the problems set out above, this case has a troublesome, bizarre, and unprecedented twist. Prior to, during, and after trial, appointed "second chair" was suing appointed "lead counsel" (the Public Defender) and the State Public Defender Commission for racial discrimination in the work place. "Second chair" alleged that the State Public Defender passed her over for promotion because she was a black female. She alleged that her white male boss ("lead counsel" and the State Public Defender) feared that promoting her would result in her selection for a "head" State Public Defender position. He was unwilling to put her in this advantageous position because it would diminish the chances of his white female Deputy getting selected for such a position.

"Second chair" presented a document she said Vinson signed, explaining that she would leave the case if he wanted. She also said she showed the document to the judge but nothing was filed, and there was no inquiry made by the court on the record. "Lead counsel" did not claim to have discussed the matter with Vinson but said he mentioned the potential conflict to the judge, but said he saw no conflict. According to "lead counsel," the judge said he appointed "second chair" because she was a black female. (Angela Felton was white and Vinson is African-American.)

Counsel each gave affidavits in Vinson's state habeas that they worked together without difficulty. In her lawsuit, however, "second chair" presented medical testimony that her anxiety was so severe that it caused her hair to fall out in clumps the size of silver dollars. The lawyers claimed to have decided to work separately on different parts of the case, with "second chair" in charge of the "penalty phase of the case should Vinson be convicted. The division was so sharp that "lead counsel" never spoke to the psychologist appointed to the defense to assist in developing evidence about Vinson's social history for the penalty phase. Unfortunately, the psychologist could never get in touch with "second chair" counsel, and met with her only in the court hallway during the trial. He said it was clear to him that she did not understand what his testimony was about. The document "second chair" provided to this psychologist to use in analyzing Vinson's history was Ms. Felton's autopsy report! (Att. I (Dr. Schlichter)).

VI. Not "Guilty Beyond a Reasonable Doubt" Or Deserving of Death

As set out above, significant doubts are raised whether Vinson committed the crimes for which he is scheduled to be executed. Indeed, based on Ms. Hunter's statements, Mr. Vinson could not be the person who murdered Ms. Felton. At a minimum, the case presented by the prosecutors is no longer intact, and reexamination of the case would be required to salvage whatever credibility remains.

Fortunately, the Governor does not have to estimate the potential for misidentification on his own. Just last year, the State Crime Commission conducted an in-depth study of mistaken identification in criminal cases and published a report, including proposed changes to the manner in which Virginia handles identification witnesses in criminal cases. The Study was directed by Joint Resolution No. 79 in the General Assembly, noting that 90% of the first 40 DNA exonerations "involved mistaken identification by one or more eyewitnesses," and referencing a study finding that 53 of 63 wrongful convictions reviewed "were based on eyewitness identification" and virtually none of these cases had lineups in which the actual criminal appeared.

The Commission specifically discussed three cases of exonerated Virginia inmates in which "mistaken eyewitness identification was a factor leading to the [false] conviction." Two of the three cases included a lineup. Unlike Vinson's case, these witnesses were confident in their identification, one testifying that she was 100% certain she identified the right man. The Commission emphasized that the courts are especially ill-equipped to filter mistaken identifications: "[I]n 90% of convictions involving mistaken eyewitness accounts that were later cleared through DNA evidence, 'witness reliability and identification were challenged but upheld by the courts.'" SCC Report, Sec. IV.A.

The conclusions of the General Assembly were echoed by a Study released in 2005 by the Innocence Commission of Virginia (ICVA), a joint project of the Mid-Atlantic Innocence Project, the Administration Justice Program at George Mason University, and the Constitution Project. (Att. L). The Study examined eleven exonerations in Virginia and recommended reforms for preventing future wrongful convictions. Virginia has not backed away from closely scrutinizing the potential for wrongful convictions, at least in cases that do not involve a death sentence. The ICVA is only the second innocence commission in the United States and the one of the first groups to study a state's exoneration cases. The report identifies common problems that led to these eleven wrongful convictions. It calls for reform and highlights measures in seven areas – eyewitness identification, interrogation, discovery, law enforcement investigation, scientific evidence, and defense practices -- that would improve Virginia's criminal justice system and offer the latest and best practices to law enforcement officers, courts, prosecutors, and defense counsel alike.

Like the General Assembly and State Crime Commission, the ICVA acknowledged serious potential problems with eyewitness testimony and recommended a number of reforms to try to reduce these problems. As far as Vinson has been able to

determine, there is no evidence that most of the proposed procedures were followed in his case.

The ICVA also endorsed the continuation and expansion of the initiative to examine and test biological from old cases using DNA. As discussed about, due to a "backlog" and related policy at DFS, hair evidence in Vinson's case never was tested even though DNA tests can be done on this evidence. At the time of Vinson's trial, the DFS could do DNA tests on the hairs if they contained tissue; the FBI labs could do DNA tests on the hairs whether or not they contained tissue.

VII. Virginia Has Not Done Enough to Ensure It Will Not Execute an Innocent Person

Too many unanswered questions remain to allow Vinson's execution to go forward. It is important to note that, since trial, Vinson has developed this evidence of innocence without any assistance from the courts, without expert assistance, and without being afforded a single opportunity to call witnesses on his behalf or address those who provided evidence against him. With such assistance, he undoubtedly could develop more evidence to support his claim

Mr. Vinson asks the Governor to intervene to commute his death sentence to life without parole and to allow him access to evidence that would further support his claims of innocence.

Respectfully Submitted,

R. Lee

Robert Lee
Matthew L. Engle
Deirdre M. Enright
Virginia Capital Representation Resource Center
2421 Ivy Road, Suite 301
Charlottesville, Virginia 22903
(434) 817-2970
(434) 817-2972 (facsimile)

Mark E. Olive
Law Offices
320 West Jefferson Street
Tallahassee, Florida 32301
(850) 224-0004
(850) 224-3331 (facsimile)