

January 4, 2006

The Honorable Mark R. Warner
Executive Office Building, 3rd Floor
1111 East Broad Street
Richmond, VA 23219

Dear Governor Warner:

We are former judges and prosecutors. We write to urge you to grant clemency for Joseph Dick, Jr., Derek Tice, Danial Williams, and Eric Wilson. Three of these young men, Dick, Tice, and Williams, are in Virginia prisons serving life sentences for a rape and murder they did not commit. We are confident that upon reviewing the evidence in its entirety, you will come to the same conclusion that we each did and order their release.

We write this letter from the perspective of individuals with a strong interest in ensuring the reliability of the criminal justice system. As former judges and prosecutors, we understand the importance of holding people accountable for their actions. We have spent the better part of our careers serving our communities as advocates for justice, victims, and the community. We understand the importance of maintaining the criminal justice system as a fair and effective means of punishing the guilty. It is equally important that the innocent are freed.

Let us explain why we are urging you to grant clemency. Each of us has independently reviewed the facts of this case and have come to the conclusion that these men are innocent and should be freed. Our review has persuaded us of the following:

This crime was committed by only one person. This was the conclusion of the investigating officers in the days and month after the crime. The condition of the crime scene and injuries to the victim all point in this direction. We are fortified in our belief by the comprehensive review given this issue by Larry McCann, a twenty-six year old veteran of the Virginia State Police and an expert on crime scene reconstruction and profiling. His firm conclusion that Omar Ballard and only Ballard committed this crime strikes us as entirely correct. This view is supported by the absence of any forensic evidence linking any individual other than Ballard, and by the persuasive opinion of Dr. Werner Spitz, one of our country's most experienced forensic pathologists, who concluded that the victim's injuries are consistent with only one assailant.

Only one of the confessions is reliable. The contrast in the circumstances concerning the statements made by Williams, Dick, Tice, and Wilson on the one hand, and Ballard on the other, could not be more extreme. The four sailors repeatedly insisted on their innocence *for hours*, and relented and gave incriminating statements that failed to match the known crime scene evidence only after vigorous interrogation, and only after being confronted with untruths and threats about the death penalty. Ballard, on the other hand, confessed not long after being confronted with the highly incriminating DNA match evidence, and was never threatened. We find that Dr. Richard Ofshe's analysis of the statement evidence is correct, and that only Ballard's confession is credible.

No court has or will review all the relevant facts. Executive clemency is particularly appropriate in this matter because no court has or will consider all of the facts that have now come to light. When these cases were pending in the trial court, they were treated separately. Only Tice and Wilson had trials, and in both, some of the evidence suggesting Ballard and only Ballard committed this crime was not considered. Dick and Williams entered guilty pleas due to fear of the death penalty, and have no judicial remedies remaining.

We urge you to use your executive power because our review has persuaded us that these men are innocent. We know who committed this crime. He is appropriately locked away serving a life sentence without parole. It is in the interests of all of the citizens in Virginia that the clemency requests of Joseph Dick Jr., Derek Tice, Danial Williams, and Eric Wilson be granted. The cause of justice will not be fully and finally served in this case until they are released from incarceration and their convictions are overturned.

Sincerely yours,

Harold J. Bender
United States Attorney
Western District of North Carolina (1980-1982)

Zachary W. Carter
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Eastern District of New York (1993-1999)

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Southern District of Florida (1993-1996)

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United States District Judge
Northern District of Illinois (1980-1987)

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United States Attorney
Eastern District of Michigan (1994-2001)

Hal D. Hardin
United States Attorney
Middle District of Tennessee (1976-1981)

Timothy K. Lewis
United States Circuit Judge
Third Circuit Court of Appeals (1992-1999)
United States District Judge
Western District of Pennsylvania (1991-1992)

George C. Pratt
United States Circuit Judge
Second Circuit Court of Appeals (1982-1995)
United States District Judge
Eastern District of New York (1976-1982)

Judge Alfred Wolin
United States District Judge
District of New Jersey (1988-2004)