

flawed because Joe Dick, fearing the death penalty, falsely testified at three trials that he and the other sailors had participated in the crime. Finally, the state court proceedings led to erroneous jury guilty verdicts because jurors were not presented with the full array of evidence demonstrating the sailors' innocence.

After between eight and twelve years of incarceration, all four men are now out of prison. Yet Danial Williams, Joseph Dick, Eric Wilson, and Derek Tice continue to face severe restrictions on their liberty and continued terms of parole and/or status as registered sex offenders as a result of their wrongful convictions.

In the summer of 1997, Danial was a 25-year-old newlywed serving his country in the United States Navy.¹ He had no criminal record or prior run-ins with law enforcement, but that was about to change through no fault of his own. Soon after Michelle Bosko was raped and killed in her apartment, a Norfolk police detective, Robert Glenn Ford, who had previously been demoted for extracting multiple false confessions, took over the case. As he had in the past, the detective ultimately coerced false confessions from Danial and Joe Dick, who roomed together across the hall from Bosko, and from Eric Wilson and Derek Tice, all of whom served or had served in the Navy. After multiple other theories were developed and discarded because they conflicted with the key piece of physical evidence in the case (A DNA profile of semen and blood left by the rapist), the final police and prosecution theory which persists to this day rests on the preposterous claim that eight men were involved in Bosko's rape and murder: the four innocent sailors who falsely confessed (two of whom had corroborated alibis), three other

¹ Attached as an Appendix to this Petition is a Timeline of Key Events.

innocent men named in those false confessions (two with corroborated alibis), and Omar Ballard – the man who committed the rape and murder by himself, a man none of the sailors knew.

The police and prosecution theory is wrong because the evidence conclusively proves that Omar Ballard raped and murdered Michelle Bosko alone. By the time Ballard surfaced nearly two years later when he voluntarily confessed to friends that he committed the crime, Joe Dick and Derek Tice had long before agreed to cooperate with authorities in order to avoid the very real threat of the death penalty, and Danial Williams had already pled guilty for the same reason. Nevertheless, the evidence Ballard committed the crime by himself is overwhelming:

- Ballard, who had a history of run-ins with the law, volunteered his guilt and has testified under oath that he committed the crime alone. Ballard told the police details of the crime that only the real killer could know.
- The DNA found in Michelle Bosko's vagina, under her fingernails, and on a blanket near her body, includes one and only one male DNA profile – that of Omar Ballard. The chances that this DNA profile could come from anyone besides Ballard are astronomical.
- The stab wounds in Bosko's chest are closely spaced and at approximately the same angle and depth, a wound pattern indicating a single perpetrator and highly inconsistent with multiple perpetrators passing around a knife, as the prosecution theory holds.
- The undisturbed fine spray droplets of blood on the floor around Bosko's body, together with the absence of fingerprints on the floor, and absence of wounds on Bosko's wrists, ankles, arms, and legs is evidence strongly suggesting only one perpetrator inflicted the wounds and is highly inconsistent with multiple individuals crowding around Bosko, stabbing and restraining her, as the prosecution theory holds.
- The tiny, pristine apartment was neat and orderly, and showed no signs of a struggle involving a victim and nine assailants. The narrow hallway leading to the room where Bosko's body was found was lined with shelves containing papers, glasses, and other items near the edges and protruding from the edges of the shelves, yet those items were undisturbed, which is inconsistent with a group of individuals carrying a struggling Bosko down the hallway, as the prosecution theory holds, but comports with Ballard's confession that he attacked the victim in her bedroom after following her there.

- The condition of the tiny bedroom and its contents – including a leaning mirror and a dresser and night table with knickknacks, perfume bottles, and other balanced items that were all undisturbed, and the relatively small open area in the middle of the room – were inconsistent with the Commonwealth's multiple offender theory.
- Ballard was friends with the victim; he had a habit of visiting her at odd hours of the night, and she was comfortable letting him in her apartment when she was alone, which is consistent with the absence of any signs of forced entry into the Bosko apartment.
- In a 24-day period surrounding Michelle Bosko's murder, Omar Ballard assaulted, and in one case raped, two other young women in the vicinity of Bosko's apartment, a pattern of violent behavior suggesting Ballard was on a crime spree of his own and that he did not join, as the Commonwealth claims, a conspiracy in progress that was hatched by a group of men with no prior criminal records who were serving or had served their country in the military.

The police correctly deduced early in the investigation that one man alone committed the crime – they simply had the wrong man. After wrongly charging Danial Williams in July 1997 as the sole assailant the morning after discovering the victim's body, the police and prosecutors conducted no further investigation for the next five months and did not consider the possibility that additional suspects existed—and with good reason, given that the physical evidence at the scene supported a single-offender crime.

Ford only abandoned this single perpetrator theory when Danial's DNA profile excluded him as a possible contributor to the DNA found at the crime scene. In place of the correct single offender theory, which could have led to Ballard, Ford developed a flawed multiple offender theory that changed from two participants, to three, to six, to seven, and finally to eight participants. The arrest and capital charges against the eight men spanned a period of 21 months. After charging Danial in July 1997, Ford next arrested Joe Dick in January 1998 and Eric Wilson in April 1998. Ford arrested Derek Tice in June 1998. Ford swore out warrants for Richard Pauley and Geoffrey Farris in June and July 1998. Ford had John Danser arrested in October 1998. Finally, in March 1999, Ford charged the actual perpetrator, Ballard. Through the course

of this investigation, Ford pursued a risky, confession-driven strategy based exclusively on the unbelievable and uncorroborated false confessions of the four innocent men during a 21-month desperate search for a DNA match.

No other evidence besides their false confessions connects the innocent sailors to the rape and murder of Michelle Bosko – there is absolutely no physical or scientific evidence of any kind linking the innocent sailors to this crime. Yet, the false confessions themselves, when viewed objectively and analyzed together, are actually evidence of the sailors' innocence, not their guilt. Unlike Ballard, who readily admitted his guilt during police interviews that were short and cooperative, Ford extracted confessions from the four sailors after high pressure, coercive interrogations. The products of those interrogations were confessions that are internally inconsistent, inconsistent with each other, and flatly contradicted by the crime scene evidence. In addition to the DNA, the autopsy, the crime scene and other evidence suggesting one perpetrator, the other glaring inconsistencies revealing the innocent sailors' confessions to be false include:

- Danial “confessed” that he murdered Bosko by hitting her in the head with a shoe and punching her in the face, he said he otherwise used no weapon, he claimed that he did not choke her, and asserted that he did not ejaculate.
 - But Bosko was not beaten with a fist or shoe and had no injuries to her face or head, she was stabbed with a knife and strangled, and the rapist did ejaculate.
- Joe Dick “confessed” that the crime occurred between 7 or 8 p.m., said that he ejaculated, claimed that Bosko was stabbed in the living room of her apartment and her body was then moved to the bedroom, and asserted that he covered her body with a blanket.
 - But Bosko was with her friend until 11:30 p.m. on the night of the murder, neither Dick's semen nor his DNA was found in the victim or at the crime scene, the blood spatters relative to the location of Bosko’s body on the bedroom floor leave no doubt that she was stabbed in the bedroom, and her husband testified that it was he who covered her body with the blanket after he discovered her dead body.

- Eric Wilson "confessed" that he too ejaculated, said he pinned a struggling victim to the floor by her arms, claimed she was beaten, and said that the crime occurred in the living room.
 - But neither Wilson's semen nor his DNA was found in the victim or at the crime scene, Bosko had no restraint bruises on her arms nor was she beaten at all, and the crime did not occur in the living room.
- Derek Tice "confessed" that the group of suspects forced their way into Bosko's apartment by attacking the door with a claw hammer, claimed that the group carried a struggling victim from the apartment entrance down the hall to the bedroom where she was raped, said he ejaculated in the victim, and asserted that the group of assailants passed the knife around while encircling the victim's body and took turns stabbing her.
 - But there was no sign of forced entry and the door was undamaged, items protruding into the narrow hallway and on the hallway walls were undisturbed, neither Tice's semen nor his DNA was found in the victim or at the crime scene, and the clustering of the wounds in a small area on the victim's chest and their uniformity belie the multiple offender scenario.
- The "confessions" evolved from suspect to suspect and from a crime committed by one person, to two perpetrators, then to three participants, to a conspiracy of six, to seven, and finally to eight perpetrators, and the "confessions" only changed as a result of police prompting as serial DNA results repeatedly refuted the Commonwealth's working theory of the crime.
- None of the individuals stated in their original "confessions" that Omar Ballard committed the crime.

Ignoring the glaring inconsistencies in the unreliable statements from the innocent sailors, the prosecution followed a bizarre and increasingly implausible multiple perpetrator theory. This theory evolved, and the number of suspects implicated by the theory increased, as the serial false confessions, extracted by Ford, persisted in pointing to individuals whose DNA did not match the crime scene evidence. Rather than discarding the sailors as possible suspects and considering information in police possession that suggested a strong, alternate suspect (namely Ballard), the police and prosecutors treated everyone who confessed or who was named in the false

confessions as perpetrators and kept looking for additional individuals to add to the group and who might provide a DNA match.

The state court prosecutions of the innocent sailors were deeply flawed and fundamentally failed to arrive at just and accurate results. Many factors contributed to the failures in these cases, and in combination they resulted in two innocent men being left with no choice but to plead guilty to crimes they did not commit and two other innocent men to be found guilty by juries at trial. The overarching defect that spanned the life of this case was tunnel vision, in which the prosecutors and the police ignored or minimized compelling evidence that they had accused the wrong men and persisted in prosecuting them in the face of overwhelming evidence that the men were not involved.

The flawed and failed state court proceedings began with Ford, an aggressive police detective who relied exclusively on a risky interrogation-driven strategy dependent upon high pressure and coercive interrogation tactics that led to false confessions. In turn, the prosecutors neglected their responsibility to supervise and failed to put a brake on the investigation when it obviously had veered terribly off course. The prosecutors instead engaged in a pattern of delaying the disclosure of and, at times withholding altogether, exculpatory information from the defense. Most importantly, the prosecutors lost sight of their duty to do justice and instead pressed ahead with flawed theories in their zeal for convictions.

The state proceedings were further flawed because the landscape of the case constantly changed as it spiraled out of control and the police and prosecutors continued to charge new defendants. As a result, none of the defense attorneys involved in the case had a full view of the evidence and its many glaring weaknesses and inconsistencies. Moreover, all four men faced the very real possibility that they would be convicted and sentenced to death for a crime they did not

commit. Thus, the specter of the death penalty affected every aspect of the case and impacted the decisions that the four innocent sailors and their lawyers made as the case progressed.

Contributing to the inadequate state court proceedings, some of the attorneys representing the Navy suspects failed to live up to, and/or abandoned their obligations to be zealous and vigorous advocates for their clients (who universally proclaimed their innocence from the start). The defense attorneys for Danial Williams, Joseph Dick, and the initial lawyer for Derek Tice never fundamentally questioned the Commonwealth's case against their clients. Fearing the conviction and execution of their clients, these attorneys did not even attempt to investigate the facts, thus neglecting to marshal evidence to counter the Commonwealth's case. They never searched for or pursued affirmative evidence that could prove their clients' innocence. As a result, they failed to discover exculpatory evidence, including alibi evidence, that they could have used at trial.

Instead, early on in the cases, some of these lawyers exclusively pursued strategies to seek plea offers from the Commonwealth that would avoid the death penalty for their clients. Once plea offers were secured, the lawyers for Danial Williams, Joe Dick, and Derek Tice made every effort to convince their clients that their only hope was to plead guilty. By the time Ballard materialized, key exculpatory alibi evidence had been lost forever. Danial Williams was locked into a guilty plea from which he could not escape. And Joe Dick's attorney, astonishingly, convinced him to continue cooperating with the authorities, despite powerful new evidence that Ballard, and Ballard alone, was guilty. For this reason, Joe testified falsely at three jury trials that he and the other innocent sailors were guilty, when in fact they were and are all innocent.

Moreover, the state court proceedings fundamentally failed to do justice because the trial court issued restrictive evidentiary rulings that excluded reliable evidence proffered by the

innocent sailors that supported their innocence. As a result, the juries who convicted Wilson and Tice were not aware of an array of key exculpatory evidence proving the sailors' innocence such as (1) Ballard's three week crime spree; (2) Ford's history of extracting false confessions; (3) demonstrative and expert testimony related to crime scene reconstruction that would have further undermined the prosecution's multiple offender theory; and (4) expert testimony about the risk that coercive interrogation can lead to false confessions, and the classic signs of false confessions in the sailors' statements.

The Wilson and Tice juries also never heard the complete array of alibi evidence that showed that four of the seven innocent men had corroborated alibis. Finally, the juries never heard Omar Ballard testify under oath that he committed this crime by himself and that the innocent sailors were not involved in the crime in any way. Instead, they heard Joe Dick falsely testify, in conformity with his plea deal, that he and the other sailors participated in this crime. For all of these reasons, the juries were led to the wrong result, convicting two innocent men of crimes they did not commit.

The evidence that the four sailors are actually innocent is overwhelming. The only two fact finders who had all of the exculpatory evidence before them have recognized the power of this evidence. Virginia Governor Timothy Kaine conducted a three-year-long review of the convictions before granting conditional pardons to Danial Williams, Joe Dick, and Derek Tice, the three men who remained in jail serving life sentences without parole. (Eric Wilson was convicted only of the rape and had previously completed his sentence, although his conviction, like the others, remains). In the public statements he made upon granting the pardons, Governor Kaine recognized that the confessions, the only evidence against the four sailors, were the product of interrogation tactics that did not ensure their reliability, noted the confessions' glaring

inconsistencies on important details, and concluded that he had "very grave doubts" about the men's guilt.

United States District Court Judge for the Eastern District of Virginia Richard L. Williams, who granted Derek Tice's petition for habeas corpus relief in the related *Tice v. Johnson* case, stated that the prosecution's case was "awash in doubt." As Judge Williams recognized, setting Derek Tice's false confession aside reveals the extreme weakness of the prosecution's case against the sailors and, "considering the dearth of evidence of Tice's guilt against the significant evidence consistent with Tice's assertion of innocence, a reasonable juror would have grave doubts about Tice's guilt." (citations omitted). The same reasoning applies with equal force to Danial Williams, Joseph Dick, and Eric Wilson.

Danial Williams' conviction is unconstitutional because he is in fact innocent. This petition is timely because Danial did not exhaust his remedies in Virginia until Governor Kaine ruled on his clemency petition on August 6, 2009. Any potential procedural or statute of limitations bars to consideration of this petition are excused because this is an extraordinary case in which Danial Williams has presented compelling evidence of actual innocence. This petition presents a claim for relief under the actual innocence principle articulated by the Supreme Court in *Herrera v. Collins*, 506 U.S. 390 (1993). This petition also presents claims for relief based on severe deprivation of Danial Williams' constitutional rights under the standard enunciated in *Shlup v. Delo*, 513 U.S. 298 (1995). There is sufficient doubt about Danial Williams' guilt that his conviction constitutes a miscarriage of justice because it was not the product of fair proceedings. These constitutional deprivations include claims that Danial Williams received ineffective assistance of trial and appellate counsel, that he entered an involuntary plea, and that police and prosecutor misconduct violated his rights to due process of law.

II. Jurisdiction and Venue

1. The District Court has jurisdiction pursuant to 28 U.S.C. § 2254 because Danial Williams' liberty has been and continues to be deprived because he is under onerous parole restrictions that arise from a conviction that was obtained in violation of the Constitution or laws of the United States, pursuant to a judgment of a State court.

2. Venue lies in the United States District Court for the Eastern District of Virginia (Richmond Division) because Danial Williams' liberty is being unlawfully restrained by the Virginia Parole Board, whose headquarters is located within the Eastern District of Virginia.

III. History of Prior Proceedings

1. Danial Williams was indicted for capital murder and rape on August 6, 1997 in Commonwealth of Virginia v. Danial J. Williams, CR-97003404 in the Circuit Court for Norfolk, Virginia. He was represented by Danny S. Shipley and Robert Frank during the proceedings before the Circuit Court for Norfolk, Virginia.

2. On November 7, 1997, Danial Williams filed a motion to suppress his statements to police on the grounds that his statements to the police were involuntary in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Danial Williams testified at a hearing on his motion to suppress on November 17, 1997 before the Honorable Charles E. Poston. The Circuit Court denied his motion to suppress on November 17, 1997.

3. Danial Williams entered a guilty plea on January 22, 1999 before Judge Poston.

4. Danial Williams filed a motion to withdraw his guilty plea on April 14, 1999. The Circuit Court denied his motion to withdraw on April 28, 1999 and sentenced him to life in prison without the possibility of parole on capital murder and to life in prison on rape.

5. The date of the judgment of conviction was April 28, 1999.

6. The offenses for which Danial Williams was convicted were capital murder and rape.

7. Danial Williams appealed his conviction on April 28, 1999 and on May 24, 1999. He was represented by Cynthia D. Garris on the appeal. His appeal was denied by the Court of Appeals of Virginia on July 25, 2000 in Danial J. Williams v. Commonwealth of Virginia, Record No. 1099-99-1.

8. After his appeal was denied, Danial Williams was never informed by the state court or by his attorney that he had a right to further appeal to the Virginia Supreme Court or to the United States Supreme Court. Accordingly, Danial Williams never filed any further appeal to the Virginia Supreme Court or a petition for certiorari before the United States Supreme Court.

9. After his appeal was denied, Danial Williams was never informed by the state court or by his attorney that he had a right to challenge his conviction by filing a writ of habeas corpus in the Virginia Circuit Court or in the United States District Court. Accordingly, Danial Williams never filed a petition for habeas corpus relief in the state courts of Virginia and has not previously filed a petition for habeas corpus relief in the United States District Court.

10. Danial Williams filed a petition for an absolute pardon based on innocence with Virginia Governor Mark Warner on November 10, 2005.

11. Governor Timothy Kaine granted Danial Williams a conditional pardon on August 6, 2009 that commuted his sentences from life without parole for capital murder and life for rape to sentences of time served with the balance of the sentence to be served under the custody and control of the Virginia Parole Board for a period of 20 years following his release, under conditions set by the Governor and the Virginia Parole Board. Supervision of Danial Williams has been transferred to the State of Michigan, where Danial Williams resides, under the

Interstate Commission for Adult Offender Supervision. However, Danial Williams remains under the custody and control of the Virginia Parole Board until August 6, 2029.

IV. Statement of Facts

A. Michelle Bosko

1. Michelle Moore Bosko was eighteen years old in July 1997. She left her home in Pennsylvania and eloped with her high school sweetheart, Billy Bosko, moving to Norfolk to join Billy, who was nineteen and had enlisted in the Navy after high school. Other than Billy, Michelle knew no one else in Norfolk when she arrived. The couple moved into an apartment at 254 West Bay Avenue in an apartment complex then known as Bayshore Gardens in May 1997. Soon, Michelle met Tamika Taylor, who lived with her children in the same apartment complex. Michelle and Tamika became fast friends. (Wilson Tr. at 37-40, 217-18.)²

Danial Williams Assisted Billy Bosko After Bosko Found His Wife's Body

2. At the beginning of July, Billy Bosko left Norfolk for a week-long cruise with his Navy ship. When he returned on July 8, 1997, he expected to find Michelle waiting for him at the pier. Billy Bosko went home to the apartment looking for his wife. After entering the apartment, Billy found Michelle lying dead on the floor of their bedroom. Billy ran across the hall and banged on Danial Williams' door, screaming that his wife had been murdered. Danial was in his apartment with his wife, Nicole, and his parents. He called 911 and then followed Billy into the apartment to wait for the police.

² References to Eric Wilson's June 16, 1999 to June 18, 1999 criminal trial are referred herein as "Wilson Tr." followed by an appropriate page number. References to Derek Tice's February 8, 2000 to February 11, 2000 criminal trial and his January 27, 2003 to January 31, 2003 criminal trial are referred to as "Tice I Tr." and "Tice II Tr." respectively, followed by an appropriate date and page number. References to Derek Tice's state habeas hearing spanning September 11 to September 12, 2006 are referred to as "Tice Habeas Tr." References to other proceedings in the cases against the eight men charged in this case will identify the defendant and the nature of the hearing, followed by an appropriate date and page number.

Neighbor and Bosko Friend Tamika Taylor Mentioned Denial to the Police

3. When the police arrived, they took control of the apartment and began their investigation. One of the police officers who spoke to Tamika Taylor asked her if she could think of anyone who might have committed the crime. Taylor told the officer that Michelle was anxious about the neighbor, Dan, who lived in the apartment across the hall, and who Michelle had said seemed unusually interested in her. (July 8, 1997 Notes of Norfolk Police Investigator P.J. Dunn.)

4. Additionally, on more than one occasion, to more than one person, since early in the murder investigation, Tamika Taylor suggested to Norfolk police detectives, officers, or prosecutors that they investigate Omar Ballard as a possible suspect in Michelle's murder. Tamika Taylor had good reason to suspect Ballard. She was aware of his criminal past in New Jersey and of the other crimes that he had committed in June and July 1997 in Norfolk, including a brutal assault two weeks before Michelle Bosko's murder in the same apartment complex where she and Michelle Bosko lived, and his rape of a young girl two weeks after Michelle's rape and murder. She also knew that Ballard regularly stopped by Michelle Bosko's apartment early in the mornings looking for Michelle, and that Michelle was comfortable letting him into her apartment when she was alone. However, the Commonwealth failed to ever disclose to the defense Tamika Taylor's tip implicating Ballard. (June 23, 2005 Declaration of Tamika Taylor.)

5. On the night of July 7, 1997, Tamika Taylor called her sister-in-law, Karen Stover, and mentioned she was leaving Michelle Bosko's apartment and returning to her own. Ballard was at Stover's home when Stover received this call. Ballard then left and told Stover he was going to Tamika's place. The next day, after Michelle Bosko's body was found, Stover told

Ballard about the murder. He did not seem surprised or shocked, and told Stover he had stopped by Bosko's apartment the previous night. (June 23, 2005 Declaration of Karen Stover.)

B. The search for confessions and a DNA match

(i) Danial Williams

6. In response to Tamika Taylor's original mention that Danial Williams seemed interested in Michelle, the police focused their interest on Danial, a Navy sailor living across the hall from the Boskos. The police suspicion hardened into a firm belief that Danial was guilty based solely on two highly unreliable reasons. This is a classic mistake made by police investigators who succumb to tunnel vision. The first reason stemmed from the information from Tamika Taylor and others close to Michelle Bosko that Danial made Michelle feel uncomfortable because he behaved in ways that suggested he was attracted to her. The second reason was a detective's hunch that Danial was guilty based on purely innocent behavior on Danial's part, including his ready willingness to come to the police station to answer questions, bumper stickers on his truck with off-color jokes about sex, and his denial that he had anything to do with the crime when the police began aggressively interrogating him. Ignoring his repeated denials and the corroboration of his alibi by his wife, the police used high pressure and high risk techniques designed to obtain a confession from Danial. The detective's suspicions and hunches about Danial were mistaken.

7. Danial Williams was an unlikely suspect for this violent rape and murder. Danial was a good, gentle, patriotic young man with an unblemished record. An average to below average high school student, Danial was nevertheless praised by teachers for his effort and his character. He enlisted in the Navy immediately after graduating from high school, trained to become a steam propulsion engineer for the United States Navy, honorably served with

distinction, and reenlisted in the Navy upon completion of his first tour of duty. Danial intended to make the Navy a career. He had never in his life been accused of any crime, and has absolutely no history of violence. (November 2, 2005 Affidavit of Danial Williams, hereafter "Danial Williams Affidavit".)

8. Danial had dated Nicole Mathewson for over three years, had been engaged to her for much of that time, and had lived with her since approximately December 1996. Nicole Mathewson had previously been married to Richard Pauley, one of the other sailors later to be falsely accused of the Michelle Bosko murder. Because the Mathewson-Pauley marriage had ended in divorce, neither Nicole Mathewson nor Danial socialized with Richard Pauley, either before or after Danial and Nicole were married. (*Id.*)

9. Early in the spring of 1997, Danial and Nicole believed that Nicole was pregnant and they were thrilled about that news, sharing it with their family. However, a few weeks before Omar Ballard murdered Michelle Bosko, Danial and Nicole discovered that she was not actually pregnant, but instead had ovarian cancer. Nicole required surgery and Danial and Nicole expedited their wedding so that Nicole could qualify for Danial's Navy health insurance, and the pair married on June 27, 1997. Nicole entered the hospital on July 1, 1997 for her surgery. (*Id.*)

10. Danial's parents traveled in their motor home from Michigan to visit the newlyweds, arriving on Saturday, July 5, 1997. On Sunday, July 6, 1997, the day before Michelle Bosko was killed, Danial brought Nicole home from the hospital after her surgery. On Monday, Danial and Nicole drove to the campground, about 45 minutes outside of Norfolk, where his parents were staying. After visiting with his parents, Danial and Nicole returned to their apartment where they remained by themselves for the rest of the night. (*Id.*; November 2,

2005 Affidavit of Rhea Williams, hereafter "Rhea Williams Affidavit"; November 2, 2005 Affidavit of Norman Williams, hereafter "Norman Williams Affidavit.")

11. By the time the Commonwealth was ready to try Danial and the other sailors for the capital murder of Michelle Bosko, about eighteen months later, its prosecution was based on the following preposterous theory: while Danial Williams' parents were in the area visiting from Michigan and his wife was recuperating from major surgery in the bedroom of their small, two-bedroom, one-floor apartment, Danial supposedly invited his roommate, Joe Dick, and a group of five other Navy sailors – Eric Wilson, Derek Tice, Geoffrey Farris, John Danser, and Richard Pauley, Nicole's ex-husband and someone with whom Danial did not socialize – to his apartment for a drinking party; during the party, the sailors decided to rape and murder Michelle Bosko; the sailors went across the hall to Ms. Bosko's apartment, but she refused to let them in; while smoking cigarettes in the parking lot, the sailors fortuitously met Omar Ballard, who agreed to help the sailors rape and murder Michelle Bosko; and, finally, Omar Ballard was the only assailant who managed to leave his DNA in and on her body and at the crime scene.

12. Within two hours of discovering Michelle Bosko murdered in her apartment, the police focused their investigation on Danial with very little justification. At that point in their investigation, the police knew little about Michelle, her acquaintances, or her recent activities. They also knew very little about Danial, his strong relationship with his wife, his background and character, and his honorable service to his country. The investigating officers also apparently were not aware that Omar Ballard, who knew Michelle Bosko and was someone who she was comfortable letting into her apartment when she was alone late at night, had attacked a woman just ten days before in the Bayshore Gardens apartment complex where Michelle lived. They also did not know that Ballard had told Karen Stover he was at Michelle Bosko's apartment

on the night she was killed. The police suspected Danial as the likely culprit in this case based on nothing more than a hunch by Tamika Taylor (whose relationship with Omar Ballard might have raised questions about her motives in police detectives' minds if they had investigated Ballard from the beginning) and the gut feeling of Detective Maureen Evans, who was the lead homicide detective on the Bosko investigation on the day her body was discovered. This strategy has all the hallmarks of classic tunnel vision.

The Norfolk Police Focused on Danial as a Suspect and Pressured Him to Confess

13. Danial cooperated fully in the first police interview of his life. He had nothing to hide and it never occurred to him to ask for a lawyer. He voluntarily drove to the police station for questioning, waived his Miranda rights, answered all of the police's questions, allowed the police to swab his penis and provided a blood sample for DNA testing, allowed them to take his head hairs and pubic hairs, and removed his underwear and gave that to the police at their request. (Danial Williams Affidavit.)

14. The police engaged in extremely risky interrogation tactics from the outset of Danial's questioning. They lied to Danial by telling him that a witness had seen him leaving the victim's apartment the night of her murder after she had last been seen alive. This police claim was completely false; there was actually no witness who had said any such thing. The police forcefully rejected his claim that he was home in bed with his wife at the time of the murder even though his wife had corroborated Danial's account. They accused him of lying without any justification. They took advantage of his willingness to take a polygraph examination. When the polygraph results showed "no deception indicated" when Danial truthfully denied he was present when Michelle was killed, that he killed Michelle, and that he had not stabbed Michelle, they lied to Danial again and told him he failed the polygraph. (*Id.*)

15. They then aggressively interrogated him relentlessly throughout the night, accusing him of lying, wearing him down, refusing to let him rest, and tag-teaming during the interrogation between detectives with the sole purpose of obtaining a confession from him. The police told Danial that they had found pubic hairs on and near Michelle Bosko's body and that DNA testing would prove that the pubic hairs belonged to him. They played on Danial's compassion by talking about how terrible it must have been for an innocent young woman to be murdered. They suggested to Danial that he might have sleepwalked or blacked out and was not aware that he had gone to Michelle's apartment, although they had no basis for believing that was the case. They suggested to Danial that Michelle had agreed to have consensual sex with him but then had changed her mind after they began having intercourse. Despite these and other very coercive tactics, Danial insisted that he was innocent for over nine hours and did not confess. (*Id.*)

16. At about 5 a.m., nine hours into the interrogation, eleven hours after Danial arrived at the police station, and 21 hours after he had last slept, Danial Williams continued to insist that he was innocent. Deciding to change tactics to try to obtain a confession, Detective Ford took over the interrogation. Ford sat directly in front of Danial with no table between them, thrust his face into Danial's, poked Danial in the chest with his fingers, yelled at Danial, and repeatedly accused him of lying, and of murdering Michelle Bosko. He told Danial that he faced capital murder charges, although Ford did not spell out that capital charges carried the death penalty. Ford also explained the various degrees of murder and manslaughter, and told Danial that if he confessed, the police would help him and the punishment would not be that bad. Danial believed this was a promise from Ford that things would go better for him if he confessed. Ford badgered Danial, insistently pressuring Danial to confess. Eventually, Danial, who felt isolated, alone, helpless and defeated, could resist Ford's pressure no longer. Believing his

ordeal would end only if he confessed, Danial finally told Ford what he thought Ford wanted to hear: a confession. (Danial Williams Affidavit; July 8, 1997 and July 9, 1997 Interview Notes of Detectives Evans and Halverson with Danial Williams, hereafter "Danial Williams Interrogation Notes".)

Danial Gave a Confession Inconsistent With the Evidence

17. Danial Williams had seen Michelle Bosko's body on the floor of the bedroom when he accompanied Billy Bosko into the apartment while calling 911, and he incorporated some of what he observed into his false confession. In Danial's confession, he told Ford that he knocked on Michelle's door wearing only his underwear, pushed his way in when she opened the door, forced Michelle to the bedroom, raped her, and left her screaming. At Ford's prompting, Danial said he punched Michelle a few times. He said he hit her once with a hard, flat-soled shoe that he found on the floor of the bedroom, and then tossed the shoe aside. Ford made Danial repeat the confession until Danial said what Ford wanted, and then Ford tape recorded the final statement. But, the entire interrogation that preceded this short, tape-recorded statement was not audio or videotaped. The confession that Danial gave after nearly ten hours of interrogation was inconsistent in every material respect with the physical evidence from the crime scene and autopsy. There are glaring inconsistencies because Danial's confession was false, and he simply incorporated into his confession his observations of Michelle's body on the floor when he entered the apartment after her husband, Billy Bosko, discovered her body, and parroted back facts suggested to him by the police during the interrogation. (July 9, 1997 Written Statement of Danial Williams signed at 9:30 a.m., hereafter "Danial Williams Statement I;" Danial Williams Affidavit.)

18. Nearly every detail that Danial gave in his confession (save for those he knew because he saw Michelle's body when he accompanied Billy Bosko into the apartment after calling 911) was wrong. In his false confession:

- Danial said he did not ejaculate.
 - But the rapist did ejaculate and semen was found inside Michelle and on the blanket near her body.
- Danial said he did not use any weapons other than a shoe.
 - But the murderer used a knife.
- Danial said he did not stab Michelle.
 - But the murderer stabbed Michelle.
- Danial said he did not choke Michelle.
 - But she was strangled.
- Danial said he did not touch the blanket.
 - But semen stains were found on the blanket.
- Danial said he hit Michelle once on the head with a shoe and hit her three times in the head with his fist.
 - But she had no bruises on her head or face.
- Danial said the underwear that he gave to the police during his interrogation was the same underwear that he wore the night of the rape.
 - But there was no DNA from Michelle on the underwear.
- Danial said he went to Michelle's apartment in his bare feet.
 - But his footprints were not found on the shiny parquet floor, yet Michelle's and her husband's were found.
- Danial said Michelle was resisting when he pushed her down the hallway to the back bedroom.
 - But the papers jutting out into the narrow hallway were not disturbed.

- Danial says he restrained Michelle with his hands during the rape.
 - But she had no bruises on her wrists, arms, ankles, or legs.
- Danial said Michelle was not wearing any panties.
 - But her panties were found turned inside out on the floor near her body.
- Danial said he left his apartment to go to Michelle's apartment to commit the crime.
 - But Danial had a corroborated alibi that he was home in bed with his wife all night.

(Danial Williams Statement I.) In sum, Danial's "confession" was the product of a man with no knowledge of the actual crime, doing his best to provide what he thought police wanted to hear, based on the limited knowledge he acquired in helping the victim's husband cope with the tragedy.

19. Within the same hour that Danial signed his initial confession, the police learned from the autopsy that Michelle Bosko had not been beaten over the head, but instead she had been stabbed and strangled. When the police realized that Danial's signed confession did not match the autopsy results, they should have been concerned and questioned whether they had accused the wrong man, especially given the highly coercive interrogation tactics they employed. Instead, because they suffered from tunnel vision, they pressured Danial to conform a new confession to the facts they had learned. Specifically, Detective Halverson suggested to Danial that he grabbed Michelle's neck and choked her. Detective Evans suggested that Danial did more to Michelle than just hit her with a shoe. She suggested he used a weapon. She suggested that Michelle had been stabbed. She suggested that he used a knife. She suggested that Michelle kept a knife in her bedroom because her husband was away and she was alone, and that he stabbed Michelle multiple times in the chest with a knife from her apartment, and she mimed the stabbing motion on her own chest. At this point, Danial had been confined to the same room for

seventeen hours, was exhausted, and finally just told the police what they wanted him to say. At first he denied stabbing Michelle, but then he said he stabbed Michelle with a knife he found lying next to her on floor of bedroom.

20. The police tape recorded this new confession, transcribed it, and had Danial sign it. Eighteen hours after he arrived at the police station, the police charged Danial with capital murder and rape, and he was incarcerated at the Norfolk jail. Charged with capital murder, Danial now faced the very real possibility that he could be executed for the murder of Michelle Bosko. (Danial Williams Interrogation Notes; July 9, 1997 Statement of Danial Williams signed at 12:07 p.m.)

Danial Consistently Maintained His Innocence

21. As soon as Danial was no longer in police presence, he insisted he was innocent. The first time he spoke to his parents and his wife after he was incarcerated, he told them that he was innocent and that he had only confessed because of police pressure. The first time his court-appointed lawyers asked him about his confessions in September 1997, he told them he was innocent and that the police pressured him to confess. He repeated this assertion every time he met with his lawyers for nearly two years. When Derek Tice brought Danial's wife to visit Danial in jail (before Tice himself became a suspect), the first thing Danial did was to start a conversation with Tice about how he was innocent. He also told the court-appointed psychologist who performed a competency evaluation in March 1998 that he was innocent and that the police had pressured him to confess. Every time a new sailor was charged, Danial told his lawyers that he, Danial, was innocent. When Joe Dick, Eric Wilson, and Derek Tice confessed and implicated him, he told his lawyers he did not know why they accused him because he was innocent. When his lawyers chastised him for failing to tell them that others

were involved because they could have used that information to obtain a better plea deal, he told them he was innocent. Every time between July 1997 and December 1998 that his lawyers approached him with a plea deal, he told them he was not interested in pleading guilty because he was innocent. Even after Danial finally pled guilty to avoid the death penalty, he continued to insist he was innocent; Danial told the pre-sentence investigator preparing a report for his April 28, 1999 sentencing that he was innocent and that he had only confessed because he was emotionally stressed and exhausted from caring for his ill wife and because he was overwhelmed by the police. He said he pled guilty to avoid receiving the death penalty. Danial later tried to withdraw his guilty plea because he was innocent, but his motion was denied. (Danial Williams Affidavit; December 3, 2009 Affidavit of Danny S. Shipley, hereafter "Shipley Affidavit"; April 19, 1999 Virginia Department of Corrections Presentence Investigation Report for Danial Williams.)

Danial's Lawyers Believed in His Guilt and Focused Only on a Plea Possibility

22. Danial's lawyers, Dan Shipley and Robert Frank, did not take obvious and reasonable steps to investigate and preserve evidence that could have given him a chance to prevail at trial. One possible reason for his attorneys' failings was that, early on in their representation of Danial, they concluded that he was guilty, and that the only course of representation was to try to negotiate a plea. The Commonwealth provided initial discovery to the defense on October 8, 1997, including a copy of the police interrogation notes and Danial's signed confession. When he read his client's confession, Dan Shipley, Danial's lead lawyer, believed that Danial was guilty of the Bosko rape and murder, despite Danial's consistent claims that he was innocent. Shipley's belief in Danial's guilt continued when other sailors were charged and he learned of their confessions as well. Dan Shipley only came to believe in

Danial's innocence when he learned of Omar Ballard's confession that he committed the crime by himself and the DNA evidence conclusively linking Ballard to the crime.

23. Shipley had a previous client, Derek Barnabei, who had been convicted and sentenced to death for a very similar sexual assault and murder. The victim in the Barnabei case and Michelle Bosko shared many common traits – they were both attractive, innocent young women who had been brutally sexually assaulted and murdered. Barnabei's death sentence, and his later execution, weighed heavily on Shipley and led him to put significant pressure on Danial to accept a guilty plea to avoid the death penalty. (Shipley Affidavit.)

Danial's Lawyers Failed to Preserve His Alibi Evidence

24. During his first meeting with his lawyers, Danial told them that he was home in bed with his wife, Nicole, all night on Monday, July 7, 1997, the night when Michelle Bosko was killed. Nicole corroborated her husband's alibi, telling the police that she and Danial were together the whole night and that Danial had never left their apartment after the couple had gone to bed. Danial and Nicole also told Shipley and Frank that Nicole had ovarian cancer. (Danial Williams Affidavit; Shipley Affidavit.)

25. Even though Danial's lawyers knew that Nicole had ovarian cancer, they took no steps to preserve her testimony, the only evidence that would verify that Danial was not present when Michelle Bosko was murdered. His lawyers did not take Nicole's deposition and give the Commonwealth an opportunity to cross examine her, so that her testimony would be admissible at a subsequent trial. They did not even obtain an affidavit from her establishing an alibi for Danial's whereabouts on the night of the murder. Nicole Williams died of ovarian cancer in November 1997, four months after Bosko's murder and while her husband's case was still pending, and with her death, Danial's sole alibi witness was lost. (Shipley Affidavit.)

Danial's Lawyers Failed to Investigate Leads Pointing to Ballard

26. Shortly after Danial's arrest, he and Nicole told Danial's lawyers that there had been a series of crimes in their neighborhood, including an assault, that fit the modus operandi of the Bosko crime. They suggested to his lawyers that the person or persons who had committed these other crimes could have raped and murdered Michelle Bosko. On August 18, 1997, among other pretrial motions, Danial's lawyers filed a request for the court to authorize funds so that they could hire an investigator to help interview witnesses and investigate the case. At a motions hearing on October 27, 1997, his lawyers told Judge Poston, in support of their request for funds for an investigator, that Danial and his family had informed them about recent crimes in the neighborhood, including assaults, with a similar modus operandi as the Bosko murder. The prosecutor suggested to the court that the defense was "grasping at straws" and the court should not approve funds for the "random knocking on doors" to support any "outlandish defense." However, the court approved \$1000 for the defense to hire an investigator. (October 27, 1997 Motions Hearing, Commonwealth v. Danial Williams at 2-5, hereafter "Danial Williams October 27, 1997 Motions Hearing".)

27. Yet Danial's attorneys never used the investigator funds. They never hired an investigator. They never followed up on the information they learned from Danial and Nicole that someone else was committing similar crimes in the neighborhood at the time of Michelle Bosko's murder or that a friend of Michelle Bosko had pointed the finger at Danial. Instead, they very quickly focused on securing a plea deal for Danial. (Shipley Affidavit.)

28. Had Shipley and Frank hired an investigator, the investigator likely would have learned very quickly that Omar Ballard was a prime suspect in the Michelle Bosko rape and murder for several reasons. First, on July 27, 1997, within three weeks of Danial's arrest, *The*

Virginian Pilot published a story on the front page of the Metro section about Omar Ballard's arrest for raping a fourteen-year-old girl; the story included a color photograph of Ballard, and noted that the "Ocean View" community, where Danial and Nicole and Michelle Bosko lived, was very concerned about the rape. (Steve Stone, "Rape Victim Spots Suspect on Street," *The Virginian Pilot*, July 27, 1998 at B1.)

29. Danial's lawyers also were aware that a witness, an unidentified friend of Michelle Bosko's, had told the police that Danial seemed attracted to Michelle Bosko, but they did not seek to locate and interview the witness. Had an investigator been instructed by Danial's lawyers to explore the reports that Danial seemed interested in or obsessed with Michelle Bosko, or even to talk to those who knew Michelle Bosko, the investigator likely would have interviewed Tamika Taylor, who lived in the Bayshore Gardens apartment complex. The investigator would have learned that Tamika Taylor had told the police soon after the crime that Omar Ballard was a possible suspect because Ballard knew Michelle, because he had a habit of going to Michelle's apartment at odd hours of the night, and because she knew that Ballard had been arrested for two other assaults of young women in the area in a three-week period before and after Michelle's murder, a baseball bat assault on a woman in the Bayshore Gardens complex and a brutal rape of a fourteen-year old girl less than a mile away. The investigator could easily have then obtained copies of the arrest warrants and charging papers from Ballard's cases. The investigator could also have learned that Ballard told Taylor's sister-in-law, Karen Stover, that he was at Michelle's apartment on the night of the murder. In short, had his lawyers hired an investigator, Omar Ballard's existence and the crime spree he had engaged in would likely have come to light long before Danial pled guilty and long before he and other innocent sailors were charged with this crime. (Shipley Affidavit.)

Danial's Lawyers Put on an Ineffective Case at the Suppression Hearing

30. Soon after Danial was arrested, his lawyers filed a motion to suppress the confessions that he gave to the police. However, his lawyers failed to prepare adequately for the suppression hearing on November 17, 1997. They met with Danial on November 7, 1997, five days after his wife died. Danial told his lawyers during the meeting that on the day he was interrogated by the police, he was "feeling stressed out over his wife," a reference to his wife's recent surgery for ovarian cancer and her discharge from the hospital the previous day. He told his lawyers that he "sometimes felt physically intimidated" by Detective Ford during the interrogation. He described how Detective Ford told him for over an hour that he could be charged with capital murder but if he confessed, Ford would get the charges "knocked down" or could help him "get a lesser charge." Danial told his lawyers that at one point he told one of the detectives during his interrogation that he was tired and wanted to go home and tried to end the interrogation, but the police refused to stop. He also described for his lawyers that the detective told him that failing to confess would make him look more guilty when the DNA came back in six weeks. He also told his lawyers that Detective Evans provided him with details about the crime, including that the victim was stabbed in the chest with a knife that she kept in her room, and that she had mimed the stabbing motion on her own chest. Finally, Danial told his lawyers that his will was overborne by the police during the interrogation.

31. Despite the significant amount of information that he provided them about the interrogation process, Danial's lawyers failed to prepare Danial to testify at the motions hearing and they failed to elicit during his testimony at the motions hearing all of the information Danial had told them about the interrogation and other information that would have supported his claim that his confession was involuntary.

- They failed to have Danial testify that he told the police over and over again that he was home with his wife on the night of the murder and that his wife had corroborated his alibi to the police the night they were questioning Danial when she was not even aware that Danial was a suspect.
- They failed to have Danial testify that he repeatedly put his head down on the table in the interrogation room because he was exhausted, but that the detectives ordered him to pick up his head.
- They failed to have Danial testify that he expressed concern about his wife a number of times and asked for permission to call his wife to see how she was doing, but his requests were ignored.
- They failed to have Danial testify that he was distressed about his wife's medical condition while he was being interrogated by the police.
- They failed to have Danial testify about his military training that taught him to follow orders and obey authority figures, and how he trusted what the police told him.
- They failed to present evidence that Danial was a marginal student.
- They failed to have Danial testify that he cooperated with every request the police made, including their request that he come down to the police station to answer questions, their request that he waive his Miranda rights, their request that he provide blood, head hair, pubic hair samples and their request that he allow them to swab his penis and seize his underwear.
- They failed to have Danial testify that the police falsely told him that a witness had seen him leaving the victim's apartment after she was last seen alive.
- They failed to have Danial testify that he was told that he failed a polygraph test but that the police claim concerning the polygraph results was not true.
- They failed to have Danial describe the angry tone of questioning by Detective Evans and Ford.
- They failed to have Danial testify that the police suggested that he may have sleepwalked or blacked out and committed the offense without remembering it.
- They failed to have Danial testify that the police fed him facts to incorporate into his confessions, including Detective Evans miming the stabbing motion on her own chest, after Williams had continued to deny stabbing Michelle Bosko.
- They failed to have Danial testify that his will was overborne during the interrogation.

32. Although the motion to suppress the statements filed by Danial's attorneys asserted that the statement was involuntary and although they knew of Ford's background of obtaining false confessions and specifically his involvement in the notorious Lafayette Grill case, they never sought to introduce evidence of Ford's history at the motions hearing. They never called Ford to testify at the hearing even though the prosecutor told the motions court that Ford was present and available to testify. They failed to cross examine the two detectives who did testify at the hearing, Detectives Evans and Halverson, about the substantial evidence of coercion and of Danial's will being overborne. His attorneys also never requested court ordered funds to hire a defense psychiatric expert witness to determine whether Danial's personality profile made him susceptible to succumbing to police pressure that he confess and to corroborate his claim that his will was overborne by the police, in support of an involuntary confession claim.

33. Danial's lawyers failed to establish at the suppression hearing that Danial's first confession did not match the key details of the crime, but instead that they conflicted with the physical evidence and the autopsy evidence in every material respect.

- They failed to show that Michelle Bosko was not hit over the head or punched in the head as Danial had claimed, but instead had no injuries to her head of any kind.
- They failed to show that Michelle Bosko had been stabbed and strangled even though Danial's first confession never mentioned choking or stabbing her, in fact he said he had no weapon.
- They failed to show that Danial told the police he did not complete the sex act and did not ejaculate, when in fact the rapist had ejaculated and semen had been found in Michelle Bosko's vagina and on a blanket left next to her body.
- They failed to show that Danial said he tried to pin Michelle Bosko down but she had no restraint marks on her body, particularly her arms or legs.
- They failed to show that Danial said he could not close Michelle Bosko's mouth when she was screaming, but she had no injuries to her mouth.

- They failed to show that Danial told the police he went into Michelle Bosko's apartment and committed the rape in his bare feet but his footprints were not found on the highly polished wood floor or anywhere else in the apartment; instead Michelle Bosko's footprints and her husband's footprints were found on the floor.
- They failed to show that there was no physical trace of Danial in Michelle Bosko's apartment at all.
- They failed to establish that the police never found any shoe that matched the shoe that Danial claimed he had used to hit Michelle Bosko in the head.

34. Danial's lawyers failed to establish at the suppression hearing that Detective Halverson's notes made clear that he suggested to Danial that he had choked Michelle Bosko after Danial had claimed that he never choked her. They also failed to show that the notes indicated that Detective Evans showed Danial that Michelle Bosko had been stabbed repeatedly in the chest by demonstrating a stabbing motion on her own chest.

35. Danial's lawyers failed to establish at the motions hearing that the only facts that Danial correctly described in his initial statement were things that he observed when he accompanied Billy Bosko into the apartment after calling 911 at Billy's request, specifically that Michelle Bosko was assaulted in her bedroom, that she had on a black t-shirt and no panties, and that she was lying on the bedroom floor with her arms over her head.

36. As a result of his lawyers' failure to present evidence that the totality of the circumstances indicated that Danial's inculpatory statements to the police were not voluntary, Judge Poston denied the motion to suppress. (November 17, 1997 Hearing on Motion to Suppress, Commonwealth v. Danial Williams, Tr., hereafter "Williams Motion to Suppress".)

DNA Analysis Excluded Danial From the Crime Scene Samples

37. Unbeknownst to Danial and his lawyers at the time, on December 11, 1997, a Virginia Department of Forensic Science DNA analyst reported to the Norfolk police his preliminary results from DNA testing performed on samples from the Michelle Bosko crime

scene and autopsy. The analyst, Robert Scanlon, reported that Danial was excluded as a contributor to the semen stain found on a blanket next to Michelle Bosko's body and the DNA found under Michelle Bosko's fingernails. The Commonwealth failed to disclose this highly exculpatory exclusion to Danial's lawyers immediately. Instead, they withheld this key information until the police had coerced confessions from two new suspects who implicated Danial. Specifically, the prosecutors waited until April 30, 1998, after charging Joe Dick and Eric Wilson, to disclose the DNA report to Danial's lawyers, at which time they simultaneously produced for Danial's attorneys Eric Wilson's confession. (September 8, 2005 Letter from Donald P. Salzman to Katya Herndon, Department Counsel, Virginia Division of Forensic Science; October 21, 2005 Letter from Katya Herndon to Donald P. Salzman; March 26, 1998 DFS report; Commonwealth's April 30, 1998 Addendum to Response to Defendant's Motion for Discovery.)

38. Later DNA testing confirmed that Danial was conclusively excluded from contributing to all of the DNA samples taken from the crime scene and the autopsy, including the critical vaginal swabs and the knife and the cigarette butts found in the apartment. Moreover, sensitive DNA testing done on Danial's underwear that the police seized on the night of his interrogation and on swabs taken from Danial's penis during his interrogation proved that Michelle Bosko's DNA was not on Danial's underwear or on the penis swabs. Early on in his questioning on July 8, 1997, before the police accused Danial of committing this crime, he told them that the underwear he was presently wearing was the same underwear he wore the night before and at the time Michelle was murdered. Todd Bille, a DNA expert consulted years after Danial was convicted, has concluded based on his review of all of the DNA evidence that the forensic testing of Danial just hours after the crime, strongly suggests that he was not involved in

the rape of Michelle Bosko. It is Todd Bille's opinion that he would have expected foreign DNA (Ms. Bosko's) to be found on the underwear and penis swabs had Danial had intercourse with Ms. Bosko the night before and had not changed his underwear. (February 18, 1999 DFS report; March 26, 1998 DFS report; December 21, 2005 Affidavit of Todd W. Bille, hereafter "Todd Bille Affidavit".)

Detective Ford Sought a New Suspect to Provide a DNA Match and Focused on Joe Dick

39. In January 1998, having learned that Danial's DNA did not match the autopsy and crime scene samples, Ford, who had taken over the investigation at this point, pivoted his focus to Danial's roommate, Joseph Dick, a fellow sailor and another innocent man. Ford had no reason to suspect that Joe Dick was in any way involved in the crime, but his tunnel vision apparently blinded him from reconsidering his basic premise that Danial was involved in the crime at all and exploring the evidence that suggested that someone unconnected to Danial was the real and only culprit. Instead, their blinders led the police and prosecutors to incorrectly assume that someone connected to Danial must have been involved alongside Danial, the original suspect.

40. Like Danial, Joe Dick initially maintained his innocence. Dick told Ford, who led the interrogation, that he was on his ship, the USS Saipan, on duty the night of the crime. But Ford wore down Dick as he had Danial, and at one point threatened to "force Joe under the hoses." Joe eventually falsely confessed to the rape and murder. Joe Dick's confession was inaccurate and in every material respect, conflicted with crime scene, autopsy, and other physical and scientific evidence, and clashed with Danial's statements. (November 29, 2005 Affidavit of Joseph Jesse Dick, Jr., hereafter "Affidavit of Joseph Dick".)

41. Danial and his lawyers soon learned of Dick's arrest and confession. When his lawyers chastised Danial for failing to tell them about another accomplice, information they said they could have used to get Danial a better plea deal, Danial told his lawyers that he could not have told them about any accomplices because he was innocent and did not know who committed the crime. (Danial Williams Affidavit; Shipley Affidavit.)

Before Learning About the Exculpatory DNA Evidence, Danial's Lawyers Pressured Him to Plead Guilty

42. Because Danial's lawyers failed to investigate the facts of his case and had lost the motion to suppress evidence, Danial's ability to challenge the Commonwealth's evidence against him was sorely compromised. Rather than properly preparing so that Danial would be in a position to challenge the Commonwealth's charges at trial, soon after the motion to suppress was denied Danial's lawyers instead negotiated with the prosecutors and obtained a plea offer to avoid the death penalty. It is likely that the Commonwealth agreed to offer a life sentence because it knew that its case had been weakened by the exculpatory DNA test results that it was withholding from the defense. The plea offer was made in January 1998, long before the Commonwealth disclosed to Danial's lawyers the exculpatory results from the DNA testing. Danial's lawyers were aware that the Commonwealth was conducting DNA testing in his case because they had received the requests for laboratory examinations in the October 8, 1997 discovery materials; in response, Danial's lawyers sought court funds at an October 27, 1997 motions hearing to hire a DNA expert but the court took that request under advisement until the DNA results were known and his lawyers later gave up on their request. (Commonwealth's October 8, 1997 Discovery Response; Danial Williams October 27, 1997 Motions Hearing at 5.)

43. Nevertheless, before learning the results of the DNA testing, Danial's lawyers pressured him to accept the Commonwealth's plea offer. Danial told his lawyers that he was not

interested in pleading guilty but instead told them he wanted to await the results of the DNA analysis because he was confident the DNA testing would exonerate him. When Danial rejected the Commonwealth's plea offer, his lawyers, frustrated by his resistance, filed a motion on February 13, 1998 asking the court to order a competency evaluation because "extensive discussions with defendant have left counsel to believe that he may not fully understand the gravity of the situation with which he is faced." One of Danial's lawyers ridiculed him for his resistance, saying that he should be named "Denial" instead of "Danial." Soon after, on February 17, 1998 – still without the benefit of the exculpatory DNA evidence – Danial's lawyers wrote to Danial's parents and informed them that Danial is unwilling to accept the "fact" that the Commonwealth "has a very good case" against Danial. They told his parents that they recommend that Danial accept the plea offer that they negotiated for Danial in which the Commonwealth agreed not to pursue the death penalty but that Danial "does not seem able to understand" their advice. They asked to meet with Danial's parents to explain why they believe the plea offer is reasonable and why Danial should accept it, and they asked that his parents travel from Michigan to meet with Danial and his lawyers so that they could "bring Danial to his senses." (February 13, 1998 Motion for Competency Evaluation; February 17, 1998 Letter from Robert E. Frank to Norman and Rhea Williams.)

44. On March 5, 1998, Dr. David Keenan, a licensed clinical psychologist and forensic evaluator, interviewed Danial as a result of his lawyers' request for a competency examination. According to Dr. Keenan, Danial gave "extensive detail as to his functioning at or about the time of the offense in question." He told Dr. Keenan that the police questioned him for fourteen straight hours with few breaks and no sleep and said that he "felt worn down by the lengthy process of interrogation." Danial told Dr. Keenan that the police gave him a polygraph

test and he was told that he had failed, and that the police took his DNA and the police told him that the DNA tests would likely show that he was guilty. He explained that throughout the night, the police gave him additional details about what happened to the victim. As he had so many times before, Danial told Dr. Keenan that he was innocent of the Bosko rape and murder and that at the time of the crime he was home in bed asleep with his wife. Danial told Dr. Keenan that after many hours of interrogation, he "'broke down' or 'was worn down' and made a false confession giving the police back only the information they had provided to him." He told Dr. Keenan that he was "so extremely stressed that he almost came to believe that the false confession was true." He described to Dr. Keenan how the detectives shared information with him from the autopsy, and that one of the detectives suggested to him that Michelle Bosko had been stabbed and demonstrated the stabbing motion on her own chest. Danial told Dr. Keenan that his roommate, Joe Dick, had also been charged in this case and had made statements against Danial, but that Dick's statements were false. In summary, Danial told Dr. Keenan:

that he did not have any involvement in the offenses in question. He says that he made and signed statements only after long hours of interrogation when he was confused and under intense stress and pressure to say he committed the crime.

Dr. Keenan concluded that Danial was competent to stand trial. He prepared a report including all of the foregoing information that he submitted to Danial's lawyers and submitted a redacted report with only his competency findings to the court. (March 11, 1998 Forensic Evaluation Report of Danial J. Williams by Dr. David H. Keenan.)

45. In June 1998, after finally learning that the DNA testing excluded him, Danial again rejected the plea offer that his lawyers had negotiated with the Commonwealth and that they presented to him in the spring of 1998. Between the spring of 1998 and December 1998, Danial's lawyers did little to develop a defense to challenge the Commonwealth's evidence

against Danial nor did they take any other steps to prepare for the guilt-innocence phase of his upcoming trial other than monitoring the progress of the codefendants' cases. (Letter from Danial Williams to Dan Shipley, dated approximately June 9, 1998; Shipley Affidavit.)

The DNA Evidence Excluded Joe Dick and Detective Ford Tried Again for a Match, This Time Turning to Eric Wilson

46. In April 1998, after the Commonwealth's DNA testing had excluded not only Danial but also Joe Dick as the rapist whose DNA was left at the scene, Ford quickly focused on another innocent sailor, Eric Wilson. Ford subjected Eric to a high pressure, coercive interrogation and Eric, who initially maintained his innocence, eventually succumbed and gave Ford a false confession, implicating Danial and Joe Dick. Like Joe Dick's and Danial's confessions, Eric Wilson's confession conflicted with all of the physical and scientific evidence. It also was inconsistent with the coerced statements given by Danial and Joe. Danial Williams, Joe Dick, and their lawyers soon learned about Eric Wilson's arrest and his inculpatory statements. When his lawyers rebuked Danial for not telling them about a third accomplice, information they again said they could have used to get Danial a better plea offer, Danial again told his lawyers that he could not have told them about Eric Wilson or anyone else because he was innocent and did not know who committed the crime. (Danial Williams Affidavit; Shipley Affidavit.)

The DNA Evidence Excluded Eric Wilson and Detective Ford Turned to Derek Tice, Who Confessed and Also Named Pauley, Farris, and Danser

47. In June 1998, DNA tests showed that Eric Wilson could not have been the rapist who left his semen and other DNA at the crime scene and in and on Michelle Bosko's body. Ford returned to Joe Dick for an additional name, and Joe told Ford that three new sailors had been involved, for a total of six. Ford eventually identified another innocent sailor, Derek Tice,

as a suspect, and Joe Dick adopted Ford's theory and selected Derek Tice's photograph as an additional accomplice. The police obtained a warrant for Derek Tice's arrest and returned him to Virginia. Once in Norfolk, Ford subjected Derek to highly coercive interrogation methods. Derek – like Danial, Joe and Eric before him – insisted he was innocent, but Ford wore him down. Ford repeatedly yelled at Derek that he was lying when he denied being involved in the crime. Ford threatened Derek, stating to Derek that if he continued to lie: "You're going to die. You're going to get the needle. You're going to get the death penalty." Ford demanded that Derek name the two additional suspects, and Derek eventually falsely confessed, implicating himself and two other innocent men, Richard Pauley and Geoffrey Farris, as well as Danial, Joe, and Eric. DNA tests later revealed that Derek, Richard Pauley, and Geoffrey Farris could not have been the rapist who murdered Michelle Bosko. In October 1998, in an attempt to curry favor with the police, Derek identified another innocent sailor, John Danser, as another accomplice. Within a short time, Ford learned that Danser's DNA did not match the profile of the rapist and murderer. (June 25, 1998 Statement of Derek Tice; October 27, 1998 Notes of Detectives R.G. Ford and B.E. Wray of Interrogation of Derek Tice; September 8, 2005 Affidavit of Derek Elliot Tice, hereafter Tice Affidavit; September 11, 2006 Habeas Tr. at 245-46.)

48. After their arrests, the lawyers representing Joe Dick and Derek Tice persuaded the two innocent men that their only chance to avoid being convicted and sentenced to death was to cooperate with the police and agree to testify against their fellow innocent sailors at pretrial hearings and at trial. Both men cooperated, meeting with police detectives, providing names or identifying photographs of supposed accomplices, and testifying at preliminary hearings for Eric

Wilson, Derek Tice, Richard Pauley, and Geoffrey Farris (Joe Dick), and John Danser (Derek Tice).

Tice and Dick Agreed to Testify Against Danial and Danial's Lawyers Finally Succeeded in Persuading Him to Plead Guilty to Avoid the Death Penalty

49. By January 1999, Danial had been informed by his lawyers that both Joe Dick and Derek Tice had agreed to testify against Danial at his upcoming trial. Since his lawyers had abdicated their responsibility to try to challenge the Commonwealth's evidence against Danial, their only option was to persuade Danial to accept a plea offer. The Commonwealth again offered Danial a plea to capital murder and rape with a sentence of life in prison rather than the death penalty. Despite the DNA results that exculpated him, Danial's lawyers told him that given his own confession and the testimony against him by Dick and Tice, he would almost certainly be convicted and would likely be sentenced to death. They told Danial that in Virginia, death sentences were very rarely reversed or overturned on appeal, and that if he received a death sentence he would very likely be executed. His lawyers placed enormous pressure on Danial to accept the plea offer. Faced with attorneys who had not marshaled the evidence necessary to challenge the Commonwealth's evidence at trial and with his February 1, 1999 trial date less than two weeks away, Danial felt he had no choice but to plead guilty even though he maintained his innocence. The threat of the death penalty was too powerful to resist, particularly since Danial did not have the tools necessary to properly defend against the Commonwealth's case. (Danial Williams Affidavit; Shipley Affidavit.)

50. On or about January 21, 1999, Danial gave in to his attorneys' pressure and agreed to plead guilty in return for the Commonwealth's promise that he would not receive the death penalty. On January 22, 1999, Danial pled guilty before Judge Charles E. Poston – ironically, the same judge who had sentenced Omar Ballard for the rape of Virginia Owens – to capital

murder and rape. Pursuant to the terms of his plea agreement, Danial signed a stipulation of facts prepared by the Commonwealth. Judge Poston scheduled sentencing for April 28, 1999. (January 22, 1999 Guilty Plea Hearing, Commonwealth v. Danial Williams.)

Unhappy With Danial's Cooperation, the Prosecutors Moved to Revoke His Plea Agreement, But Then Withdrew the Motion Without Explanation on the Same Day They Secretly Learned Ballard's DNA Matched the Crime Scene and Ballard Confessed to Acting Alone

51. On February 9, 1999, at his attorneys' direction, Danial met, along with one of his attorneys, with Norfolk Police detectives and with an Assistant Commonwealth's Attorney. As a result of that meeting, the Commonwealth subsequently filed, on February 26, 1999, a motion to withdraw from its plea agreement. The Commonwealth claimed that Danial had materially breached his plea agreement by retracting a statement in the stipulation of facts he signed; specifically, the Commonwealth claimed that during the meeting, Danial stated that Eric Wilson had not participated in the murder of Michelle Bosko, which the Commonwealth claimed contradicted the stipulation. But Danial had read Eric Wilson's confession and knew that Wilson had only confessed to the rape. Having no actual knowledge of any involvement by Wilson, during the proffer session, Danial simply parroted back to the detectives the information he had gleaned from Eric Wilson's statement, and said that Eric had left Michelle's apartment before the murder. The Commonwealth's motion to revoke the plea was scheduled for a hearing before Judge Poston on March 4, 1999. (February 25, 1999 Letter from D.J. Hansen to Albert Teich, Jr., Clerk of the Circuit Court for Norfolk, Virginia; Commonwealth's February 26, 1999 Motion to Withdraw from Plea Agreement.)

52. On or about February 22, 1999, the Norfolk Police Department and/or the Commonwealth's Attorneys' Office received a letter written by Omar Ballard to Karen Stover, Tamika Taylor's sister-in-law, in which Ballard confessed to murdering Michelle Bosko. Stover

later gave the letter to Taylor's mother, who turned it over to the police. On March 4, 1999, the Norfolk police finally found a match to the Bosko crime scene: the DNA under Michelle Bosko's fingernails, in her body, and on the nearby blanket was consistent with Ballard's profile. (Undated Letter from Omar Ballard to Karen and Kamonte; March 4, 1999 DFS report.)

53. On March 4, 1999, Detective Ford interviewed Omar Ballard after confirming that Ballard's DNA matched the DNA of Michelle Bosko's rapist and murderer. During the interview, Ballard confessed to murdering Michelle Bosko and claimed that he committed the crime by himself. (March 4, 1999 Statement of Omar Ballard.)

54. Faced with this new evidence putting its prosecution of Danial at risk, on the same day as Ford's interview of Ballard, the Commonwealth reversed the position that it asserted just two weeks before that Danial's plea agreement should be voided, and orally withdrew its motion to revoke Danial's plea agreement. The Commonwealth took this step without informing Danial's defense attorneys that Ballard's DNA matched the DNA profile from the Bosko crime and without informing them that Ballard had asserted that he was solely responsible for the crime. There is no question that Omar Ballard's declaration that he was solely responsible for the Michelle Bosko attack dramatically weakened the prosecution case against Danial, and that moving to revoke Danial's plea agreement could jeopardize its ability to preserve a conviction against Danial for this crime. (April 27, 1999 Memorandum from Bill Blaine to The Honorable Charles Poston re Defendant's motion to withdraw from plea agreement.)

Having Learned of Ballard's Confession and DNA Match, Danial Unsuccessfully Moved to Withdraw His Plea

55. Sometime between mid-March 1999 and April 14, 1999, Danial's lawyers gave him a copy of Omar Ballard's letter and informed him that Ballard had confessed to raping and murdering Michelle Bosko by himself and that Ballard's DNA matched the DNA profile of the

perpetrator. Danial immediately told his lawyers that he wanted to withdraw his guilty plea. On April 14, 1999, Danial's attorneys filed a Motion to Withdraw Guilty Plea and on April 22, 1999, they filed a Brief in Support of Motion to Withdraw Guilty Plea. Danial's attorneys failed to prepare Danial to testify at the upcoming hearing scheduled on his motion to withdraw his guilty plea and to assert under oath that he is actually innocent of the rape and murder to which he earlier had pled guilty, and that he had only pled guilty because he felt that he had no alternative to avoid receiving the death penalty. (April 14, 1999 Motion to Withdraw Guilty Plea on Behalf of Danial Williams; April 22, 1999 Brief in Support of Danial's Motion to Withdraw Guilty Plea; Shipley Affidavit.)

56. On April 28, 1999, Judge Poston held a hearing on Danial's motion to withdraw his guilty plea. Reversing course and contradicting its previous position attempt to revoke the plea, the Commonwealth now vigorously argued that the Court should deny Danial's request and urged the Court to uphold the plea agreement.

57. Danial's attorneys did not call Danial to testify at the hearing, even though Judge Poston indicated clearly that it was up to the defense attorneys, and not the court, to decide whether or not to have Danial testify. Had his attorneys called him, Danial would have testified to the following:

- Danial had adamantly insisted upon his innocence every time he discussed the case with his lawyers.
- Danial told his family and the court-ordered psychologist that he did not commit the crime.
- When Joe Dick, Eric Wilson, and Derek Tice confessed and implicated him, Danial told his lawyers he did not know why they accused him because he was innocent and was not present at the crime.

- Danial's lawyers chastised him for failing to tell them that others were involved because they could have used that information to obtain a better plea deal, but Danial insisted that he was innocent.
- Every time between July 1997 and December 1998 that his lawyers approached him with a plea deal, Danial told them he was not interested in pleading guilty because he was innocent.
- Danial pled guilty only to avoid the death penalty because he felt he had no alternative.
- Danial maintained his innocence even after his guilty plea; Danial told the pre-sentence investigator preparing a report for his sentencing (which turned out to be the same day the Court heard his plea withdrawal motion) that he was innocent and that he had only confessed because he was emotionally stressed and exhausted from caring for his ill wife and because he was overwhelmed by the police.

58. Never having heard Danial's credible and persistent claims of innocence, Judge Poston denied the defense motion to withdraw Danial's guilty plea. Judge Poston specifically noted that Danial had never asserted his innocence before the court, but Danial's attorneys never responded to the court that Danial was ready and willing to definitively assert his innocence in court, as he had since the beginning of the case. (April 28, 1999 Hearing on Danial Williams' Motion to Withdraw Guilty Plea and Sentencing.)

Danial Was Sentenced to Life in Prison

59. Judge Poston then sentenced Danial, an innocent man, to life in prison without the possibility of parole on the charge of capital murder and sentenced Danial to life in prison on the charge of rape. (*Id.*)

60. Cynthia Garris was appointed as Danial Williams' appellate attorney in mid-1999. On Danial's behalf, Garris filed an appeal on the sole ground that Judge Poston abused his discretion in denying Danial's motion to withdraw the guilty plea. The appeal did not challenge the standard articulated by the trial court. The appeal did not assert that the proceedings below violated any of Danial's constitutional rights. On July 25, 2000, the Virginia Court of

Appeals denied Danial's appeal. Danial raised no further appeal and did not bring any post-conviction actions prior to the present petition.

(ii) Joseph Dick

61. Joseph Dick was born on July 31, 1976 in Baltimore, Maryland. When Joe was three years old, he received a severe head injury and doctors believe he may have suffered organic damage to the frontal lobe of his brain. Joe was a shy, awkward child who was teased by his peers because of his last name. Joe was immature for his age and gravitated toward spending time with younger children. Joe had significant developmental disabilities, experienced trouble with learning to read and repeated a grade in elementary school, struggled academically as a middle school student, and attended a vocational high school. Teachers and his parents describe him as slow intellectually. However, Joe was universally described as a peaceful, obedient child and young man who was never aggressive toward others and who never got into trouble. He was a Boy Scout, a church choir boy, and later a Navy sailor who served his country honorably.

(Joseph Dick Affidavit; November 6, 2005 Affidavit of Patricia Dick; November 7, 2005 Affidavit of Joseph Dick, Sr.)

62. Joe was raised in a family with a strong military tradition that included his father, Joseph Dick, Sr., who served in the Maryland Army National Guard. Joe always wanted to follow in his father's footsteps by serving in the military. He enlisted in the Navy in 1995 at the age of eighteen immediately after graduating from his vocational high school. Joe was assigned to the USS Saipan based in Norfolk, Virginia after attending basic training. Joe struggled in the Navy because of his immaturity and the difficulty he had in fulfilling assigned tasks. His immediate supervisor, then Petty Officer Michael Ziegler, questioned how Joe had passed the Armed Services Vocational Aptitude Battery, the written exam necessary to enter the military

(Joe had received the minimal qualifying score). Yet Ziegler took a special interest in Joe and made extra efforts to help Joe succeed because he realized that Joe was trying his best and was a good person. Until he was charged with rape and capital murder in this case, Joe had never before been arrested or accused of committing any crime. Given his background, personality, and nature, just like Danial, Joe Dick was an unlikely person to be suspected of committing a violent, premeditated rape and murder. (October 26, 2005 Affidavit of Michael D. Ziegler, hereafter "Ziegler Affidavit"; September 11, 2006 Testimony of Michael D. Ziegler, Tice Habeas Tr. at 102-122, hereafter "Ziegler Testimony, Tice Habeas Tr".)

Joe Dick Was on Duty Aboard His Ship When Michelle Bosko Was Killed

63. Joe did not participate in any way in the assault upon Michelle Bosko but instead was on his ship, the USS Saipan, at the time of the crime. For about a week or so before Michelle Bosko was murdered, Joe had been told to sleep every night on the ship (whether or not he was on duty) by his supervisor, Petty Officer Michael Ziegler, because Joe was having trouble getting to work on time. In addition, for the 24-hour period starting on the morning before Michelle Bosko was raped and murdered and continuing to the following morning after her murder, Joe was assigned to duty on his Navy ship, the USS Saipan. When Navy sailors are assigned to "duty" on their ship, they must remain on the ship for 24 hours and account for their presence several times throughout their duty shift. While on duty, Joe was not permitted to leave the Saipan without permission, and the one route available to enlisted personnel to leave the ship was guarded by enlisted sailors supervised by a non-commissioned officer. Joe attended a number of roll-calls throughout his 24-hour duty shift, called "musters," and did not miss any musters. Sailors on the Saipan were assigned to duty on a fixed, rotating basis once every four days, and detailed records of the duty assignments and records of the roll-calls, called "muster

reports," were kept on the Saipan for several months before they were transferred off of the ship and later destroyed. (Joseph Dick Affidavit; Ziegler Affidavit; Ziegler Testimony, Tice Habeas Tr. at 102-122; August 31, 2007 Declaration of Greg Booth.)

64. Although he was not a suspect at that time, during the fall or winter of 1997, Joe Dick was questioned by investigators. Joe told them that he knew nothing about the Michelle Bosko murder and that he was assigned to duty on his ship and was on his ship on the night of the murder. Danial Williams had also told the police during his interrogation that Joe was on duty on the night of the murder. During a later meeting, possibly after the police learned that Danial Williams' DNA did not match, the police detective and prosecutor insisted to Joe that he had lied when he denied knowledge about the crime. Joe was confused and intimidated by the groundless accusation that he had lied, and he told Chief Ziegler about the police questioning. Petty Officer Ziegler asked Joe whether he had anything to do with the murder and Joe said no, and that he was assigned to duty and was on the ship on the night of the crime. Although at this point, the duty assignment records and muster reports were no longer kept on the Saipan, Ziegler verified through another reliable method that Joe was on duty on the night of the crime: while in Joe's presence, Ziegler used a calendar to count back from that day (the day of their conversation) to the day and night of the crime; knowing the fixed duty assignment rotation that provided a pattern for counting back, Ziegler confirmed that Joe was, in fact, assigned to duty that night. As Joe's supervising officer, Petty Officer Ziegler would have been the first person to have learned if Joe had not been at his duty station but never received any such report. Ziegler is absolutely sure that Joe Dick was on the USS Saipan on the night of July 7 and the early morning hours of July 8, 1997 and could not have participated in this crime in any way. (Joseph Dick Affidavit; Ziegler Affidavit; Ziegler Testimony, Tice Habeas Tr. at 102-122; Booth Declaration.)

65. When Danial's DNA did not match the DNA of the rapist who murdered Michelle Bosko, Ford should have reevaluated his theory that Danial was involved in this crime, particularly since no part of his confession had been corroborated by the physical and scientific evidence. Ford should have reinvestigated the case and considered the possibility that someone besides Danial had committed the crime. Instead, however, Ford succumbed to tunnel vision and searched for an accomplice to Danial, targeting Joe Dick. Ford had absolutely no reason to suspect that Joe Dick was involved. There were no witnesses to the crime, the physical evidence strongly indicated that only a single offender committed the rape and murder, and no evidence pointed toward Joe. Nevertheless, Ford brought Joe Dick in for questioning and subjected him to a lengthy high pressure, coercive interrogation as part of his strategy to solve the case through confessions. This was a reckless, high-risk strategy.

Like Danial, Joe Provided a False Confession Inconsistent With the Evidence After a High-Pressure Interrogation

66. On January 12, 1998, Ford interrogated Joe. Joe voluntarily waived his Miranda rights. Asked whether he knew anything about the crime, Joe said he did not and told the police once again that he was on duty on board the Saipan on the night of the murder. Ford immediately adopted aggressive, accusatory interrogation tactics. He lied to Joe, telling him that his alibi had not checked out. Joe became confused because he knew that he was on the ship and had nothing to do with the crime. Joe agreed to take a polygraph test, hoping it would convince Ford that he was innocent, but Ford told Joe he failed the polygraph, that he had nearly broken the machine, and that Joe was lying when he said he was not involved in the crime. Ford interrogated Joe in an extremely aggressive manner, suggesting that he should force Joe "under the hoses" and that Joe would face the death penalty unless he agreed to Ford's theory that Joe and Danial had committed the crime together. When Joe insisted that he was not involved, Ford

repeatedly accused Joe of lying, forced him to stare at pictures of Michelle Bosko after she had been stabbed, and demanded that Joe admit his involvement. Joe was emotionally and intellectually incapable of resisting Ford's pressure. Feeling hopeless, worn down, and terrified that he would face certain death if he did not tell Ford what Ford wanted to hear, after hours of interrogation, Joe falsely told Ford that he and Danial had raped and murdered Michelle Bosko together. (Joseph Dick Affidavit; January 12, 1998 Notes of Detectives R. G. Ford and B.E. Wray of Interrogation of Joseph Dick.)

67. Joe's false confession was wrong in every key detail, despite the fact that the police had shown him crime scene photographs and shared information with him about the crime. Moreover, Joe's confession did not match Danial's confession in any way.

- Joe initially told Ford that he and Danial had committed the crime at 7 or 8 p.m. and later was prompted by Ford to say it could have been between 9 p.m. and 11 p.m.
 - But these claims were impossible because Michelle Bosko and Tamika Taylor were together that evening until nearly 11:30 p.m.
- Joe guessed that the rape and murder occurred in the living room.
 - But the assault occurred in the bedroom.
- Told by Ford that Michelle's body was found in another room in the apartment, Joe said they might have moved the body from the bedroom after she was killed.
 - This claim, too, was impossible, since there was no blood anywhere in the apartment except in the bedroom and the blood drops and blood pool on the bedroom floor were not smeared in any way.
- Joe told Ford that he had ejaculated in the victim's mouth and that she bit his penis.
 - But DNA tests showing no male DNA on oral swabs from Michelle Bosko proved these statements were false.
- Joe claimed he wiped his penis on the blanket after ejaculating.
 - But only Omar Ballard's DNA, not Joe's, was on the blanket.

- Joe told Ford that he and Danial had stabbed Michelle Bosko while she was standing and that while still standing she had fought back.
 - But this was completely absurd, since the evidence clearly showed that she was stabbed while lying on her back on the floor and never moved from that position once she had been stabbed.
- Joe told Ford that after stabbing her and before they left the apartment Danial had thrown a blanket over Michelle's legs.
 - But this was also false because William Bosko placed the blanket over his wife's dead body shortly after he discovered her in the apartment.
- Joe told Ford that he had committed the crime with Danial.
 - But both Danial and Joe had corroborated alibis.

(January 12, 1998 Statement of Joseph Dick.)

Like Danial's Lawyers, Joe's Lawyer Focused Immediately on a Plea Strategy

68. Based solely on Joe's own, unreliable and uncorroborated false statement, Ford arrested and charged Joe Dick with capital rape and murder. When Joe spoke to his parents by phone for the first time a few days later, Joe told his father that he was innocent and that he had only agreed with the police insistence that he was involved to end Ford's psychological abuse. Joe's parents hired a private attorney, Michael Fassanaro, to represent Joe on his capital murder charges. Within several weeks of Joe's arrest, Fassanaro received discovery materials from the prosecutors, including a copy of Joe's statements to the police. Fassanaro provided a copy of Joe's statements to Danial's attorneys in exchange for a copy of Danial's statements. When Fassanaro reviewed Joe's confession and Danial's, he believed that Joe was guilty. Fassanaro concluded that the best way to save Joe's life was to seek a plea deal with the prosecution.

(Joseph Dick Affidavit; Joseph Dick, Sr. Affidavit.)

69. Fassanaro completely abdicated his role to investigate the facts of Joe's case and to prepare a defense on Joe's behalf. Fassanaro failed to adequately investigate Joe's alibi that he

was on the USS Saipan on the night of the murder: he did not make a comprehensive effort to locate Navy records, which by January 1998 no longer were kept on the ship but were still likely able to be tracked down, that would have proved Joe was assigned to duty that night; and he never contacted Petty Officer Ziegler or other officers or sailors on the ship who could have confirmed Joe's alibi. Fassanaro never litigated any motion to suppress Joe Dick's involuntary confession nor did he make any other efforts to challenge the Commonwealth's case. Fassanaro, instead, apparently ignored repeated red flags suggesting that Joe Dick's confession was false. Like Danial Williams' lawyers, Fassanaro apparently concluded very early on in his representation of Joe Dick that Joe was guilty. Fassanaro used his strong personality to place intense pressure on Joe to agree to cooperate with the Commonwealth in their investigation and prosecution of the case. Malleable by nature, scared, and confused, Joe felt he had no choice but to go along with his attorney's plan and he agreed to cooperate. (Joseph Dick Affidavit.)

70. On March 26, 1998, DNA analysis of Joe's DNA samples proved that he had told his parents and his attorney the truth when he said that he was not involved in the Bosko crime. The DNA tests eliminated Joe as a contributor to the DNA found at the crime scene and from Michelle Bosko's autopsy. By the time Joe learned of the DNA results, however, his lawyer had already committed him to cooperating with the police and prosecutors. Fassanaro insisted Joe should continue to cooperate rather than abandoning that strategy, and Joe Dick was incapable of overcoming his attorney's will. (March 26, 1998 DFS report; Joseph Dick Affidavit.)

Ford Used a Jailhouse Snitch to Get Joe Dick to Point a Finger at Eric Wilson

71. Faced with a second DNA exclusion, Ford adopted a new tactic in his pursuit of his confession-based investigation strategy. In April 1998, Ford paid Joe's cell mate, Timothy Gurley, cash and promised Gurley immunity from prosecution on Gurley's unrelated arson

charges in exchange for Gurley's offer to try to get a name of another potential suspect in the Bosko crime from Joe Dick. Sending Gurley on a mission to obtain information from Joe Dick made Gurley an agent of the police. When Ford gave Gurley this mission, Joe had been arraigned on his capital murder and rape charges and had hired a defense attorney who had entered his appearance in Joe's case. Ford's use of a police confidential informant as an agent to obtain inculpatory information from Joe violated Joe Dick's Sixth Amendment rights. By deceiving Joe as to his intentions and through trickery, Gurley was able to get Joe to write letters to Danial's then deceased wife, Nicole, and to Gurley's brother in which Joe expressed anger at someone named "Eric" who he wanted Gurley's brother to beat up. (January 6, 1999 Pretrial Motions Hearing in Commonwealth v. Eric Wilson at 11-17.)

72. On several occasions when Ford debriefed Gurley at the Norfolk Police station about information that Gurley had gleaned from Joe, Ford gave Gurley fabricated arrest warrants that Ford had prepared charging Gurley with fictitious crimes that Gurley could use to show to other inmates in case anyone questioned why Gurley was frequently transported out of the jail. Ford forged the signature of a magistrate on the fabricated warrants in Gurley's presence. (*Id.*)

(iii) Eric Wilson

73. Based on the information he received from Gurley, Ford soon focused his sights on Eric Wilson, another unlikely suspect who was a Navy sailor who had become acquainted with Danial and Joe. Eric was twenty-one years old and had been raised in Pleasanton, Texas, a small town south of San Antonio. He was a religious young man who was very involved in the Baptist church that his family attended. Eric was a helpful, caring, obedient young man who was polite and was brought up as an "old school gentleman." He was an average high school student who became an Eagle Scout in the Boy Scouts, and he joined the Navy right out of high school

in 1995. Eric had never been in trouble with the law and had no history of violence or any other misbehavior. (Wilson Tr. at 515-17.)

Like Danial and Joe, Eric Wilson Provided a False Confession Inconsistent With the Evidence After a High-Pressure Interrogation, but Confessed Only to Rape, Not Murder

74. On April 8, 1998, after he had served watch on board his ship starting at 3 a.m. that morning, Eric was brought by a Navy Criminal Investigative Service agent to the Norfolk police station at Ford's request. Eric waived his Miranda rights and agreed to answer Ford's questions. Ford asked Eric if he knew Michelle Bosko and Eric told him that he had never met her nor had he ever been in her apartment. Ford asked Eric where he had been nine months earlier on the night Michelle Bosko was murdered. Eric told Ford that he probably was on board his ship out at sea. Within ten minutes of beginning the interrogation, Ford asked Eric whether he would take a polygraph examination and Wilson immediately agreed, cooperating completely as had Danial and Joe. After the polygraph test, Ford told Wilson that he failed the exam and that he was lying about being out to sea at the time of the murder. Ford yelled at Wilson, telling him that they knew that Wilson participated in the rape but did not think he was involved in the murder, using a common police tactic to wear down a suspect by first inducing a confession to a lesser crime. Eric Wilson repeatedly denied that he was in any way involved in the crime. Ford became very angry and aggressive. He stood over Eric, who had been forced to sit in a chair in the corner of the room, and pinned his wrists to the chair, yelling loudly the entire time with his face within inches of Eric's face. Ford repeatedly poked Eric Wilson in the chest and the forehead with his fingers, only stopping when he poked Wilson in the eye. Ford told Eric that they had proof that he had committed the crime. Ford showed Eric photographs of Michelle Bosko, both before she was murdered and a graphic photo of her dead body. Ford's partner suggested to Eric Wilson that he might have blacked out and not known that he committed the

crime (another common but high-risk tactic intended to wear down a suspect's resistance) and told Eric to close his eyes and imagine what might have happened during the assault. (Wilson Tr. at 519-67.)

75. At this point, Eric was exhausted and intimidated by Detective Ford, and so he told the detectives what they wanted to hear. He described a violent dream in which a woman was shaking her head back and forth. Ford pressured Eric to say that the woman in the dream was Michelle Bosko and that she was on a couch (Bosko's body was found on the bedroom floor. There was no couch in the bedroom, and because the only blood in the apartment was on the bedroom floor, it was impossible for the assault to have occurred on a couch in the living room). At this point, Eric Wilson was exhausted and broke down from the pressure and falsely told the police that he was with Danial and Joe Dick when they assaulted Michelle Bosko. (*Id.*)

76. Eric Wilson's confession did not match the evidence, nor did it match Danial's and Joe Dick's confessions.

- Like Dick, Eric told Ford the rape happened in the living room.
 - But the blood stains and other crime scene evidence shows that the crime occurred only in the bedroom.
- Eric also told the police that he believed he had ejaculated inside Michelle Bosko.
 - But this was impossible since Eric Wilson's DNA later proved not to match the DNA from the crime.
- Eric told the police that he pinned Michelle Bosko's hands down and that Danial and Dick got rough with her and Danial hit her in the face.
 - But these claims were also false because Michelle Bosko had no facial injuries or bruises to her arms or wrists.
- Eric also told the police that Michelle Bosko broke one of her hands free and scratched him.

- But the only male DNA under Michelle Bosko's fingernails belonged to Omar Ballard.
- Eric also told the police that he committed the crime with Danial and Joe.
 - But both Danial and Joe had corroborated alibis.

After extracting his confession, Ford charged Eric Wilson with capital murder and rape. (April 8, 1998 Statement of Eric Wilson to Detectives R.G. Ford and G.S. Hoggard.)

77. Eric's parents immediately hired a private attorney, Greg McCormack, to represent him on the case. Eric consistently told his parents and his attorney that he did not commit the crime. McCormack aggressively pursued investigating the facts of the case. In the summer of 1998, McCormack's investigator learned from Tamika Taylor that Omar Ballard was a possible suspect in the case. McCormack considered how best to approach Ballard and when he learned about Ballard's letter to Karen Stover confessing to the crime he decided to contact Ballard directly. McCormack's co-counsel, Russell Woodlief, wrote to Ballard in prison asking him for information about the crime. Ballard wrote back, hinting that he was involved in the crime and offered information in exchange for money. (March 5, 1999 Letter from Russell Woodlief to Omar Ballard; Undated letter from Omar Ballard to Russell Woodlief and Greg McCormack.)

78. McCormack vigorously defended Eric Wilson. He insisted that prosecutors turn over all of the statements made by any defendant in the case, and when the prosecutors dragged their heels, he requested that the court order the production of this evidence, which he rightly believed was exculpatory because of the many inconsistencies between the statements and the fact that they were not corroborated by the physical evidence. McCormack demanded to see the crime scene photographs, which the prosecutors also resisted, and the crime scene videotape, which prosecutors initially claimed did not exist and then delayed in providing to the defense;

when finally revealed to the defense, the crime scene videotape and photographs were highly exculpatory because they contradicted the Commonwealth's multiple offender theory. McCormack filed multiple discovery motions and, when those requests were denied, he repeatedly filed motions to compel and motions for sanctions because of the Commonwealth's foot-dragging in complying with its discovery obligations. McCormack also moved to recuse the Commonwealth's Attorneys Office for violating Eric Wilson's Sixth Amendment Rights by using confidential informants as police agents to elicit information from Wilson. (July 9, 1998 Letter from Greg D. McCormack to Valerie Bowen requesting discovery; October 30, 1998 Motion for Discovery and Inspection, Commonwealth v. Wilson; December 14, 1998 Letter from Greg D. McCormack to the Honorable Charles E. Poston; December 21, 1998 Letter from Russell W. Woodlief to Valerie Bowen; December 14, 1998 Motion to Suppress and to Remove the Commonwealth's Attorney for the City of Norfolk; March 2, 1999 Motion for Imposition of Sanctions; April 2, 1999 Motion to Compel Discovery and Inspection; April 7, 2009 Motion for Imposition of Sanctions; April 2, 1999 Motion to Compel Discovery and Inspection; May 17, 1999 Motion for Imposition of Sanctions; April 2, 1999 Motion to Compel Discovery and Inspection.)

79. In June 1998, DNA testing proved that Eric Wilson was excluded as a contributor to the autopsy and crime scene DNA evidence. (June 10, 1998 DFS Report.)

(iv) Derek Tice

Pressured by Ford for Another Suspect, Joe Dick Picked Derek Tice Out Of a Yearbook

80. The third DNA exclusion left Norfolk detectives and prosecutors scrambling to find a way to salvage their death penalty prosecution against the three charged sailors. Ford returned to Joe Dick, the most malleable but least reliable of the three innocent sailors, searching for an additional accomplice. Joe's defense attorney, Michael Fassanaro, had persuaded Joe that his only hope to avoid the death penalty was to cooperate with every request the police and prosecutors made for information and testimony against his fellow sailors. When Ford interrogated Joe once again in June 1998, Joe told Ford that a total of six sailors participated in the rape and murder of Michelle Bosko, but he was unable to accurately identify the names of the three additional suspects. Ford decided that Derek Tice, another friend of Danial's, was one of the three new suspects. Ford gave Joe a 1997 yearbook from a Navy ship, flagged seven pages of the yearbook, and asked Joe to identify one of the accomplices' picture on the flagged pages. Joe had met Derek once and therefore the only person whose picture looked familiar in those yearbook pages was Derek Tice, so Joe named Derek as one of the three other suspects. (June 16, 1998 Interrogation of Joseph Dick by Detectives R.G. Ford and B.E. Wray; June 18, 1998 Interrogation of Joseph Dick by R.G. Ford and B.E. Wray.)

81. Derek Tice, a former Army soldier and Navy sailor, was an equally unlikely suspect. Derek spent his teenage years in Clayton, North Carolina, a small town not far from Raleigh. Derek's father had served in the Navy, and Derek grew up in a family that prized service to others. Derek was a Boy Scout, played in his high school band, and worked as a volunteer emergency medical technician for nearly two years for his local volunteer fire

department. Derek was a shy, respectful, caring, and compassionate young man. Two years after high school, Derek followed in his father's military footsteps, first by enlisting in the Army and then later in the Navy. In June 1998, when Ford focused on Derek Tice, Derek was 28 years old with no prior criminal record. (Tice Affidavit; November 4, 2005 Affidavit of Larry A. Tice; November 4, 2005 Affidavit of Rachel Tice.)

82. On June 18, 1998, based only on the highly unreliable, evolving accusation by Joe Dick, Ford obtained a warrant for Derek Tice's arrest for rape and capital murder. Derek had finished his last Navy tour, had reentered civilian life, and was now living with his girlfriend and her young daughter in Florida. Ford had Derek arrested in Florida and, a week later, Ford traveled to Florida to bring Derek back to Virginia. On June 25, 1998, Derek was awakened between 4 and 5 a.m. by jail officials in preparation for his transfer to Virginia. A few hours later, Ford and his partner picked Derek up, took him to the airport, and flew him back to Virginia, arriving at the police station at approximately 2 p.m. (September 11, 2006 Tice Habeas Tr. at 229.)

After Ford Violated Tice's Miranda Rights And Subjected Him To a Brutal High Pressure Interrogation, Tice Made a Demonstrably False Confession Naming Two New Innocent Suspects

83. Derek fully cooperated with every request that the police made of him. He agreed to waive his Miranda rights and to answer Ford's questions. Ford immediately began an angry and aggressive interrogation of Derek. Ford accused Derek of being one of six men who raped and murdered Michelle Bosko. When Derek repeatedly denied being involved in the crime in any way, Ford forcefully rejected Derek's assertions of innocence, yelling in his face that he knew Derek was lying. Ford described to Derek the scenario that Ford wanted Derek to adopt, claiming that six men had a party at Danial's apartment, wanted to go over to see the color of

Michelle Bosko's underwear, decided to rape Michelle, and tricked her into opening her door, at which point the men rushed in and raped her. When Derek rejected Ford's scenario, Ford threatened Derek with the death penalty, shouting that Derek was going to “get the needle” and was going to die. Derek agreed to take a lie detector test, and afterward told the polygraph examiner that he did not want to answer any more questions. (Tice Affidavit; September 11, 2006 Tice Habeas Tr. at 223-79.)

84. But the police failed to honor Derek's invocation of his right to silence (both the Circuit Court for Norfolk, Virginia and this Court have since ruled during habeas proceedings that the police violated Derek's Fifth Amendment right to remain silent), and continued their high pressure interrogation. Ford showed Derek a picture of the victim when she was alive, and barraged him with leading questions about how Ford believed the crime occurred. Ford told Derek that other suspects currently in custody had agreed to testify against him and had told police that it was Derek's idea to rape and murder the victim, and told him they had unnamed additional witnesses and evidence against him. Ford eroded Derek's resistance with his repeated threats of the death penalty and his insistence that his co-defendants were going to testify against him. And Ford suggested that he would help Derek avoid a harsh sentence if Derek confessed. Finally, at about 8 p.m., about sixteen hours after having been awakened in a Florida jail, an exhausted Derek Tice gave in to Ford's pressure and told Ford the story that Ford had relentlessly pursued, that six men, including Derek, raped and murdered Michelle Bosko. (June 24, 1998 Notes of Detectives R.G. Ford and B.E. Wray concerning Interrogation of Derek Tice; Tice Affidavit; September 11, 2006 Tice Habeas Tr. at 223-79.)

85. Although it was no coincidence that Derek's false confession mimicked the latest version of the crime that Joe Dick described (a six person assault was the latest scenario Ford

persistently painted), the details in Derek's confession, like those in the confessions of Danial, Joe, and Eric, contradicted the crime scene evidence and were demonstrably wrong. Derek's confession also was completely inconsistent with those given by the three innocent sailors before him. (June 25, 1998 Statement of Derek Tice.)

- Derek told the police that the men entered the victim's apartment by forcing the door open with a claw hammer.
 - But there was no evidence of forced entry; instead, the crime scene strongly suggested that Michelle Bosko permitted her attacker to enter.
- Derek claimed that Michelle Bosko struggled with the men near the apartment entrance, as they carried her down the hall to the bedroom, and in the bedroom where the rape occurred.
 - But Ms. Bosko had no bruises anywhere on her body (indicating she did not struggle with her attacker), and there was no sign of a struggle and no furniture or items on the furniture was disrupted near the apartment entrance nor in the narrow hallway or small bedroom.
- Derek told the police he ejaculated inside the victim while raping her.
 - But only Ballard's DNA was on the autopsy and crime scene samples.
- Derek claimed that the six men took turns stabbing Michelle Bosko.
 - But her stab wounds were clustered in a small area on her chest and were identical in depth, angle, and path, completely inconsistent with a multiple stabber scenario and strongly suggesting that only a single person stabbed her.
- Derek identified the six participants as Danial, Joe, Eric, Geoffrey Farris, and Richard Pauley.
 - But Danial, Joe, and Richard Pauley all had corroborated alibis that they were elsewhere at the time of the crime.

(June 25, 1998 Statement of Derek Tice.)

86. After extracting Derek's confession, Ford charged Derek with capital murder and rape. When Derek was able to call his parents from the Norfolk jail after he was charged, Derek told his parents that he was innocent and had falsely confessed because he feared he would face

the death penalty if he continued to maintain his innocence during Ford's coercive interrogation. He also repeatedly told his court-appointed attorney, Alan Zaleski, that he was innocent. Yet rather than making efforts to build a defense to the charges, Derek's lawyer immediately defaulted toward cooperation with the Commonwealth. Zaleski believed at that time that Derek Tice was guilty and he did not investigate the facts of the case, never litigated a motion to suppress Derek's involuntary confession, and took no steps to mount a defense on Derek's behalf. Instead, Zaleski convinced Derek to cooperate with the police and prosecutors in order to avoid a possible death sentence. (Tice Affidavit; September 11, 2006 Tice Habeas Tr. at 271-72; Affidavit of Larry A. Tice; Affidavit of Rachel Tice.)

(v) Geoffrey Farris, Richard Pauley and John Danser

87. Based solely on Derek's false confession that they were involved in the crime, Norfolk detectives arrested Richard Pauley, who served in the Army reserves, and Geoffrey Farris, another former sailor. Ford was on leave on June 30, 1998, when Pauley was arrested, so Pauley was not subjected to Ford's aggressive questioning style and did not confess. Yet Pauley later told his attorney, Jon Babineau, that the other detectives who questioned him in Ford's stead frightened him so much that he almost said anything the police wanted in order to end the questioning.

Pauley Had An Electronically Verifiable Alibi

88. Pauley was at home with his parents on the night of the murder and had a solid alibi. In July 1997, Richard Pauley lived with his parents and was working at a roofing company. On the evening of July 7, 1997, Pauley got home from work between 6:30 and 7 p.m., showered, ate dinner with his parents, and then later chatted on the computer and telephone with his girlfriend, who lived in Australia. Telephone and internet records verified that Pauley

communicated with his girlfriend from 11 p.m. until after 3 a.m. the next morning. Pauley's parents also verified that he never left the house that evening or night after he got home from work. Since the crime occurred after Tamika Taylor last saw Michelle Bosko alive at about 11:30 p.m. on July 7, 1997, and Omar Ballard stated he committed the crime between about 1 and 3 a.m. on July 8, Pauley had an unshakeable alibi for the crime. Pauley was charged with capital murder and rape. (June 30, 1998 Interrogation notes by Detectives B.E. Wray and P.J. Dunn of Richard Pauley; Excel Telecommunications, Inc. records for July 7, 1997 for Richard Pauley.)

89. Ford arrested Geoffrey Farris on July 9, 1998 and soon began to interrogate him. Farris requested an attorney early on in the questioning. But although the police violated his Fifth Amendments rights by continuing to question him for about an hour longer, Farris did not confess. Farris was charged with capital murder and rape.

90. Derek's protestations to his parents and his attorney that he was innocent despite his false confession proved true two months later when DNA results eliminated Derek Tice, Geoffrey Farris, and Richard Pauley as possible sources of the genetic material found at the crime scene and on the autopsy samples. (August 28, 1998 DFS report.)

91. Despite the exculpatory DNA results, Derek's attorney, Zaleski, did not believe in Derek's innocence, and he persuaded Derek that he needed to continue cooperating with the authorities in order to avoid a death sentence. Zaleski negotiated a plea agreement for Derek in mid-October 1998 in which Derek would be spared the death penalty in exchange for Derek's cooperation, including identifying the unknown seventh assailant and testifying against his co-defendants.

92. On October 27, 1998, as part of the plea agreement, Tice met with Zaleski and Norfolk police and prosecutors at the Norfolk Police station. Although the purpose of the meeting was for Derek to identify other suspects, at one point when he was alone with Zaleski, Derek repeated his earlier assertions that he was innocent. Frustrated, Zaleski allowed Detective Ford and his partner to interview Derek alone. Later, even more frustrated, Zaleski left the police station altogether, giving his consent to Ford to continue questioning Derek. Ford interrogated Derek again after Zaleski went home. Ford suggested to Derek that John Danser, a friend of Derek's and another former sailor, was the seventh suspect and Derek eventually agreed to Ford's suggestion that Danser had been involved. (October 27, 1998 Notes of Detectives R.G. Ford and B.E. Wray of Interrogation of Derek Tice.)

93. With no other evidence against him other than Derek's accusation, Ford obtained a warrant for John Danser's arrest. Danser had moved to Warminster, Pennsylvania, located just outside of Philadelphia, so Ford had him arrested there and Danser later was transported to Norfolk. Ford interrogated Danser on November 4, 1998, and, as he had with all the other innocent sailors, accused Danser of participating in Michelle Bosko's rape and murder on July 7, 1997. Danser told Ford that he was not involved in the crime, and that he was not even in Virginia on the night of the murder. July 7, 1997 was Danser's birthday, and he told Ford that after working that day at his job for an air conditioning and heating company, he celebrated his birthday that night in Philadelphia. Danser told Ford that he had visited Norfolk several weeks after the murder and had stayed in two motels, an Econo Lodge and a Tides Inn. Danser then asserted his right to counsel, and the interrogation soon thereafter ended without Ford being able to extract a confession from Danser. (November 4, 1998 Notes of Detectives R.G. Ford and B.E. Wray of the Interrogation of John Danser.)

Derek Tice Recanted Danser's Involvement, and Police and Prosecutors Withheld Exculpatory Documents From Danser's Attorney

94. Ford immediately obtained motel records corroborating Danser's claim that he stayed at the Norfolk motels, not on the night of the murder but only about two weeks after the murder. Ford then interrogated Derek again the next day, on November 5, 1998. Ford confronted Derek with the motel records and accused Derek of lying about John Danser's involvement, since the records did not match Derek's story from the week before. Derek then recanted his claim that John Danser was involved in any way in the crime. Shortly afterward, Derek completely recanted his own involvement in the crime and told Ford that he was not present. Yet Ford and the Assistant Commonwealth's Attorneys failed to turn over these motel records to Danser or his attorney, and instead falsely told Danser's attorney that no motel records existed. (November 4, 1998 Notes of Detectives R.G. Ford and D.R. Norrell concerning Interrogation of Derek Tice.)

Documents Showed Danser Was In Philadelphia When Michelle Bosko Was Killed In Norfolk

95. Danser's attorney eventually subpoenaed Danser's Discover Card records, which proved that Danser did stay at the motels exactly when he said he had, two weeks after the murder but not when the murder occurred. More critically, Danser's attorney, Jennifer Stanton, obtained records corroborating Danser's unshakeable alibi. She subpoenaed work records that showed that Danser worked to repair the air conditioning in a customer's Warminster home until 6:30 p.m. on July 7, 1997. She subpoenaed bank records that showed that Danser withdrew money from an automatic teller machine at 8:42 p.m. on July 7, 1997 near the bar in Philadelphia where Danser celebrated his birthday with friends. She obtained work records showing that Danser returned to work in Warminster at 7:30 the next morning. Stanton also interviewed Danser's work colleagues, the customer whose air conditioning system he worked on, and

Danser's friends with whom he celebrated his birthday, who all corroborated Danser's alibi. Warminster, Pennsylvania is 295 miles from Norfolk, and it would have been impossible for Danser to drive from Warminster after 8:42 p.m. to Norfolk and return to his work in Pennsylvania at 7:30 a.m. the next day. Stanton also confirmed with airlines, bus companies, and the passenger railways that it was impossible to get from Pennsylvania to Norfolk and back in this window of time. Nevertheless, when provided with Danser's solid alibi evidence and aware of the corroborating motel records in the Commonwealth possession, the Assistant Commonwealth Attorney, D.J. Hansen, persisted in pursuing his capital case against Danser. (Testimony of John H. Danser, Tice II Tr. at 47-78; Lindsey Mechanical Services, Inc. records dated July 7 and July 8, 1997 for John Danser; Commonwealth Federal Savings Bank records dated July 7, 1997 for the account of John Danser.)

C. Pre-Trial Police and Prosecutorial Misconduct

95. The Norfolk Police and the Norfolk Commonwealth's Attorneys Office engaged in a pattern of misconduct throughout the course of this prosecution that violated the due process rights of the innocent Navy sailors and that sorely prejudiced their ability to adequately counter the evidence against them. The government misconduct in this case included the intentional misuse of a confidential informant. It involved the fabrication of official signatures on sworn court documents by Detective Ford, the lead detective on the case. It involved a pattern by both the police and prosecutors of the intentional suppression of exculpatory information and records. It included misleading statements by prosecutors and, in a few instances, affirmative misrepresentations by police and/or by prosecutors about the existence of exculpatory evidence. It involved the direct disregard for repeated and explicit court orders. And it involved the bad faith reversal by the Commonwealth of its position on the validity of Danial's plea in a cynical

effort to preserve his conviction after extremely exculpatory evidence emerged. The government's pattern of misbehavior described below symbolizes the desperate nature of the flawed prosecution of the innocent sailors in this case.

96. *Jailhouse Snitch as Government Agent.* The Norfolk Police and the Commonwealth's Attorney violated the Sixth Amendment rights of Joe Dick, directing Timothy Gurley, a jailhouse informant, to obtain information from Joe Dick after he was arraigned and represented by counsel. The Norfolk Police and Commonwealth's Attorneys Office made the informant an agent of the Commonwealth by encouraging the informant to question the sailors to gain specific information. (January 6, 1999 Pretrial Motions Hearing in Commonwealth v. Eric Wilson at 11-17.)

97. *Pressure On Gurley Not To Testify.* At pretrial hearing in Eric Wilson's case, Gurley testified on January 6, 1999 on a defense motion to recuse the Norfolk Commonwealth's Attorneys office due to police and prosecutorial misconduct. Gurley testified that his probation agent learned that Gurley was a possible defense witness. Gurley stated that his probation agent told him that she did not like the fact that he was "involved" in the case and that she had heard that he would be testifying against Valerie Bowen, one of the Assistant Commonwealth's Attorneys handling the Bosko case. Gurley testified that his agent told him that he may or may not have his probation violated depending on the circumstances of his testimony involving Ms. Bowen's behavior in the case. Gurley testified that he interpreted his agent's comment as an implicit threat that he would have his probation violated if he testified for the defense. (*Id.*)

98. *Pressure on Defendants Not To Share Information.* The Commonwealth violated Canon 8 of the Virginia Code of Professional Responsibility, Disciplinary Rules § 8-102(A)(3), which prohibits a prosecutor from discouraging any person from providing relevant information

to the defendants. The Commonwealth in this case actively discouraged the cooperating co-defendants, Joseph and Derek, and their lawyers from disclosing to the lawyers representing the other defendants the terms of their plea agreements, other details of their cooperation, and their knowledge of the crime and the ongoing legal proceedings related to the crime. During a November 30, 1998 motions hearing in Danial's case, Assistant Commonwealth's Attorney Valerie Bowen confirmed that the Commonwealth had required that the cooperating co-defendants and their counsel not discuss with other defendants or their lawyers the terms of their plea agreements and other facts about the crime or the prosecution of which they were aware. After hearing argument on the issue, Judge Poston stated that it would be improper for any police or prosecutor to tell any defendant not to discuss the terms of any plea agreement or other facts with other defendants or their attorneys. (November 30, 1998 Pre-trial Motions Hearing, Commonwealth v. Danial Williams, Tr. at 6.)

99. *Withholding And Claimed Ignorance Of Crime Scene Video.* During the pretrial phase of his case, the Commonwealth initially informed Eric's defense counsel that it was not aware of any videotape of the crime scene. When the defense insisted there must be a crime scene videotape, the Commonwealth reversed course and confirmed that the crime scene videotape existed. However, the Commonwealth next took the position that it had no obligation to turn over the videotape. Later, when it was finally disclosed, the crime scene videotape was obviously exculpatory because it vividly contradicted the Commonwealth's multiple offender, gang rape theory showing that the Bosko apartment's physical layout, its neat, orderly, pristine condition, and the undisturbed blood droplets on the bedroom floor were not consistent with the theory that eight men carried a struggling victim to the back bedroom and took turns raping and stabbing her.

100. *Withholding of Contradictory Statements.* The Commonwealth withheld disclosing all of the contradictory and inconsistent statements made by all of the suspects. After initially disclosing to Danial's lawyers the statements of Joe and Eric, the Commonwealth reversed course and refused to disclose to the defendants all of the later statements of the sailors who were subsequently charged and the statements of the cooperating sailors, despite repeated requests by defense attorneys. The Commonwealth took the position that there was nothing exculpatory about these statements. Judge Poston ordered the Commonwealth to submit all of the statements to him for his in camera review, and he ultimately ruled that all of the statements must be turned over to the defendants, directly contradicting the Commonwealth's claim that there was nothing exculpatory in the statements.

101. *Withholding of Exculpatory Motel Records.* After interrogating John Danser on November 4, 1998, Detective Ford obtained motel records from the Econo Lodge and the Tides Inn and confirmation from motel staff corroborating Danser's claim that he stayed at two Norfolk motels in late July 1997, but not in the days before or after the night of the murder. The motel records and the information from the motel staff were exculpatory information that should have been turned over to all of the defendants because they were consistent with Danser's claim that he was not in Virginia at the time of the crime and contradicted Derek's brief assertion that Danser was one of the assailants. Yet Ford and the Assistant Commonwealth's Attorneys failed to turn over these motel records to Danser's attorneys at all and did not disclose the existence of police notes documenting the seizure of the motel records to any defense counsel until they were produced to Derek's attorneys on January 25, 2000, on the eve of Derek's first trial.

102. *Misrepresentation to Defense Counsel Of Police Investigative Findings.* In addition, John Danser's attorney was falsely told by the police and/or by the Commonwealth that

the police had checked the records from the two motels and that there was no record of John Danser ever staying at the motels. This misrepresentation was later proved false when Danser's attorney subpoenaed his Discover Card records that verified that he did stay at both hotels in late July 1997.

103. *Withholding of Documents Showing Tice Recantation of Danser's Involvement.*

The Commonwealth failed to provide to John Danser's attorneys copies of police notes concerning the November 5, 1998 interrogation of Derek in which Derek recanted his claim that John Danser was involved in the Bosko crime. The Commonwealth failed to disclose this highly exculpatory information to any of the innocent defendants' lawyers until January 25, on the eve of Derek's trial in January 2000, when it disclosed these notes to Derek's attorneys. At a motions hearing on January 28, 2000, Assistant Commonwealth's Attorney D.J. Hansen stated that Derek's attorneys never asked for the notes to be produced, which was flatly contradicted by Derek's attorneys' discovery requests and by Judge Poston's orders. More importantly, Judge Poston chastised Hansen by saying: "Didn't the court on several occasions and in the process of these related cases ask, Are there any other statements? Are there any other statements? Didn't I do that several times?" D.J. Hansen tried to feign ignorance, stating: "I'm not sure if the Court did." But Judge Poston persisted, stating, "Didn't I order several times that every statement be turned over to me for review?" Hansen then conceded the truth, answering: "Yes, sir." Judge Poston responded: "And this wasn't done, was it?" Before Hansen could respond, a clearly annoyed Judge Poston ruled: "They're not going to be introduced. You violated my order that I have given over and over and over in these cases. It will not be introduced in this case." (January 28, 2000 Motions Hearing in Commonwealth v. Tice at 13-18.)

104. *Manipulation of Commonwealth's Position on Danial Williams' Plea Agreement Based On Withheld Exculpatory Information.* As discussed in paragraph 45 above, on February 26, 1999, the Commonwealth filed a notice to withdraw from Danial Williams' plea agreement, claiming that his insistence that Eric did not participate in the murder was a material breach of his plea agreement so that the Commonwealth was not bound by its commitment that Danial would not face the death penalty, and requested that the Court either force Danial to withdraw his guilty plea or continue with his guilty plea and face the possibility of a death sentence. But just a week later, on the same day Ford interviewed Ballard, securing his confession that he acted alone, and after Ford learned that Ballard's DNA matched the crime scene evidence, the Commonwealth quietly withdrew its motion without explaining why and without providing the exculpatory information to Danial's lawyers. The very next month, the Commonwealth cynically and in bad faith opposed Danial's motion to withdraw his guilty plea once Danial and his lawyers became aware of the Ballard evidence. (February 25, 1999 Letter from D.J. Hansen to Albert Teich, Jr., Clerk of the Circuit Court for Norfolk, Virginia; Commonwealth's February 26, 1999 Motion to Withdraw from Plea Agreement; April 14, 1999 Motion to Withdraw Guilty Plea on Behalf of Danial Williams; April 22, 1999 Brief in Support of Danial's Motion to Withdraw Guilty Plea; April 27, 1999 Memorandum from Bill Blaine to The Honorable Charles Poston re Defendant's motion to withdraw from plea agreement).

D. Guilty Pleas and Trials

105. Danial Williams pled guilty in January 22, 1999. Less than two months later, on March 4, 1999, after the Norfolk police obtained Omar Ballard's confession letter, the Commonwealth's DNA analyst compared Ballard's DNA profile to the profile of the rapist and murderer developed from the blanket stain, the vaginal swabs, and the fingernail clippings. To a degree of certainty in the millions and billions to one, the analyst concluded that Ballard's DNA matched the DNA profile from this evidence. In addition, Ballard spoke to Ford the very same day and gave a statement that flatly contradicted the long-held police theory of multiple perpetrators: Ballard made clear he murdered Michelle Bosko by himself. Taken together, this was conclusive evidence that the Commonwealth had been pursuing a flawed prosecution of the seven innocent sailors and had let Ballard, the obvious suspect from the beginning of the case, elude their grasp for nearly two years. (March 4, 1999 DFS Report; May 6, 1999 DFS Report.)

With The Exculpatory Ballard Evidence And No Confessions, Prosecutors Dropped Charges Against Farris, Pauley, and Danser

106. When Omar Ballard's existence and the compelling evidence that he raped and murdered Michelle Bosko by himself emerged, Danial Williams immediately, but unsuccessfully, sought to withdraw his guilty plea, and Judge Poston sentenced him to life in prison. Derek withdrew from his cooperation agreement with the Commonwealth and said he wanted to go to trial. Left with absolutely no credible evidence against Geoffrey Farris, Richard Pauley, and John Danser and with powerful DNA and alibi evidence proving they were not involved, the Assistant Commonwealth's Attorney still tried to persuade them to plead guilty by offering guilty pleas to rape and by offering to drop the murder charge completely. Only when all three forcefully rejected the offers did the Commonwealth drop the charges against Farris, Pauley, and Danser. All three were immediately released from jail. (May 14, 1999 Entry of Nolle Prosequi

in Commonwealth v. Richard Pauley, CR-98003429; Commonwealth v. Geoffrey Farris, CR-98003428; and Commonwealth v. John Danser, CR-99000441). Despite the dropped charges, the prosecution continues to insist, a decade later, that the three men were involved.

To Comply With His Plea, Joe Testified Falsely Against Eric Wilson At Trial

107. Despite the new and powerful evidence that Ballard was Michelle Bosko's sole attacker, Joe's attorney, Michael Fassanaro, persuaded Joe that he still needed to cooperate and plead guilty to the rape and murder in order to avoid the death penalty. When Greg McCormack, Eric's lawyer, learned that Fassanaro planned to plead Joe guilty, he was stunned that Fassanaro would persist in having Joe cooperate given the powerful evidence demonstrating that Ballard committed the crime by himself. Joe pled guilty to capital murder and rape on April 21, 1999. As part of his agreement, Joe was required to cooperate with the Commonwealth, including testifying against his co-defendants. McCormack confronted Fassanaro outside of the courtroom after Joe pled guilty and the two lawyers got into a heated argument over the propriety of Fassanaro's advice to Joe.

108. Joe Dick testified for the Commonwealth against Eric Wilson in order to comply with his plea agreement to avoid the death penalty. Joe falsely testified that he, Eric, and the other sailors and Omar Ballard committed the rape and murder of Michelle Bosko together. Ballard, who had since been charged with capital murder and rape and who was facing the death penalty, was called as a witness at Eric's trial but asserted his Fifth Amendment rights and refused to testify. (Wilson Tr., pp. 493-94.)

Eric Wilson Was Acquitted Of Murder But Convicted Of Rape

109. The jury acquitted Eric of murder but convicted him of rape and sentenced him to eight and a half years in prison.

Derek Tice's Trial Judge Rejected Multiple Attempts By His New Lawyers To Introduce Exculpatory Evidence

110. When Derek Tice decided no longer to cooperate with the Commonwealth and insisted on going to trial, his original lawyer, Zaleski, withdrew as his lawyer and he was replaced by new attorneys, James Broccoletti and Jeffrey Russell. They sought to introduce testimony at Derek's trials from a false confession expert, Richard Leo, who would have testified about the coercive interrogation techniques used against Derek and the factors in his case that were consistent with a false confession. They also sought to introduce evidence that Ford had a history of obtaining false confessions to support their claim that Derek's confession was coerced. They also sought to introduce testimony from a former police homicide detective with expertise in crime scene reconstruction and sought to construct a scale-sized wooden model of the bedroom of the Bosko apartment in order to graphically demonstrate that the Commonwealth's multiple offender theory was inconsistent with the evidence. They also sought to introduce John Danser's work time records that corroborated his presence on July 7 and July 8, 1997, in Pennsylvania. They also sought to introduce Omar Ballard's letter to Karen Stover in which he first admitted to murdering Michelle. Finally, they sought to introduce evidence that Omar Ballard was engaged in a three-week crime spree before and after he murdered Michelle Bosko against young, female victims and that he was a convicted felon, as proof that Ballard committed the Bosko murder by himself. Judge Poston excluded all of this evidence at Derek's trials.

111. Joe Dick testified, as required by his plea agreement, against Derek Tice at his first trial in February 2000 on behalf of the Commonwealth. Like he had in the Wilson trial, Joe falsely testified that he, Derek, and the other sailors committed the rape and murder with Omar Ballard. Omar Ballard was called as a defense witness but his capital murder and rape charges were still pending and he continued to face the death penalty. Despite the fact that he had

voluntarily confessed to raping and murdering Michelle Bosko to the police and the fact that DNA evidence proved beyond any doubt that he was guilty, Ballard testified that he was not involved in any way in the crime. Derek was convicted by a jury of rape and murder, but his conviction was reversed by the Virginia Supreme Court because of a faulty jury instruction. (Tice Tr. I, pp. 706-725.)

After Renewed Pressure By Ford and Prosecutor Hansen When He Decided To Tell The Truth, Joe Dick Testified Falsely Against Derek Tice At Trial

112. Before Derek's second trial began, Joseph Dick had decided to tell the truth and was prepared to testify truthfully that he was not involved in any way in the rape and murder of Michelle Bosko and that he had no knowledge that Derek Tice or any of the other innocent sailors were involved either. But Ford and D.J. Hansen visited Joe immediately before he was called to testify by the Commonwealth. Joe had no defense counsel with him during this meeting. Ford and Hansen reminded Joe that his plea deal was in jeopardy and he would face the death penalty again if he did not testify on behalf of the Commonwealth as he had in the past. Joe was frightened by this threat, and he reverted back to his prior position of cooperating with the Commonwealth. Accordingly, Joe falsely testified that he and Derek Tice and the other sailors were involved in the crime after Ford and Hansen spoke with him immediately before his testimony. (Joseph Dick Affidavit.)

113. Similarly, Omar Ballard was prepared to testify at Derek's second trial that he committed the crime by himself and that Derek was not involved in any way. But Ballard received separate visits shortly before trial from Tice's attorney, James Broccoletti, and from Ford. Ballard heard similar messages from both Broccoletti and Ford, essentially that neither side was interested in hearing from Ballard at trial. Frustrated, Ballard refused to testify when

Judge Poston called him to the courtroom and urged him to tell the truth. (January 29, 2003 Tice II Tr. at 4-8.)

Derek Tice Was Convicted Of Rape and Murder And Sentenced To Life In Prison

114. With Joe Dick falsely testifying that he, Derek, and the other sailors participated in the Bosko attack along with Ballard, Derek was convicted by a jury again of rape and murder, and was sentenced to life in prison without the possibility of parole.

E. The Full Picture of Innocence Emerges

The defective state court proceedings left Danial Williams and Joseph Dick serving life sentences without the possibility of parole for Michelle Bosko's rape and murder as a result of their guilty pleas, and left Derek Tice serving life without parole after his 2003 jury conviction on these same charges. And the flawed state court proceedings similarly ended with Eric Wilson convicted of rape and sentenced by a jury to eight and a half years after his 1999 jury trial.

These four innocent men were convicted of this crime because no trier of fact ever was presented with a complete and comprehensive picture of the abundant evidence of their innocence. Not until 2004 and 2005, when new attorneys for Danial Williams, Joseph Dick, and Derek Tice, working in conjunction with Eric Wilson original defense counsel, gathered together existing evidence and uncovered further persuasive evidence demonstrating the former sailors actual innocence did the full picture emerge. No court has ever considered the comprehensive and compelling evidence, presented below, that demonstrates that Omar Ballard raped and murdered Michelle Bosko by himself, and that proves that Danial Williams, Joseph Dick, Eric Wilson, and Derek Tice are actually innocent of the crimes for which they still stand convicted.

F. Omar Ballard's Background and his Crime Spree

115. With Omar Ballard properly as the focus, it becomes clear that he and he alone killed Michelle Bosko, and that the other men investigated and charged were the victims of a gross miscarriage of justice. Ballard's adolescence and young adulthood was filled with anger, delinquency, and extreme violence. Many clues pointed to Ballard as the prime suspect in the rape and murder of Michelle Bosko, had any one cared to pay attention to them. Ballard was friends with Michelle Bosko. He regularly visited her at odd hours when she was alone, including on the night she was murdered. And he was an extremely violent, dangerous man.

116. Tamika Taylor introduced Michelle to Omar Ballard, a long-time childhood friend from her New Jersey neighborhood who had moved to Norfolk from New Jersey. Ballard's mother was a prostitute and a drug addict who abandoned him when he was about two years old. At that point, Ballard was shuttled from foster home to foster home, until he ended up being raised by adoptive parents in a rough neighborhood in New Jersey. When he grew older, Ballard expressed intense anger toward women. Ballard had an explosive temper at school and regularly got into fights. He spent a lot of time on the streets, constantly drinking and using drugs. He sold drugs and guns, and committed assaults and robberies. (Wilson Tr. at 230.)

Ballard Moved To Norfolk And Stayed With The Stovers And With Tamika Taylor

117. In New Jersey, Ballard became very close to Tamika Taylor, her brother, Kamonte Stover, and their mother, Delvi Stover, who lived in the same neighborhood. He even lived with the family for a period of time. Later, when Ballard met Karen, who was Kamonte's girlfriend and eventually his wife, he developed a crush on her. After the tenth or eleventh grade, Ballard had dropped completely out of school. When Tamika Taylor, Delvi Stover, Kamonte and Karen moved to Norfolk, Ballard followed soon afterward. Ballard had no fixed place to

live of his own in Norfolk. At first he stayed with Kamonte and Karen Stover and later he often stayed with Tamika Taylor, who lived with her two young children in the same apartment complex as Michelle Bosko and her husband. (March 29, 2004 letter from Omar Ballard to Tom Wells; Omar Ballard Presentence Investigation Report; June 23, 2005 Tamika Taylor Declaration.)

Ballard Assaulted Other Young Women In The Area Before And After Killing Michelle Bosko

118. In a 24-day period in late June and early July, 1997, both before and after he murdered Michelle Bosko, Omar Ballard violently assaulted two other young women in a small area in and around the Bayshore Gardens Apartments. On June 24, 1997, Ballard attacked a young woman, Melissa Morse, with a baseball bat in a common area in the apartment complex. Ballard's assault on Ms. Morse was interrupted and he fled to Michelle Bosko's and Billy Bosko's apartment, who were both home at the time. Soon afterward, an angry crowd of Navy sailors and other residents of the apartment complex gathered outside the apartment demanding that Ballard come outside and shouting racial epithets. Billy Bosko stepped outside to try to defuse the situation, telling the vigilante crowd that they must be mistaken because Ballard could not have committed any assault. The crowd eventually left.

119. Ballard was later banned from the apartment complex by the apartment management. He continued to sleep at Tamika Taylor's apartment at night and would leave early in the morning because of the ban. Ballard was eventually charged with the assault, and the prosecutor assigned to the case from the Norfolk Commonwealth's Attorney's Office was D.J. Hansen, the same prosecutor who later became one of the lead prosecutors of the cases against the defendants charged in the Michelle Bosko murder case. On February 10, 1998, Ballard pled guilty to malicious wounding before Norfolk Circuit Court Judge William Rutherford. Judge

Rutherford sentenced Ballard to 5 years in the Virginia Department of Corrections and suspended all but 1 year in the Norfolk City Jail. (Commonwealth of Virginia v. Omar Ballard, CR-7004727; Matthew Dolan, "Love and Loss in a Navy Town," *The Virginian Pilot*, July 9, 2000 at A1.)

120. Being barred from the apartment complex did not stop Ballard from coming on the apartment complex grounds. Ballard had a habit of knocking on Michelle Bosko's apartment door at odd hours of the night and early morning looking for Tamika Taylor. Michelle would let Ballard into her apartment in the middle of the night sometimes and other times she told Ballard that Tamika was at her mother's apartment. Ballard would show up at Tamika's apartment late at night or early in the morning, saying that Michelle had just told him where he could find Tamika. (Wilson Tr. at 249-50, 255, 258.)

121. Two weeks after assaulting Melissa Morse, Omar Ballard raped and murdered Michelle Bosko by himself very late on the night of July 7 or very early in the morning on July 8, 1997. On that night, sometime after 11:30 p.m., Omar Ballard knocked on Michelle Bosko's apartment door. Ballard was alone and so was Michelle, because her husband was away on a week-long cruise on his Navy ship. Michelle let Ballard in her apartment. At some point, Michelle went into her bedroom. Ballard followed her into her bedroom and raped Michelle Bosko. During the attack, he choked her and she scratched him. He stabbed her in the chest multiple times with a knife that he had taken from her kitchen. He threw the knife he used to stab Michelle under a dresser near where Michelle lay. At some point after raping Michelle, Ballard wiped his penis with a blanket he found by her bed. Ballard then left the bedroom and found Michelle's purse. He dumped the contents of her purse on a small table in the living room/dining room area and stole \$35 in cash. Ballard then left the apartment. (March 4, 1999

and March 11, 1999 Statements of Omar Ballard to Detective R.G. Ford; September 11, 2006 Tice Habeas Tr. at 42-48.)

122. That very day – July 8, 1997 – Ballard was charged with malicious wounding with intent to maim, disfigure, disable or kill for violently assaulting Melissa Morse and a warrant was issued for his arrest. That warrant was not served upon Ballard until eighteen days later.

123. Ten days after murdering Michelle Bosko, on July 18, 1997, Ballard attacked Virginia Owens, a fourteen-year-old girl, about a mile away from the Bayshore Gardens Apartments. Ballard accosted Owens as she was walking near a McDonalds by a shopping plaza, threatened that he had a gun, and attempted to rob her. Ballard pulled Owens into a secluded area, ripped off her shorts and panties, and raped her, threatening that he would shoot her with a gun he claimed to possess. Owens fought back and escaped after the rape, and passersby gave her assistance. During the rape and assault, Ballard punched Owens in the face, breaking her nose, and caused tears to her vagina that required surgery to repair. About a week later, on July 25, 1997, Owens and her sister spotted Ballard in the vicinity of the rape and called the police, who arrived and arrested Ballard. Ballard readily confessed. He briefly claimed that he had consensual intercourse with Owens and then beat her afterward, but he very quickly admitted that he had actually raped her. (Ballard similarly initially claimed he had consensual intercourse with Michelle Bosko, but later admitted he raped her too).

124. Ballard's rape of Owens was reported on the front page of the local section of *The Virginian Pilot*, the local newspaper, and included a color photograph of Ballard. Ballard was charged with rape, abduction with intent to defile, malicious wounding, robbery, and use of a firearm in the commission of a felony. On January 15, 1998, Ballard pled guilty to rape,

abduction with intent to defile, and malicious wounding before Norfolk Circuit Court Judge Charles Poston. On March 23, 1998, Judge Poston sentenced Ballard to 100 years, suspending 59 years and requiring Ballard to serve 41 years in the Virginia Department of Corrections. (Steve Stone, "Rape Victim Spots Suspect on Street," *The Virginian Pilot*, July 27, 1997 at B1; Commonwealth of Virginia v. Omar Ballard, CR-970046664727; July 25, 1997 Statement of Omar Ballard to Detectives G.T. Davies and J.G. Ingram; Matthew Dolan, "New Evidence Links Suspect to Murder of Navy Wife," *The Virginian Pilot*, April 20, 1999 at B1.

G. Ballard Raped and Murdered Michelle Bosko by Himself

125. The evidence that Omar Ballard raped and murdered Michelle Bosko by himself is overwhelming. Michelle Bosko was last seen alive by Tamika Taylor at about 11:30 p.m. on Monday, July 7, 1997. That night, Ballard told Karen Stover he was going to the Bayshore Gardens apartment complex. Billy Bosko found Michelle's body the next day, Tuesday, July 8, 1997, at about 4 p.m. when he arrived home after a week long cruise. That day, Ballard told Karen Stover he had stopped by the Boskos' apartment the night before. Within 24 hours of discovering Ms. Bosko's body, the police had concluded that she had been raped and murdered by a lone assailant. The police, and very soon afterward, the prosecutors assigned to the Bosko murder continued to believe that this was a single assailant crime for the next five months. This initial belief was warranted and was correct because all of the physical and forensic evidence pointed to a single offender, as did commonly accepted police methods for analyzing violent crimes and crime scenes.

126. Early on in the investigation, Tamika Taylor repeatedly told the prosecutors and/or Norfolk Police that they should look at Omar Ballard as a possible suspect in the case. Unfortunately, everyone apparently ignored or dismissed Tamika Taylor's tip. Had the police

quickly focused on Omar Ballard based on the obvious signs that he was a prime suspect, and based on his assault of Melissa Morse two weeks earlier, they might have even prevented Ballard's rape of Virginia Owens. Coincidentally, Danial Williams and his wife, Nicole, told Danial's lawyers that there had been other assaults in the area with a similar modus operandi and that the assailant might be the true perpetrator of the Bosko murder. Danial's lawyers, in turn, told prosecutors and the judge in open court about these assaults early in October 1997 early on in the case in support of a defense request for investigative funds, but the Commonwealth belittled this as an outlandish defense. Had the Commonwealth taken this information seriously, they might have prevented the prosecution from careening wildly off-track and from depriving four innocent men of their liberty and impugning the reputations of three others. (Taylor Declaration; Danial Williams October 27, 1997 Motions Hearing at 2-5.)

DNA Analysis Pointed To Only One Perpetrator: Omar Ballard

127. DNA evidence demonstrates beyond any doubt that a lone male assailant, Omar Ballard, had raped and murdered Michelle Bosko. One and only one man's DNA profile, Omar Ballard's, was on the vaginal swabs, the blanket stain, and the fingernail clippings. Omar Ballard admitted he had ejaculated inside Michelle during the rape, and his semen was later identified in 1999 through DNA testing on the vaginal swabs taken at her autopsy. Omar Ballard wiped his penis with a blanket that he found near Michelle Bosko's body after he raped her, and his semen was identified through DNA testing on the samples taken from the blanket that Ballard left next to her body in the bedroom of her apartment. Michelle Bosko scratched her assailant during the rape, and Ballard's DNA was found on fingernail clippings taken from Michelle Bosko's left hand during the autopsy. The male DNA profile from the semen on the blanket stain was 21 billion times more likely to have come from Omar Ballard than any other unknown Caucasian

person and 4.6 billion times more likely to have originated from Omar Ballard than any unknown individual in the Black population. The male DNA profile found on the vaginal swabs was 23 million times more likely to have come from Omar Ballard than any unknown person in the Caucasian population and 20 million times more likely to have come from Omar Ballard than any unknown Black person. (May 6, 1999 Virginia Division of Forensic Science ("DFS") Report.)

DNA Analysis Excluded The Other Seven Men

128. DNA testing performed on samples from the seven former sailors accused of this crime, Danial Williams, Joseph Dick, Eric Wilson, Derek Tice, Richard Pauley, Geoffrey Farris, and John Danser, did not match any DNA sample found at the crime scene or during the autopsy, and each man was excluded with certainty as a possible contributor to the crime scene and autopsy DNA samples. Todd Bille, an expert in DNA analysis, concluded that it is extremely unlikely that DNA from the seven innocent sailors accused of this crime would be absent from the crime scene and autopsy samples if the four sailors' confessions that the sailors raped Michelle Bosko were true. (February 18, 1999 DFS Report; Todd Bille Affidavit).

Autopsy Evidence Reflected A Single Offender

129. The autopsy performed on Michelle Bosko demonstrated that this was a single offender crime. Omar Ballard stabbed Michelle Bosko multiple times in a small area on her chest. Three of the stab wounds were deep, penetrating wounds, each five inches deep, each penetrating her chest with the same angle and direction, and each wound parallel to the others. There were a number of other small pinprick or very shallow wounds on her chest, and all of the stab wounds were concentrated in a small, 2" x 2.75" area. Michelle Bosko was also strangled, and the pattern of the marks on her neck were consistent with her being choked by one hand. She also

had small abrasions on her neck which were consistent with the stitching found on her t-shirt. Michelle Bosko had no bruises or other injuries on her arms, wrists, legs, or ankles. (May 15, 1998 Report of Autopsy Of Michelle Bosko by Dr. Elizabeth Kinnison.)

130. Dr. Elizabeth Kinnison, a forensic pathologist from the Office of the Chief Medical Examiner in Virginia who performed the autopsy, testified at a later trial that her autopsy results were consistent with the prevailing police theory (of which she was aware) at the time of the autopsy, that Michelle Bosko had been raped and murdered by a single assailant. Dr. Kinnison further testified that had she found evidence during the autopsy suggesting that Michelle Bosko's injuries were caused by more than one person, she would have informed the police. But Dr. Kinnison never told the police that the autopsy suggested more than one perpetrator was involved. (Tice II Tr. at 45-47.)

131. Dr. Werner Spitz – one of the nation's leading forensic pathologists, the author of the leading treatise on forensic pathology, and an expert who had performed over 60,000 autopsies in his career – thoroughly examined the autopsy report, autopsy photographs, and voluminous other documents and materials about the case. Dr. Spitz concluded that given the clustering, depth, and consistent direction of the stab wounds, it is extraordinarily unlikely that more than one person produced them and even less likely that several people inflicted them. Dr. Spitz also concluded that the genital and neck injuries were consistent with a single rapist and murderer. (November 8, 2005 Declaration of Dr. Werner U. Spitz.)

Evidence From The Entire Crime Scene Was Inconsistent With The Prosecution Theory

132. Two nationally and internationally renowned experts in the well-recognized field of violent crime scene analysis and reconstruction examined all of the physical, forensic, autopsy, and other evidence in this case. Larry McCann, a twenty-six year veteran of the Virginia State

Police, and Gregg McCrary, a twenty-five year veteran of the FBI, both concluded that the crime scene evidence was consistent only with a single offender. They concluded that the condition of the crime scene was highly consistent with a lone assailant. And the crime scene condition strongly indicated that Michelle Bosko knew her assailant and willingly let him into the apartment, because there was no sign of forced entry on any door or window, nor was there any sign of struggle just inside the entrance. The apartment was described by investigators as being in pristine condition, a neat and orderly but tiny apartment with little evidence that any violent struggle had occurred. An end table near the front door, which the door would have struck if forced or shoved open, had a lamp and other items sitting on it that were not knocked over or disturbed. The hallway across the apartment from the front entrance and leading to the bedroom where Michelle Bosko's body was found was extremely narrow, measuring only 32" wide. A chair that had been pulled out from the tiny dining room table partially blocked the entrance to the hallway. Papers and envelopes resting on a shelf along the hallway protruded into the hallway, further narrowing the passageway. These papers and envelopes were not disturbed in any way, nor were picture frames on the walls of the hallway. (November 3, 2005 Crime Scene Analysis and Reconstruction Report by Larry E. McCann; Declaration of Gregg O. McCrary.)

133. Michelle Bosko was found dead on the floor of the single bedroom at the back of the apartment. The bedroom was 10' x 15' in size, but with the furniture in it, the available open space in the middle of the bedroom was a small 7' x 7' area. Michelle Bosko's body lay in this area next to a delicately balanced mirror that was not disturbed. On the floor around her body were fine droplets of blood and a large pool of blood. This blood was not smeared or disturbed in any way; instead, the spray of blood droplets and the blood pool were unbroken. Perfume bottles, knickknacks, and other items sitting on a nightstand and dresser near the body were not

knocked over or disturbed in any way. Latent fingerprints and footprints found on the highly polished wood floor belonged only to Michelle and Billy Bosko. (*Id.*)

134. McCann and McCrary further concluded that the condition of the crime scene was not consistent with the prosecutions' strained theory, concocted nearly two years after the crime, that as many as eight men burst into the apartment, carried a struggling victim into the back bedroom, and took turns raping her while some of the assailants held her down on the floor by her arms and legs. Nor was the crime scene consistent with eight men taking turns stabbing the victim while kneeling or crouching around her body, as the Commonwealth theorized. Had this bizarre scenario actually occurred, the blood around Michelle Bosko's body, that she exhaled almost immediately after her lungs were penetrated by the knife, would have been smeared by one of the crowd around her. Yet the tiny blood droplets and large blood pool found around her body were not smeared in any way. (*Id.*)

135. McCann and McCrary also stated that they would have expected young men involved in a gang rape, which is a crime characterized ordinarily by frenzied violence, to cause significant injuries to the victim from severe beating or to cause restraint wounds, such as bruises or abrasions, from being tightly held down. No such injuries existed. In addition, they stated that a multiple offender assault committed in the middle of the summer would have been likely to leave latent fingerprints from the agitated sweating men crouching on the floor around the victim's body. Yet only Michelle Bosko and her husband's fingerprints and footprints were found on the floor. However, a single offender, like Omar Ballard, positioned over the victim's body with a knife in one hand and holding the victim's neck with the other hand is consistent in their opinion with the absence of latent fingerprints from the offender on the floor, the absence of

restraint injuries on the victim's limbs, and the DNA from the assailant found under the fingernails of the victim. (*Id.*)

Ballard's Confession Was Consistent With Acting Alone and Consistent With the Crime Scene Evidence

136. Omar Ballard's confession to the police is also powerful evidence that he committed the crime alone. The numerous details in his confession were completely consistent with the physical and scientific evidence at the crime scene, the autopsy evidence, and the DNA evidence. On March 4, 1999, the police questioned Ballard, who at the time was in the Virginia Department of Corrections. During this interview, Ballard waived his Miranda rights and the police confronted Ballard with the fact that his DNA matched the DNA of the rapist who murdered Michelle Bosko. In stark contrast to the coerced false confessions of the earlier suspects, within 20 minutes of waiving his Miranda rights, during tape-recorded questioning that was neither hostile, aggressive, nor suggestive, Ballard admitted that he had murdered Michelle Bosko in her bedroom and had committed the crime by himself. (March 4, 1999 and March 11, 1999 Statements of Omar Ballard to Detective R.G. Ford; Testimony of Omar Ballard, September 11, 2006 Tice Habeas Tr. at 42-48.)

137. Unlike Williams, Dick, Wilson, and Tice, Ballard accurately described details of the crime that only the real killer knew:

- Ballard told the police that he used a brown-handled knife with a serrated blade to stab Michelle Bosko, which exactly matched the bloody knife found near her body.
- Ballard told the police that he took the knife from the victim's kitchen, and Billy Bosko confirmed that the knife found by Michelle's body matched the knives from their kitchen.
- Ballard told the police that he had stolen \$35 from Michelle Bosko's purse, which he found in the dining room/living room area, and Michelle's purse and its dumped out contents were on the dining room table.

- Ballard correctly told the police that Michelle Bosko had willingly let him into her apartment, because she knew him through Tamika Taylor.
- Ballard told the police that he had been in her apartment a number of times before. Ballard also correctly described stabbing the victim three or four times and leaving the knife behind in the apartment.
- Ballard accurately described raping Michelle Bosko vaginally (but not anally or orally).
- Ballard correctly told the police that he never hit Michelle, which is consistent with the lack of injuries to her face or body.
- Ballard told the police that he committed the crime between 2 and 3 a.m., which was consistent with Tamika Taylor's statement that she last saw Michelle Bosko alive at about 11:30 p.m. on the night before her body was discovered by her husband.
- Ballard also admitted to the police during a subsequent interview a week later on March 11, 1999 that he raped and choked Michelle Bosko and that she did not struggle or fight much during the assault.

(March 4, 1999 and March 11, 1999 Ballard Statements.)

138. Dr. Richard Ofshe, a sociologist who is one of the nation's leading experts on coercive interrogation techniques and the phenomena of false confessions, and Dr. Richard Leo, a psychologist who is also one of the nation's leading experts on interrogations and false confessions, carefully examined the confessions from all of the suspects in this case. In their opinion, the confessions of Omar Ballard, unlike all the others, were not the product of coercive interrogation techniques, were entirely consistent with the physical and scientific evidence, and accurately revealed details only the true killer could know. Ballard confessed readily, and the police used none of their high pressure interrogation tactics to produce Ballard's statements.

(Declaration of Dr. Richard J. Ofshe; Testimony of Omar Ballard, September 11, 2006 Tice Habeas Tr. at 42-48.)

139. In contrast, Ofshe and Leo concluded that the confessions from the four innocent sailors were produced because Ford used risky and coercive interrogation methods. Ford lied to

the former sailors about fabricated evidence of their guilt. He interrogated some of them for hours and hours. He repeatedly and forcefully rejected all of the sailors' protestations of innocence. Ford told some of them that their alibis did not check out, when no one had comprehensively investigated these alibis, which in fact were corroborated. He improperly used polygraph tests, not to discover the truth, but as a tool to undermine the former sailors resistance. And he threatened some of the sailors with the death penalty. Ofshe and Leo concluded that the confessions of Danial Williams, Joseph Dick, Eric Wilson, and Derek Tice bear all of the hallmarks of false confessions. The details in these confessions conflict with the physical and crime scene evidence. The confessions are internally inconsistent and clash with each other. The confessions were tainted by police prompting, and changed dramatically over time. In short, the confessions are completely uncorroborated by all of the other evidence, and Ofshe and Leo both agreed that they are false confessions. (Declaration of Dr. Richard J. Ofshe; Testimony of Omar Ballard, September 11, 2006 Tice Habeas Tr. at 42-48.)

140. Both Ofshe and Leo agree that Omar Ballard's confession is the only true and reliable confession and the sailors' confessions are all false confessions that were the product of police pressure. Omar Ballard has pled guilty to raping and murdering Michelle Bosko. Ballard subsequently testified under oath that he committed this crime by himself and never wavered on that claim during cross examination by the Commonwealth's lawyer. (Declaration of Dr. Richard J. Ofshe; Testimony of Omar Ballard, September 11, 2006 Tice Habeas Tr. at 42-48.)

H. Detective Glenn Ford Had A History Of Extracting False Confessions

141. Detective Ford, who at the time had been a police officer for eighteen years and a homicide detective for ten years, was an aggressive, overly forceful, hard-charging detective who had a reputation for closing homicide cases by obtaining confessions. Ford had jeopardized his

career seven years before the Michelle Bosko investigation when he was demoted from the homicide squad after he obtained three false confessions in a previous case. During a 1990 investigation of an armed robbery and murder known as the Lafayette Grill case, Ford extracted confessions from three teenagers who he then wrongly charged with a murder they did not commit.

142. Using aggressive tactics that one of the teenagers' attorneys described as psychological coercion, Ford and his partners obtained false confessions from the three teenagers. Another attorney for one of the teenagers described how Ford and his partners "scared the teenager to death," wore him down, and made improper promises which led to the fatigued teenager's confession. Very quickly, the cases against the teenagers fell apart and the charges were dropped. Ford later admitted under oath at a hearing in Derek Tice's case that the confessions he extracted from the three teenagers in 1990 were false.

143. Shortly after dropping the charges against the three teenagers, the Norfolk Police Department transferred Ford and his partners to uniform duty. A Police Department spokesman said the three detectives were transferred "for credibility's sake" because their effectiveness in future cases could be questioned by defense attorneys as a result of the false confessions they extracted. The Norfolk Commonwealth Attorney informed the Norfolk Police in meetings before the detectives' transfers that the reliability of future statements taken by Ford and the other detectives could be challenged because of the false confessions they extracted in the Lafayette Grill case. (Joe Jackson and Thomas Huang, "Police Transfers Followed Teens' False Confessions," *The Virginian Pilot*, December 16, 1990 at p. B1.

144. Ford also has a history of other misconduct that undermines his credibility. After Ford worked his way back onto the homicide squad following his demotion, he investigated a

1994 robbery and murder for which prosecutors charged a young man named Clusbie Eaddy. Eaddy told Ford during his interrogation that although he was present and witnessed the robbery and shooting, he did not know that his companion was planning to rob or kill the victim. But Eaddy admitted that he had helped the murderer cover up his involvement in the crime after the fact. Ford interrogated Eaddy a second time two days later and obtained a different, more inculpatory confession in which Ford got Eaddy to admit that he knew about the robbery plan in advance.

145. It turned out Ford's entire interrogation process, and the related discovery production, was highly questionable: Eaddy's investigator discovered that Ford had used two tape-recorders, one that recorded the entire confession and a second one that Ford stopped and started and used to manipulate Eaddy's responses. The defense had been provided in discovery only a transcript of the manipulated, second recording, but the defense investigator was able to obtain a complete transcript of the first recording. During a bench trial, Eaddy's attorney confronted Ford with the fact that he had used the two tape recorders, had manipulated the second one, and had produced a misleading transcript. The trial court acquitted Eaddy of felony murder and robbery, counts that would have been certain convictions if the judge were to have credited Eaddy's second confession and found believable Ford's explanations for why the two tape recordings differed. Instead, the judge only convicted Eaddy of accessory after the fact, a charge that Eaddy had essentially admitted to in his first, truthful statement. (Commonwealth v. Clusbie Eaddy, Case No. 94-0005707; March 22, 1994 Statement of Clusbie Eaddy to Detective R.G. Ford.)

I. Alibi evidence

146. As recapitulated below, the Commonwealth's theory that the seven innocent sailors were involved in the attack on Michelle Bosko was fatally flawed and wrong in part because four of the seven sailors charged with the murder and rape of Michelle Bosko had corroborated alibis proving that they could not have committed the crime. Michelle Bosko was murdered between 11:30 p.m. on Monday, July 7, 1997, when she was last seen alive by her friend Tamika Taylor, and 4 p.m. on Tuesday, July 8, 1997, when she was found by her husband. Omar Ballard confessed to murdering Michelle Bosko sometime around 2:30 or 3:00 a.m. on July 8th.

147. Danial was asleep with his ailing new wife, Nicole Williams, in their apartment from 10 p.m. on Monday, July 7, 1997 until 9 a.m. on Tuesday, July 8, 1997. Danial told this to the police when they questioned him the next evening. The Norfolk Police confirmed Danial's alibi with his wife when they interviewed Nicole Williams on July 8, 1997, before she was aware that her husband was a suspect in the murder. But the police chose not to believe Danial or his wife. (Danial Williams Affidavit; July 8, 1997 Statement of Nicole Williams to Detective Maureen Evans.)

148. Joe Dick was on board his ship, the USS Saipan, on the night of July 7, 1997, when Michelle Bosko was murdered. Joe told Ford and other detectives that he was on duty on the night of the murder. Danial Williams also told the police that Joe was on duty that night. Dick had been ordered by his supervisor, then Petty Officer Michael Ziegler, to sleep on board the Saipan for at least a week in the beginning of July 1997 because Joe required close supervision of his work. In addition, Joe Dick was assigned to a regular 24-hour duty assignment on the USS Saipan beginning on the morning of July 7, 1997, and was not permitted

to leave the ship without permission during that period. In the fall of 1997, Petty Officer Ziegler confirmed through duty assignment schedules that Dick's 24-hour shift was on duty aboard the Saipan on July 7, 1997. Michael Ziegler is positive today, as he was at the time that Joe Dick was arrested, that Joe was on board the Saipan on the night of July 7, 1997, and could not have participated in Michelle Bosko's murder and rape. When Joe Dick was arrested, Ziegler reported his concerns that Dick had an alibi up the chain of command in the Navy. Ziegler was told by his command that he likely would be contacted by the authorities or by a defense attorney and he could wait to share his concerns at that time. Unfortunately, no one contacted Ziegler until Joe Dick's pro bono defense counsel located him in 2005 in Nevada, where he was stationed in the Navy. (Joseph Dick Affidavit; Ziegler Affidavit; Ziegler Testimony, Tice Habeas Tr. at 102-122, Tice Habeas Tr"; Booth Declaration.)

149. Richard Pauley was at his parents' home, where he lived, on the night of July 7, 1997, when Michelle Bosko was murdered. Telephone and internet service provider records prove that Richard Pauley was at home, where he lived with his parents, on the night of July 7, 1997 until the morning of July 8, 1997, speaking by telephone and communicating online with his girlfriend, who lived in Australia. Pauley's parents testified under oath at Derek Tice's second trial that their son was home during the evening of July 7, 1997, and never left their home until the next morning. (Excel Telecommunications, Inc. records for July 7, 1997 for Richard Pauley; Testimony of Judy Pauley, Tice II Tr. at 83-98; Testimony of Richard D. Pauley, Sr., Tice II Tr. at 98-108.)

150. John Danser was in Warminster, Pennsylvania on July 7, 1997 and July 8, 1997, at the time that Michelle Bosko was murdered. Warminster is 295 miles from Norfolk, Virginia. This distance is too far to travel by car, bus, rail or plane (given flight schedules at that time) in

less than ten hours roundtrip. Work records and witness statements showed Danser worked in Warminster until 6:30 p.m. on July 7, 1997 and returned to work at 7:30 a.m. on July 8, 1997 in Warminster. Bank records showed Danser withdrew money at 8:42 p.m. on July 7, 1997 near Warminster, Pennsylvania. (Testimony of John H. Danser, Tice II Tr. at 47-78; Lindsey Mechanical Services, Inc. records dated July 7 and July 8, 1997 for John Danser; Commonwealth Federal Savings Bank records dated July 7, 1997 for the account of John Danser.)

151. Eric Wilson, Derek Tice, and Geoffrey Farris were not charged until nine, eleven, and eleven months after the crime, respectively. Given the time that had passed since the crime before they were charged, it is understandable that they could not corroborate their whereabouts on the night of Michelle Bosko's murder, even though they were not involved in the crime.

J. Evidence No Jury Ever Heard

The juries in the Eric Wilson and Derek Tice trials did not hear much of the significant evidence demonstrating that the prosecutions of Wilson and Tice were flawed. The jurors received only a skewed, limited picture of the full panoply of compelling evidence demonstrating that all seven sailors accused of the Bosko murder were actually innocent. There are many reasons why the jurors did not hear all of the exculpatory evidence. The Commonwealth engaged in a persistent pattern of withholding exculpatory evidence from the defense. In addition, some of the defense attorneys representing the sailors failed to investigate the case and failed to discover or preserve exculpatory evidence. And the trial court excluded some highly relevant evidence that supported the defense case of innocence.

The highly exculpatory evidence that the Wilson and Tice juries did not hear included:

- *Truthful Testimony From Joe Dick.* None of the juries heard Joe Dick testify truthfully that he was not involved in any way in the rape and murder of Michelle Bosko, that he had no knowledge about the crime at all, and that his previous claims that the other former sailors were involved was false. Joe was prepared to testify to

the truth before Derek Tice's second trial, but last minute pressure by Ford and Hansen led Joe to again claim that he and the others were involved. However, Joe adamantly insists that he is innocent, and on November 29, 2005, Joe Dick signed an affidavit in which he swore that he did not participate in the crime, and that he had only claimed to have done so and testified against the other innocent sailors at their preliminary hearings and trials because of pressure from the police, prosecutors, and his own attorney to do so and because of his fear of the death penalty.

- *Complete Comparison Of the Conflicting, Inconsistent False Confessions.* None of the juries heard all of the confessions extracted by the police from Danial, Joe, Eric, and Derek. The juries were never given the opportunity to compare the confessions with each other. For this reason, the juries were not aware of all of the glaring inconsistencies and the erroneous claims included in the multiple confessions that were contradicted by the physical and crime scene evidence that, when considered together rather than in isolation, was powerful evidence of the sailors' collective innocence rather than their guilt.
- *Detective Ford's History.* None of the juries were aware that Detective Ford had a history of obtaining false confessions through high pressure interrogations, nor were they aware of Ford's manipulation of suspects' statements in other cases and his propensity to hide exculpatory evidence from the defense.
- *Omar Ballard's Crime Spree.* None of the juries ever heard about Omar Ballard's crime spree in which he attacked young white women in the immediate vicinity around Michelle Bosko's apartment within the weeks before and after his murder of Ms. Bosko. The juries never heard sworn testimony from Ballard that he committed these crimes by himself and that the other sailors and former sailors were not involved in any way.
- *Alibi Evidence.* None of the juries ever heard the full array of evidence that demonstrated that Danial Williams, Joseph Dick, Rick Pauley, and John Danser all had corroborated alibis.
 - The juries did not hear testimony from Nicole and Danial Williams that they were home in bed together all night on July 7, 1997, and that Danial never left the apartment.
 - The juries did not hear that Joe, the linchpin of the Commonwealth's case, had an alibi. Specifically, they never heard the testimony of Senior Chief Petty Officer Michael Ziegler, Joe Dick's immediate supervisor at the time of the crime, that Ziegler confirmed in the fall of 1997 that Joe Dick was on duty on the USS Saipan on the night of July 7, 1997, into the morning of July 8, 1998. They did not hear Senior Chief Ziegler's testimony that the sole access on and off of the Saipan was guarded by sailors and a non-commissioned officer, and that a sailor, like Joe Dick, assigned to duty on the ship could not leave without a compelling reason and whose failure to return would be promptly noticed and reported. The

jury did not hear that sailors on duty were required to muster for a visual head-count about four times throughout their 24-hour shift and that Joe's absence would have led to an AWOL report, investigation, and charges, but that no such report occurred. The juries did not hear Senior Chief Ziegler's testimony that he is absolutely convinced that Joe was on the Saipan on the night that Michelle Bosko was murdered and could not have participated in the crime.

- The Wilson jury did not hear testimony and see internet and telephone records showing that Rick Pauley was home with his parents at the time Michelle Bosko was killed.
- Nor did the Wilson jury hear from witnesses and see work and bank records showing that John Danser was in Pennsylvania at the time of the rape and murder.
- *Expert Analysis Of Autopsy Indicating A Single Offender.* The juries did not hear the expert testimony of Werner Spitz – one of the nation's leading forensic pathologists, the author of the leading treatise on forensic pathology, and an expert who had performed over 60,000 autopsies in his career – that given the clustering, depth, and consistent direction of the stab wounds, it is extraordinarily unlikely that more than one person produced them and even less likely that several people inflicted them. Instead, the jurors only heard the testimony of the Commonwealth's pathologist who performed the autopsy that the autopsy results were consistent either with a single offender or multiple offenders.
- *Expert Analysis Of Crime Scene Indicating a Single Offender.* The juries did not hear Larry McCann, a twenty-six year veteran of the Virginia State Police, and Gregg McCrary, a twenty-five year veteran of the FBI, national experts in crime scene reconstruction, who could have testified about all of the factors that persuasively demonstrated that the police were initially correct when they concluded that this was a single offender crime. Nor did they hear McCann and McCrary's testimony that would have explained the host of reasons why the Commonwealth's multiple offender theory was implausible, if not altogether impossible.
- *Expert DNA Analysis Indicating A Single Offender.* The juries did not hear the testimony of Todd Bille, a DNA expert from the Bode Lab, the DNA lab relied upon by the Commonwealth to conduct the DNA testing in the nation's most ambitious and comprehensive testing of old forensic evidence. They did not hear Todd Bille's conclusion that “the absence of any DNA evidence connecting Danial, Joe Dick, Derek Tice, or Eric Wilson to the crime scene makes it overwhelmingly likely that these four men did not participate in the rape and murder of Ms. Bosko.”
- *Expert Testimony On False Confessions.* The juries did not hear the testimony of false confession experts like Richard Ofshe and Richard Leo who could testify about the high risk, high pressure interrogation tactics that the police used in this case and the myriad factors that raised compelling doubts about the reliability of the sailors' confessions.

- *Ballard's Testimony Implicating Only Himself And Clearing The Others.* Finally, the juries did not hear the truthful testimony from Omar Ballard that he raped and murdered Michelle Bosko by himself. The juries did not hear Ballard swear under oath that Danial Williams, Joe Dick, Eric Wilson, Derek Tice, Richard Pauley, Geoffrey Farris, and John Danser are innocent men who were not present when he attacked Michelle Bosko and played no role in her rape and murder.

**V. Governor Kaine's Conditional Pardons of
Danial Williams, Joseph Dick, and Derek Tice:**

Eight years after Michelle Bosko's murder, Danial, Joe, and Derek jointly filed a Petition for an Absolute Pardon based on Innocence with Virginia Governor Mark Warner seeking clemency for their convictions for the murder and rape of Michelle Bosko because they are innocent of the crime. Eric had separately filed a clemency petition seeking the same relief. When Governor Warner left office, their clemency petitions passed to Governor Tim Kaine.

On August 6, 2009, after an exhaustive review that lasted over three years, Governor Kaine granted Danial, Joe, and Derek conditional pardons, explaining that the petitioners had established "very grave doubts" about their guilt. Governor Kaine noted in his official pardon statement:

that the Petitioners have raised serious doubts about their complicity in the rape and murder of Michelle Bosko. The circumstances of the crime and the physical appearance of the scene initially convinced the police that there had just been one perpetrator. None of the Petitioners had any criminal background prior to this event and each was serving honorably in the United States Navy at the time the crime was committed. There is a complete lack of any DNA or other physical evidence tying these individuals to the crime scene. The Petitioners' confessions vary in important ways from the actual facts are inconsistent with one another's statements in numerous particulars, including who was involved in the crime. None of the confessions originally even mentioned Ballard, the one person who has been conclusively proven to have been a participant, and a number of the confessions implicate people who have conclusively proven they were not present. The confessions of the Petitioners were each obtained after they were told that they had flunked lie detector tests – the actual record of those tests suggests that this assertion was an interrogation tactic and that the tests were not conducted in a manner that would assure accuracy. Finally, clear DNA evidence establishing that Omar Ballard – an individual with a record of violent assaults against women – was a perpetrator of this crime, coupled with his accurate confession obtained

nearly two years after the crime was committed, demonstrate that the judicial system has caught and convicted the person most responsible for the offense. That Ballard confessed to committing the crime alone, and that he only changed his story to implicate the Petitioners one year later on the verge of a plea bargain that allowed him to avoid the death possible capital murder charges, raises additional questions.

However, despite declaring that Danial, Joe, Eric, and Derek had demonstrated "very grave doubts" about their guilt and their convictions, Governor Kaine denied their petitions for an absolute pardon, stating that they had not "conclusively established their innocence" and had not "conclusively demonstrated that there is no possibility that they were involved in this crime." Governor Kaine's comments made clear that in order to grant an absolute pardon, he required proof beyond any doubt of the former sailors' innocence, a standard not required by any court of law in any proceeding.

VI. Derek Tice's Grant of Habeas Corpus Relief:

In addition to seeking executive clemency, Derek also filed a petition for habeas corpus relief first in the Virginia state courts. The Circuit Court for Norfolk found that Derek's constitutional rights were violated when the police failed to honor his invocation of his right to remain silent during the interrogation. The Virginia Supreme Court later reversed that decision, but when the case moved to federal litigation, this Court granted Derek Tice habeas relief, finding that the Virginia Supreme Court's decision was objectively unreasonable. United States District Judge Richard L. Williams granted Derek Tice's petition for a writ of habeas corpus, noting that the case against Derek was "awash in doubt." Judge Williams wrote in the conclusion to his opinion:

There was no physical evidence linking Tice to the crimes or suggesting that Tice acted in concert with the individuals who had committed the crimes. Indeed the physical evidence tended to refute the theory that the rape and murder had been committed by multiple individuals. Although the prosecution alleged that eight men had crowded into the bedroom to rape Michelle, and then took turns stabbing

her, there was remarkably little sign of such violent activity by so many men in such a confined space. Furthermore, the wounds to Michelle did not indicate that she had been the victim of serial stabbing by seven or eight different individuals. Additionally, while multiple DNA deposits were found at the crime scene, they were traced only to one individual, Omar Ballard.

In the absence of Tice's confession, his conviction would have hinged on Dick's credibility. Considering the variety of accounts Dick had provided and the lack of any significant corroboration of his testimony that Tice had participated in the crime, a reasonable juror would have grave doubts as to Dick's veracity regarding Tice's participation in the crime. Any confidence in Dick's testimony that Tice participated in the crimes would be further shaken by the defense evidence that indicated that Dick had falsely implicated Danser and Pauley in the commission of the crimes. The Supreme Court of Virginia's conclusion that there was no reasonable probability of a different result if Tice's confession had been excluded is objectively unreasonable. Tice's petition for a writ of habeas corpus will be GRANTED with respect to Claim One. (Citations omitted).

VII. Grounds for Relief

1. Danial Williams has been convicted and sentenced in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Danial Williams is actually innocent of all the crimes for which he has been convicted and he played no role whatsoever in the rape and murder of Michelle Bosko.

2. Danial Williams has been convicted and sentenced in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution because his trial and appellate counsels' errors and omissions denied him his right to effective assistance of counsel under the Sixth and Fourteenth Amendments. Danial Williams' lawyers failed to make reasonable and necessary efforts to investigate the Commonwealth's evidence against him and to investigate and preserve evidence in support of defenses to the Commonwealth's charges. His attorneys failed to properly prepare for and present evidence in support of his motion to suppress the inculpatory statement he gave to the police. His attorneys failed to develop defenses to the charges that were available to him and to properly prepare for trial. His attorneys failed to prepare Danial

Williams to testify at the hearing on his motion to withdraw his guilty plea and failed to call him as a witness at the hearing to testify that he was actually innocent of the charges. His appellate attorney failed to present reasonable arguments on appeal to demonstrate that it was an abuse of discretion and error for the trial court not to permit Danial Williams to withdraw his guilty plea and to press the numerous constitutional violations in the state proceedings. These errors and omission, individually and collectively, resulted in representation that fell below that required by constitutional standards and resulted in actual prejudice to Danial Williams.

3. Danial Williams has been convicted and sentenced in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution because his guilty plea was involuntary under the Fifth, Sixth and Fourteenth Amendments. His guilty plea was involuntary because (1) his attorneys failed to investigate and preserve evidence, develop available defenses to the Commonwealth's charges, and take other reasonable and necessary efforts to prepare for trial despite Danial Williams' consistent and repeated claims that he was innocent of the charges; (2) his attorneys placed enormous pressure on him to plead guilty; and (3) without the possibility of challenging the Commonwealth's evidence against him because of his attorneys' inadequate preparation, Danial Williams believed that he had no choice but to accept a guilty plea to avoid the death penalty, even though he wanted to contest the Commonwealth's charges.

4. Danial Williams had been convicted and sentenced in violation of the Sixth and Fourteenth Amendments to the United States Constitution because the Commonwealth engaged in a pattern of misconduct that violated his rights to due process. Specifically, the Commonwealth suppressed material, exculpatory, and favorable evidence that should have been disclosed to the defense. The Commonwealth and/or its agents made misrepresentations and, in at least one instance, made false representations about the existence of material and exculpatory

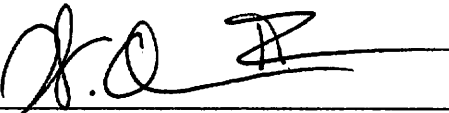
evidence. Finally, the Commonwealth acted in bad faith and violated the Virginia Code of Professional Responsibility in opposing Danial Williams' motion to withdraw his guilty plea when it had just two months before sought to void that very plea agreement, then quickly reversed course without explanation on the very day it *ex parte* received evidence inculpatng Ballard and exculpating Williams. The Commonwealth's misconduct in this prosecution, individually and collectively, caused prejudice to Danial Williams and violated his rights to due process.

VIII. Prayer for Relief

Wherefore, Danial Williams prays that this Court:

1. Order a hearing at which proof may be offered concerning the allegations in his petition, including the testimony of experts, and permit full discovery in advance of that hearing so that evidence in addition to the substantial and compelling evidence Danial Williams has already collected in support of his claims shall be produced by the Commonwealth;
2. Order that Danial Williams' conviction for the murder and rape of Michelle Bosko is null and void;
3. Grant this Petition for a Writ of Habeas Corpus ordering Danial Williams' immediate release from the parole conditions under which he currently lives;
4. Order that the Commonwealth of Virginia shall immediately expunge any and all records relating to Danial Williams' conviction;
5. Order that the Commonwealth of Virginia is forever barred from arresting and/or retrying Danial Williams for any crime stemming from the murder and rape of Michelle Moore-Bosko; and
6. Grant such other relief as may be necessary and appropriate.

Respectfully submitted,

By: 

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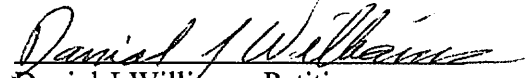
December 7, 2009

Attorneys for Danial J. Williams

Affirmation

I declare under the penalty of perjury that the foregoing Petition for Writ of Habeas Corpus Under § 28 U.S.C. 2254 is true and accurate to the best of my information and belief.

12-5-2009
Date


Daniel J Williams, Petitioner