

ATTORNEY GENERAL
STATE OF MONTANA

Mike McGrath
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

August 7, 2007

Mr. Craig Thomas
Board of Pardons & Parole
300 Maryland Avenue
Deer Lodge, MT 59722

Re: State v. Barry Beach

Dear Mr. Thomas:

Enclosed is a copy of the State's Closing Remarks for the August 1, 2007 Hearing on Barry Allen Beach's Request for Commutation of His Sentence along with Appendices.

I will also be sending you a copy of State's Closing Remarks for the August 1, 2007 Hearing on Barry Allen Beach's Request for Commutation of His Sentence by e-mail. Thank you for forwarding copies of the documents to the Board members.

Sincerely,

APPELLATE SERVICES BUREAU

A handwritten signature in cursive script, reading "Micheal Wellenstein".

MICHEAL S. WELLENSTEIN
Assistant Attorney General

msw/gg

c: Peter Camiel



**STATE'S CLOSING REMARKS FOR
THE AUGUST 1, 2007
HEARING ON BARRY ALLAN BEACH'S
REQUEST FOR COMMUTATION
OF HIS SENTENCE**

Dated August 7, 2007

At the outset of the August 1, 2007 hearing, the Board announced the sole issue in front it was whether Barry Beach received a fair sentence. Beach paraded a number of witnesses in front of the Board, but most ignored the Board's directive and never addressed the issue in question. Rather than addressing the fairness of Beach's sentence, Beach's supporters, in one way or another, proclaimed that he should be released because they believe he is innocent. Such a belief is based on their blind acceptance of Centurion Ministries' version of the events and one that ignores Beach's confession, the jury's guilty verdict, and the decisions of the Montana Supreme Court and federal courts that have reviewed and upheld the validity of Beach's confession and rejected his claim that he is actually innocent.

The issue of whether Beach received a fair sentence was addressed by Beach himself at the prior clemency hearing. The Board specifically asked him if he thought the sentence was unfair for the person who committed the offense, and Beach answered the sentence was **not unfair**. (Beach's testimony at 110-11, attached as Appendix [App.]. A.) This was a dramatic moment in the prior hearing since it clearly was the one question Centurion Ministries had not prepared Beach to answer. Beach answered the simple question that Centurion Ministries and his supporters would not. Beach's testimony that the sentence was fair silences the calls from Centurion Ministries and his supporters that he is entitled to a commutation of his sentence, and in large part made the latest hearing unnecessary.

Montana's sentencing scheme is founded upon judicial discretion. Integral to that discretion, Montana sentencing courts have broad authority to restrict parole eligibility. State v. Blake, 274 Mont. 349, 908 P.2d 676, 677 (1995). Generally, for many years, Montana sentencing courts have exercised their discretion and restricted parole eligibility. See, e.g. State v. Ayers, 2003 MT 114, ¶ 1, 315 Mont. 395, 68 P.3d 768; State v. Ford, 2001 MT 230, ¶ 6, 306 Mont. 517, 39 P.3d 108; State v. Swan, 2000 MT 246, ¶ 14, 301 Mont. 439, 10 P.3d 102; State v. Christianson, 1999 MT 156, ¶¶ 9, 30-41, 295 Mont. 100, 983 P.2d 909; State v. Race, 285 Mont. 177, 946 P.2d 641 (1997); State v. Blake, 274 Mont. 349, 908 P.2d 676, 677 (1995); State v. Aills, 250 Mont. 533, 534, 822 P.2d 87, 88 (1991); State v. Heit, 242 Mont. 488, 491, 493-94, 791 P.2d 1379, 1381, 1383-84 (1990); State v. Van Dyken, 242 Mont. 415, 424, 791 P.2d 1350, 1355 (1990); State v. Keefe, 232 Mont. 258, 259, 759 P.2d 128, 129 (1988); State v. Johnson, 233 Mont. 473, 474, 760 P.2d 760 (1988).

In his pursuit of the commutation of his sentence, Beach would like this Board to ignore the Board's discretion given to the sentencing court, and the fact that his lawfully imposed sentence has been reviewed and upheld by the Montana Supreme Court and the Sentence Review Division.

In rejecting Beach's claim that his sentence violated Mont. Const. art II, § 28 and Mont. Code Ann. § 46-18-401, the Montana Supreme Court stated:

[D]efendant argues that this [his sentence] is violative of Article II, section 28 of the Montana Constitution, which requires that "laws for the punishment of crime shall be founded on the principles of prevention and reformation," and section 46-18-101, MCA, which provides that the policy behind sentencing is the rehabilitation, if possible, of convicts. In the defendant's mind, his sentence was not based on any principle of prevention, reformation, or rehabilitation, and [was] thus an abuse of discretion by the District Court.

We find no merit in defendant's argument. First, Article II, section 28, Mont. Const. allows a district court in its discretion to base a sentence upon the principle of prevention of future crimes. This includes the power to remove a person from society, as the District Court found necessary here.

Secondly, the District Court's sentence was within the permissible statutory range, and, in the absence of clear abuse of discretion is properly reviewed by the Sentence Review Division. There was no clear abuse of discretion in this case and thus this is a matter for the Sentence Review.

State v. Beach, 217 Mont. 132, 153, 705 P.2d 94, 107 (1985).

Beach followed the Montana Supreme Court's sentence review suggestion, and filed an application for sentence review in 1985. The Montana Supreme Court's Sentence Review Division is the judicial forum that reviews whether the sentences are inequitable or unfair. See State v. Dahms, 252 Mont. 1, 13, 825 P.2d 1214, 1221, 124 (1992); State v. Evans, 247 Mont. 218, 231, 806 P.2d 512, 520 (1991); State v. Metz, 184 Mont. 533, 535, 604 P.2d 102, 104 (1979.) At his sentence review hearing, Beach was represented by attorney Dick Carstensen. The three district court judges on Beach's sentence review panel unanimously decided

not to change the original sentence given to Beach by District Court Judge James Sorte. (Sentence Review Decision attached as App. B.) The Sentence Review's decision further erodes any basis for Beach's claim that he is entitled to a commutation of his sentence because his sentence was unfair.

At the latest hearing, Beach acknowledged that he previously told this Board that his 100 year sentence was fair, but this time, Beach stated the parole restriction was not fair and "uncommon" compared to the sentences received by other defendants. The issue of whether Beach's parole restriction is fair has been resolved by the Sentence Review Division when it decided not to change Beach's sentence, and this Board should abide by that Sentence Review Division's decision. Moreover, Beach's contention that his parole restriction is unfair because other murderers, similar in age to himself, have not received such a restriction is not compelling because each sentence is based on the unique facts and circumstances surrounding the offense, the absence or presence of a plea agreement, the presentence investigation report, the presentence investigation report's recommendation, the recommendation of the prosecutor, and the characteristics and propensities of the individual defendants. Accordingly, there will always be a wide range of sentences even for the same offense committed by defendants similar in age, some which may have a parole restriction while others will not.

While Beach apparently only seeks to have the Board lift the parole restriction from his sentence, Jim McCloskey, from Centurion Ministries, wants the Board to commute Beach's entire sentence to time served and order his immediate release. In attempt to assuage any fear the Board may have about releasing Beach, McCloskey emphasized the lack of violent crimes and felonies in Beach's criminal record. McCloskey also emphasized that Beach had only 14 prison "write ups," none of which McCloskey viewed as major infractions, and none in the last seven years.

McCloskey has painted a whitewashed version of Beach's character regarding violence. His portrayal of Beach ignores the savage and vicious manner in which Beach killed Kim Nees. Beach bludgeoned Nees to death, hitting her over thirty times. In imposing Beach's sentence, Judge Sorte clearly considered the savage and vicious manner in which Beach killed Nees and that fact should not be overlooked by the Board. (Sentence attached as App. C.) Moreover, in reviewing Beach's character, the Board should not forget that Beach threatened to kill his stepmother after she had him arrested for contributing to delinquency of his stepsister. In addition, Beach's own father, Bob Beach, stated Beach was capable of murder when his mood changes.

McCloskey and Beach's supporters have offered a portrayal of Beach as a model prisoner, who has mastered a number of trades while in prison and is active

in the prison ministry. Beach's prisoner conduct record reveals that Beach has received write ups for a number of prison infractions, including possession of dangerous contraband, disobeying direct orders, conduct which disrupts, sexual misconduct, indirect insolence and fighting. Beach has not had any write-ups for prisoner infractions in the last seven years, but his overall prison record is hardly that of a model prisoner. Interesting enough, Beach's good conduct in prison appears to have coincided with Centurion Ministries involvement with his case, and one has to wonder whether Beach's behavior will deteriorate once Centurion Ministries moves on to its next case at the conclusion of these proceedings.

Corrections Officer Greg Budd was unable to attend the latest hearing, but he has submitted a memorandum for the Board's consideration regarding his experience with Beach at the prison. (Gregg Budd's Memorandum attached as App. D.) Budd has a different view of Beach's character than that espoused by Centurion Ministries and Beach's supporters. Budd has worked for the Department of Corrections for 27 years. He was Beach's unit manager from 2004 and 2007, and has known Beach from the time he has been incarcerated. Budd describes Beach as manipulative and very smooth at conning prison staff. As evidence of his manipulative and conning behavior, Budd notes that Beach has compromised female correctional staff at Montana State Prison and at Crossroads Correctional Center in Shelby. Beach's actions with the female staff resulted in

the dismissal of the two women. (App. D.) In addition, during a discussion several months ago with Beach concerning his current issues regarding his incarceration and his claim that he is innocent, Budd felt, based on his experience with inmates, that Beach "portrayed and attitude of 'I am getting one over on the state.'" (App. D.)

While the presumption of innocence is the foundation of our criminal justice system prior to the entry of the jury's verdict, it has no place in a clemency proceeding. The presumption of innocence especially has no place in a clemency proceeding when the convicted person requesting clemency has been afforded every possible avenue of appeal, and when given the opportunity to make a showing of actual innocence in a court of law, wholly failed to do so. Yet, that is what Beach and his supporters base their plea for a commutation of sentence upon--a presumption that Beach is innocent.

The perceived injustice by Beach's supporters is that Beach was coerced into giving a false confession ultimately resulting in the wrongful conviction of an innocent man--a man, who according to his supporters, is a "solid" citizen, devoid of criminal attributes. Centurion Ministries has assured the Board that it is convinced of Beach's innocence. At the August 1, 2007 hearing, Jim McCloskey repeated this belief. Beach's supporters' belief in his innocence is no doubt based

largely upon McCloskey's and Centurion Ministries' unfaltering assurance that Beach is innocent and Centurion Ministries' methods of supporting its conclusion.

At what point did Centurion Ministries become sure? Was the sureness based only upon the reading of the trial transcript? Was it based upon the persistence of Beach's mother who years ago claimed to have information to exonerate her son but refused to share that information with law enforcement? Was it based upon Calvin Lester's admittedly untrue claim of being an eyewitness to Kim's murder? Or was it based upon McCloskey's six-hour meeting with Beach in August of 2000? It would be interesting to know, since it has never been disclosed, at what point Centurion Ministries' objectivity gave way to a certainty in Beach's innocence.

What we do know, however, is despite McCloskey's certainty in Beach's innocence, he has been certain of a convicted murderer's innocence before, and he was wrong. As a Washington Post article entitled, "Burden of Proof" by Glen Frankel describes, McCloskey's certainty in Roger Coleman's innocence was somehow misplaced. (Article attached as App. E.) Roger Coleman, who was also a "model" prisoner, was convicted of and executed for the rape and murder of his sister-in-law in Virginia. As the article notes, post-execution DNA testing conclusively proved Roger Coleman's guilt and that McCloskey's belief in his innocence was incorrect. (App. E.)

The reference to Coleman's case is not meant to discredit the fine work Centurion Ministries has done in other cases, it is only meant to demonstrate the inherent risk in disregarding a jury's verdict, a sentencing court's exercise of discretion and the well-reasoned decisions of the state district court, Montana Supreme Court, federal district court and Ninth Circuit Court of Appeals.

One of Beach's witnesses remarked during his statement that the "system" had failed Beach. To the contrary, the system has bent to the breaking point to accommodate Beach. If the system has failed anyone, then it has failed Kim Nees and her parents Ted and Diane. Even after Beach's conviction, there has been no closure for the Nees family. In one way or the other they have had to relive the murder of their daughter for the last 28 years. In her letter opposing Beach's request for commutation of his sentence, Diane expressed the turmoil to her family caused by "this horrible crime." In her January 25, 2007 letter to the Board opposing Beach's release from prison, Billie Norgaard, Kim's best friend, also clearly expressed the trauma Beach has caused, and continues to cause, to Kim's family and friends.

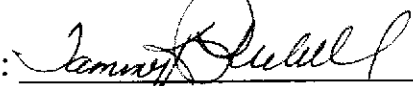
Everyone who knew Ted Nees, knew that if he were still alive he too would have been opposed to Beach's request for freedom--just as his letter to Judge Sorte stated back at the time of Beach's sentencing. While Richard Hepburn of Centurion Ministries assured the Board that Ted Nees's concern for the safety of

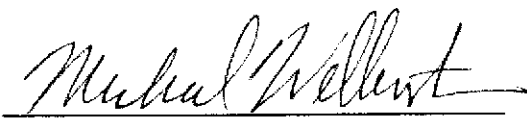
his family and the community was not a legitimate one, it was legitimate to Ted Nees when he wrote to Judge Sorte and Hepburn cannot presume to speak on his behalf.

Beach received a fair sentence from Judge Sorte for murdering Kim Nees, and the State respectfully requests that the Board deny his request for commutation of his sentence.

Respectfully submitted this 7th day of August, 2007.

MIKE McGRATH
Montana Attorney General
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

By: 
TAMMY K. PLUBELL
Assistant Attorney General

By: 
MICHEAL S. WELLENSTEIN
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing
State's Closing Remarks for the August 1, 2007 Hearing on Barry Allan Beach's
Request for Commutation of His Sentence to be mailed to:

Mr. Peter Camiel
Mair & Camiel, P.S.
710 Cherry Street
Seattle, WA 98104

Mr. Craig Thomas (also sent via e-mail)
Executive Director
Board of Pardons & Parole
300 Maryland Avenue
Deer Lodge, MT 59722

DATED: _____

August 7, 2007 Michael Wilhite

RECEIVED

JUL 23 2007

ATTORNEY GENERALS OFFICE
HELENA, MONTANA

BEFORE THE BOARD OF PARDONS & PAROLE
STATE OF MONTANA DEPARTMENT OF CORRECTIONS

IN THE MATTER OF:

BARRY ALLAN BEACH

PARTIAL TRANSCRIPT OF EXECUTIVE CLEMENCY HEARING
TESTIMONY OF BARRY ALLAN BEACH

Heard at Montana State Prison
500 Conley Lake Road
Deer Lodge, Montana

June 15, 2007
8:03 a.m.

REPORTED BY:

CHERYL ROMSA
CHERYL ROMSA COURT REPORTING
P. O. BOX 1278
HELENA, MONTANA 59624
(406) 449-6380

COPY

A P P E A R A N C E S

ON BEHALF OF THE STATE OF MONTANA:

MICHAEL WELLENSTEIN

TAMMY PLUBELL

Montana Attorney General's Office

215 North Sanders

P.O. Box 201401

Helena, Montana 59620-1401

ON BEHALF OF BARRY ALLAN BEACH:

PETER CAMIEL

Attorney at Law

Mair & Camiel

710 Cherry Street

Seattle, Washington 98104

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EXECUTIVE CLEMENCY HEARING - TESTIMONY OF BARRY ALAN BEACH

1 WHEREUPON, the following proceedings were had:
 2 CHAIR McCANN O'CONNOR: We will come to order.
 3 We will note for the record that attorneys for both the
 4 Attorney General and Centurion Ministries are present.
 5 Mr. Camiel, you may call your witness.
 6 MR. CAMIEL: Thank you.
 7 Barry Beach.
 8 (The witness was sworn.)
 9 CHAIR McCANN O'CONNOR: You may proceed.
 10 BARRY ALLAN BEACH,
 11 a witness, having been first duly sworn, testified upon
 12 his oath as follows:
 13 DIRECT EXAMINATION
 14 BY MR. CAMIEL:
 15 **Q. Barry, before we get started with my direct**
 16 **questions, you told me that you wanted to say something to**
 17 **the Board as we start.**
 18 A. Yes, sir.
 19 I'd like to -- you know, it's kind of hard for me to
 20 say, but not because it's not that I don't mean it. I've
 21 been in this prison for 24 years, and I understand how
 22 extraordinary this hearing is, and I want to thank the
 23 parole board members for giving me this chance to come
 24 here today and tell you face-to-face I did not kill
 25 Kim Nees.

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1 Not only that, but the family of the victim, it's the
 2 first time in 28 years as of today that they've had the
 3 chance to hear some of the truth that they've heard here
 4 this week. They've never heard some of this information
 5 before. The people from Poplar, a lot of them didn't even
 6 know me, and yet, they traveled all the way over here to
 7 see me and you people and to tell you what they have to
 8 say.
 9 The attorney general's office, the prison
 10 administration, I understand how extraordinary this, and I
 11 don't take none of this lightly. I don't disrespect
 12 anything that has happened here these last couple days,
 13 and I just want to thank you for this opportunity and
 14 thank the prison administration for allowing it to take
 15 place like this.
 16 CHAIR McCANN O'CONNOR: Very well.
 17 You may proceed.
 18 **Q. (By Mr. Camiel) Barry, how old are you?**
 19 A. I'm 45 years old.
 20 **Q. In 1979, where were you living?**
 21 A. In 1979, I was living in Poplar, Montana.
 22 **Q. And how old were you in June of 1979?**
 23 A. In June of 1979, I was 17 years old.
 24 **Q. Were you attending Poplar High School?**
 25 A. Actually, I was a junior in Poplar High School.

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1 **Q. And -- and back then, where did you and your**
 2 **family live in Poplar?**
 3 A. We actually lived on what they called The Hill.
 4 And in Poplar, Montana, if you were going down Highway
 5 No. 2 headed east from the high school and took a right,
 6 you'd go all the way to the end of that street, and there
 7 was a hill that was actually a cliff. We lived right up
 8 on the top of that hill in a corner house on that main
 9 street.
 10 **Q. Did you live near Kim Nees and her family?**
 11 A. Yes. We actually lived about -- I would say
 12 there was probably six houses between us and Kim Nees.
 13 Directly next to our house was Kim Nees's uncle and aunt
 14 and cousins, then there were a couple houses, including
 15 the Norgaard house, and then on the other side of the
 16 Norgaard house was the Nees house.
 17 **Q. And did you know Kim and her family members as**
 18 **you were growing up as a boy?**
 19 A. Yes. We all grew up together playing on the same
 20 block, playing kick-the-can and other, you know, child
 21 games as we were kids. We all grew up together.
 22 **Q. Barry, in 1979, you're 17 years old. What -- how**
 23 **big were you then? What was your height and weight?**
 24 A. At that time, I believe I was about 5'8", and if
 25 I'm not mistaken, I weighed probably about 155 pounds,

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1 145 pounds.
 2 **Q. Who lived in your house with you?**
 3 A. There was my mother, my stepfather, Silas
 4 Clincher, myself, my sister Barb, and my brother Brad.
 5 **Q. Now, in June of '79, school had just let out.**
 6 **Did you have any plans for the summer?**
 7 A. Yes. In fact, not only did I have plans for the
 8 summer, but just before school got out, I made
 9 arrangements with a local farmer by the name of
 10 Jim Wolaconis (phonetic) to actually go to work for him to
 11 earn some money in preparation for my trip to Louisiana.
 12 And my plans were to return to Louisiana and actually live
 13 with my father, Bob Beach, which was the first time in my
 14 entire life that I actually would have lived with my
 15 father, and that was at the age of 17.
 16 **Q. Did you -- did you own a vehicle then?**
 17 A. At that time, I owned a 1970 Ford Ranchero. It
 18 was a blue Ford Ranchero.
 19 **Q. How did you plan to get down to Louisiana to stay**
 20 **with your father?**
 21 A. I actually was going to trade the Ford Ranchero
 22 in, and I'd already been to the Ford garage in Poplar,
 23 Montana, and made arrangements to purchase a car from them
 24 with that Ford Ranchero. I knew the Ranchero wouldn't
 25 make that type of a trip, so I needed a better vehicle to

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EXECUTIVE CLEMENCY HEARING - TESTIMONY OF BARRY ALAN BEACH

1 do that.

2 **Q. So in the days before June 15th after school let**
3 **out, had you been working?**

4 A. Yes. I actually spent three weeks working for
5 the Wolaconis family doing summer fallowing and other
6 farming chores around their farm to earn money for this
7 trip.

8 **Q. I want to take you back now to June 15th of 1979,**
9 **and I'd like you to walk us through your day, starting in**
10 **the morning, if you could.**

11 A. I'd actually come in from the Wolaconis farm
12 about two days prior to that and had been doing a lot of
13 partying out all night and stuff. But I still, I woke up
14 about 9 o'clock on the morning of June 15th, I believe it
15 was, about 9. I got up, I ate some breakfast, and I
16 actually went swimming down at a place called Dago Bend in
17 my Ford Ranchero. I was by myself when I went down there,
18 but there were some other kids down there when I got down
19 there, and we actually swam around and played for, I don't
20 know, a couple hours, two to three hours down there at
21 Dago Bend.

22 And then on the way back from Dago Bend, and I don't
23 know from whom or where, but somewhere, I actually picked
24 up some beer, some Budweiser and went back to my house.
25 And I called a friend of mine by the name of Caleb Gorneau

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1 During that time that we were riding around, I

2 actually ran into Pam Nees in her father's pickup at the
3 school, over in the school parking lot. And I asked her
4 if she wanted to go swimming with us, and she said no.

5 Then I asked her if she was interested in going out to the
6 movie that night, and again she said no; which at that
7 time in my relationship with Pam Nees, we weren't actually
8 boyfriend and girlfriend at that time, so it didn't mean
9 nothing to me that she said no. You know, it was just
10 something I was asking her if she wanted to go do.

11 **Q. The two of you had dated for a while?**

12 A. We had actually dated for a couple of months
13 prior to that, yes.

14 **Q. So you end up going out to Sandy Beach with**
15 **Caleb Gorneau and Shannon O'Brien?**

16 A. Yes. We actually -- about 1 o'clock or 1:30, we
17 went out to Sandy Beach, yes.

18 **Q. And when you went out there, what did you do?**

19 A. We swam. We finished off the beer that I had
20 found that -- located that morning. I'm not sure how I
21 come across that. We actually -- I can't remember who had
22 the marijuana, but we actually smoked some marijuana while
23 we were out there swimming and just messed around for
24 three or four hours out there at Sandy Beach, because it
25 was just the three of us. And Sandy Beach is kind of an

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1 to see what he was doing, and we were going to go riding
2 around and drink that beer.

3 **Q. And did you -- did you hook up with Caleb?**

4 A. Yes. I actually went out to Caleb's house and I
5 got Caleb from his house out of town.

6 **Q. So you and Caleb are in your car?**

7 A. Yes, sir.

8 **Q. And do you know what time of day it was that you**
9 **hooked up with Caleb?**

10 A. I would say it was probably about noon or a
11 little after noon when I got Caleb.

12 **Q. And what do you guys do?**

13 A. One of the first things that we did is we went
14 and picked up Caleb's girlfriend, a girl by the name of
15 Shannon O'Brien, and then we just went riding around
16 drinking. We decided we'd actually go swimming again down
17 at a place called Sandy Beach.

18 **Q. And is Sandy Beach on the Poplar River?**

19 A. Yes, sir. It's actually northeast of Poplar, the
20 community of Poplar.

21 **Q. And before you went out to Sandy Beach, what did**
22 **you do?**

23 A. We just rode around a little bit, cruised the
24 main drag of Poplar and drank a little bit, tried to
25 decide what we was going to do.

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1 isolated swimming hole northeast of town. It's a couple
2 miles out of town.

3 **Q. Did there come a point in time where you decided**
4 **it was time to leave?**

5 A. Yes. It's my recollection, and I don't know
6 exact time because I didn't have a watch or anything, but
7 somewhere about 4 or 4:30 that afternoon, we actually
8 tried to leave. And in the process of leaving
9 Sandy Beach -- To describe Sandy Beach, you go down over
10 this little sandy knoll into this swimming hole, and
11 there's a little sandy area. And I'd actually pulled too
12 far down into the sand, and when I tried to come up out of
13 that sandy area up over that knoll, the back tires of my
14 Ranchero actually got stuck.

15 **Q. So what happened?**

16 A. Caleb and myself spent quite a bit of time trying
17 to get the vehicle unstuck. And finally, I asked
18 Caleb Gorneau to get into the vehicle and drive it and
19 rock the vehicle back and forth by going from reverse to
20 drive while I tried to push the vehicle out. As we were
21 doing that, Caleb started just slamming the gearshift up
22 and down, and it actually locked up the linkage of the
23 automatic transmission and froze the transmission to where
24 it wouldn't go anywhere. We couldn't shift it at all from
25 forward to reverse or anywhere.

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5 (Pages 8 to 11)

Q. How did you react when that happened?

A. I was -- I was upset. You know, I was angry. Not at any person, I was angry at the fact that here was a car that I'd already been down to the Ford garage and made arrangements to trade in to get a newer car, and now I just tore the transmission out of it. And it was the situation that had happened -- I mean, because I had been planning that trip to Louisiana for a long time. I'd been to Louisiana the year before and met my dad, but this was a chance to go down there and live with him. And so I had been planning that for almost a full year, and yet, I just found myself in a situation where the vehicle I was going to trade in was destroyed.

Q. In terms of how you exhibited being upset or angry, what did you do?

A. I took it out on my vehicle. I kicked the door of my vehicle, I slammed my fist down on the hood of the vehicle. I can't remember if I hit the windshield or not, but -- You know, I was angry at the situation. I was angry at the vehicle and the situation that I found myself in. You know, because to me, in a lot of ways, there went my plans once again, and I'd just spent three weeks summer fallowing and working some pretty long hours on a farm to earn the money to trade that vehicle in the next day. You know, and it was the next day that I was supposed to take

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that vehicle in and trade it in so that I could leave to Louisiana.

Q. Did you end up leaving Sandy Beach?

A. I actually left after a while. After I had an argument with Caleb Gorneau, I left Sandy Beach on my own and walked into town, which was about a two-mile walk.

Q. Do you have any idea what time you left Sandy Beach?

A. No, I don't. I'd say somewhere between 5 and 5:30, is my best estimation.

Q. On the way into town, did you run across anybody that you knew, talk to them?

A. No. In fact, on the way into town, it's nothing but hay pastures and fields going from Sandy Beach up to town. And you have to come up the hill -- there's another bluff there, it's actually a cliff, and you have to go up that cliff. But there used to be a trail that came up that cliff right behind the jail, and that's the trail that I took coming up there.

Q. How long did it take you to get into town?

A. I would say at least five or ten minutes, because I was walking fairly slow, you know. Because I was also trying to analyze how I was going to get my vehicle fixed and how was I still going to be able to carry out my plans to go to Louisiana.

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Q. Now, when you left -- when you left Sandy Beach, you were pretty angry?

A. I was angry at Sandy Beach. You know --

Q. Were you still angry when you got back into town?

A. No, not at all.

Q. Did you run into anyone in town?

A. I didn't run into anybody in town until I got all the way over to the Tastee Freeze. You know, and don't -- you know, there were people driving by on the streets, but the first time I seen anybody was stopped and parked and I personally stopped and talked to anybody was when I got to the Tastee Freeze, which is all the way over by the high school on the other side of town. And I stopped and talked to three people there.

Nancy Steele was in her mother's car. Larry Rowe and Norm Steele were in Larry Rowe's father's pickup. And I first asked Nancy Steele if she could give me a ride, and because she was in her mother's car, she said no. So I turned and I asked Larry Rowe if he could give me a ride home, the rest of the way home. Because I was tired by then and just wore out from the sun, the swimming, the heat, the drinking. And Larry Rowe told me that he would give me a ride home, but he first had to go to the baseball diamond where his father was umpiring and take him these soda pops that he'd just bought him from the

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Tastee Freeze. So I waited at the Tastee Freeze while Larry did that, and then he come back and got me and took me home.

Q. Now, when you were at the Tastee Freeze, in terms of the time of day, it's still light out?

A. It was light, but the sun was beginning to come down. You know, I don't know what time in the evening, you know, but it was still plenty of light, yes.

Q. Okay. And did you end up getting a ride with Larry Rowe?

A. Yes, I did. Larry Rowe is the one who took me home and dropped me off at my house.

Q. When you got to your house, what did you do?

A. When I got to the house, I don't remember my mother's car being there. In fact, I know I didn't see my mother's car. So I didn't assume that anybody was home, so I just went into the house and I went upstairs.

When you enter our house, there's a side door to the house right off of the driveway, and then you step into kind of like a little four-foot-by-four-foot area, and there's a door off to the side that actually went into the house, and the stairs were right there. So I just went in and went straight up the stairs because I assumed that nobody was home. And then right at the top of the stairs was my bedroom, so I just went straight upstairs and went

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1 home and went to bed. And at that time, I was so tired I
2 didn't take my clothes off.

3 **Q. Okay. And when did you -- when did you next get**
4 **up?**

5 A. I remember waking up the next morning because I
6 heard a bunch of noise down in the kitchen. And the night
7 before, I knew that I was supposed to go branding the next
8 day out at my grandfather's farm. That was something --
9 that was another event that we'd been planning. I mean,
10 it's a big branding party, you know, on the ranch. So I
11 knew that I had to go -- So when I heard the noise
12 downstairs, I knew that I had to get up.

13 So I got up and I went downstairs. And my mom looked
14 at me, and I was still in swimming trunks and my T-shirt,
15 and my mom says, "What are you doing in your swimming
16 trunks? You need to go get ready to brand. Your
17 grandmother is here." And sure enough, my grandma was
18 standing there, and she's the one that was there to pick
19 me up and take me out branding. And so I went back
20 upstairs and I put on a pair of blue jeans and a red
21 flannel shirt that I had at that time with no sleeves in
22 it and I went branding with my grandmother.

23 **Q. All right. Where is the ranch where you went**
24 **branding?**

25 A. My grandfather's ranch is actually 18-and-a-half

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1 miles southeast of Poplar. And in fact, my grandfather's
2 ranch is not on the reservation; it's on the opposite side
3 of the Missouri River. So you had to cross the
4 Missouri River Bridge from Roosevelt County into
5 Richland County to get to my grandfather's ranch.

6 **Q. Now, before you went out to the ranch, did you**
7 **tell your mother what happened with your -- with your**
8 **vehicle?**

9 A. Yes. I not only explained to my mother what had
10 happened with the vehicle, but I'd asked her to call a guy
11 by the name of Keith Erickson, who worked at the Moe
12 (phonetic) garage. He was a good mechanic down there that
13 lived right down the street from us. And asked her if she
14 would have him go get my vehicle, because I knew that it
15 had to be towed. There was no way to drive it or
16 anything.

17 **Q. When you were out branding, who else was out**
18 **there?**

19 A. It was a large branding party, but when I
20 actually got to the ranch to brand, they'd already -- I
21 was late and they'd already had all the horses up and
22 saddled. And there was Dennis Simons, Clint Linthicum, my
23 uncle, Calvin Hines, a guy by the name of Tony Jacobs, and
24 a guy by the name of Clete Leinen, who helped us round up
25 the cattle and brand.

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1 **Q. At some point during the day while you're out at**
2 **the ranch branding, do you learn that Kim Nees had been**
3 **murdered?**

4 A. Yes, sir. It was at lunchtime. We'd already
5 been out in the hills and got all the cattle out of the
6 badlands and out of the pasture lands and down into the
7 corral, and we'd broken to take our lunch break when my
8 sister came into the trailer and told all of us -- we were
9 all kind of standing there talking, you know, and she come
10 and told all of us that Kim Nees had been killed.

11 **Q. Is that the first time that you heard that**
12 **Kim Nees was killed?**

13 A. Yes, sir. That was the first time I had any
14 knowledge of Kim Nees's death.

15 **Q. How did you react when you heard that?**

16 A. I was shocked, I mean, because Kim -- You know,
17 even though she was of a different social class than I,
18 Kim just wasn't the type of person that you would have
19 expected something like this to happen to.

20 **Q. Did you stay at the ranch the rest of the day**
21 **branding?**

22 A. Yeah. We actually spent the afternoon doing the
23 branding part of the -- you know, branding the cattle and
24 separating the calves.

25 **Q. Did you go home that evening?**

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1 A. I would say somewhere between 7 o'clock and 7:30
2 that evening, I actually went back into town with
3 Dennis Simons and Clint Linthicum, yes.

4 **Q. And when you went back into town, did you hear**
5 **anything more about Kim Nees's death?**

6 A. Actually, when I went back into town that
7 evening, I ate supper again at the house and I cleaned up.
8 And I decided I'd go out to town that night. Being that I
9 didn't have a vehicle, I actually walked. And at that
10 time, I actually walked from our house straight up the
11 street to the school and then down on what they called
12 "the loop," which was down through Main Street. And when
13 I got up to the loop, I noticed that there was absolutely
14 nobody around, and then I got that eerie feeling and it
15 started -- that's when it really started to dawn on me,
16 you know, about Kim's death, is because there was nobody
17 out and about. And at that time, nobody's parents were
18 letting them go out, you know, et cetera. And so I just
19 went back home and went back to -- went up to bed.

20 **Q. And so the next day would be Sunday?**

21 A. Correct.

22 **Q. Okay. What did you do that day?**

23 A. On Sunday, I spent most of Sunday trying to
24 locate a transmission for my Ranchero. It had a 302 in
25 it, and it was a 1970, and I was having a hard time

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1 finding a transmission. But I knew that in order to trade
2 this in and get the car that I needed to go to Louisiana,
3 I would have to fix that transmission. So I spent most of
4 Sunday going to different places that I thought I could
5 get a transmission. I went to Sabey's (phonetic)
6 junkyard, et cetera, and I finally -- there was a guy by
7 the name of Raymond Yellow Owl, who was what we called a
8 backyard mechanic, and I got a transmission from him out
9 of a 1968 Falcon, I believe it was.

10 **Q. Now, during that weekend, particularly that**
11 **Sunday, were people talking about Kim Nees's death?**

12 A. Yes. Everybody around town was already talking
13 about different rumors. There was -- at that point, even
14 on Sunday, there were already different stories going
15 around town about the crime, as well as different
16 information about the crime scene. I never did this
17 myself, but many, many citizens of Poplar actually went
18 down to the crime scene and looked at different things
19 from the crime scene. I never went down there myself, but
20 a lot of people did.

21 **Q. Did some of your friends go down there?**

22 A. Yes. Almost all of my friends, as far as
23 Caleb Gorneau and Shannon O'Brien, went down to the crime
24 scene at different times.

25 **Q. Now, at some point, were you with Shannon and**

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1 **Caleb and Joanne Jackson when something happened?**

2 A. That actually was on Monday evening. I spent
3 most of my day on Monday installing the transmission into
4 my 1970 Ranchero. On Monday night, after I got the
5 transmission fixed, I went out riding around and I went
6 and picked up Shannon O'Brien and Caleb Gorneau, and we
7 were out riding around. But Shannon had to go home early
8 because her mom didn't want her out and about. So we
9 actually took her home pretty early that night. And my
10 plan was to take Joanne Jackson and Caleb Gorneau home,
11 but before we left, we were going to go smoke some
12 marijuana.

13 So we went out of town, and I can't remember exactly
14 where it was out of town, but it was out towards Sabo
15 (phonetic) somewhere around the four-mile square. And I
16 had kind of a rule in my car, because I smoked a lot of
17 dope and stuff, that I didn't like people telling secrets
18 around me. And I noticed that -- And Caleb knew that.
19 And I noticed that Caleb and Shannon were whispering to
20 each other, so I said something to them. I says, "Hey,"
21 you know, "if you got something to say around me, you
22 know, say it."

23 So they quit for a while. And then we were parked,
24 and I think I was rolling the marijuana into joints. And
25 when I was doing that, I noticed that they were whispering

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1 to each other again, and I seen Joanne hand something to
2 Caleb. And I kind of got a little bit adamant about it at
3 that point in time, that if you've got something to say or
4 something secretive, you know -- And at that time, Caleb
5 told me that Joanne was explaining to him that she'd been
6 in a fight the night before, is what I was told. And in
7 his hand, I noticed that there was a chain hanging off the
8 side of his hand, what I thought was a beaded key chain.

9 But I didn't think nothing about it at that time
10 because I didn't have any knowledge of the facts of the
11 crime. And for us to get into a fight in Poplar, Montana,
12 there was nothing unusual about that at all, you know. So
13 to me, it didn't register at that point in time the
14 significance of that situation. You know, it just didn't
15 dawn on me.

16 **Q. Did you end up taking Caleb to the police**
17 **station?**

18 A. Yes. The next day, I actually got a phone call
19 from Caleb Gorneau, and he asked me if I would come get
20 him. I said, "Why?" He says, "Well, I need to go up to
21 the tribal police department." Well, to take Caleb up to
22 the tribal police department was no big deal to me,
23 because his mother was a tribal judge and, quite often, I
24 took Caleb up there to see his mother.

25 So I went and I got him at his house and I took him up

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1 to the tribal police department, and it was only later on
2 after he came back out of the tribal police department
3 that he informed me that he had turned in a piece of
4 necklace to the police department.

5 **Q. Barry, how long was it after Kim's murder that**
6 **you left for Louisiana?**

7 A. In my memory, it was somewhere between ten days
8 and two weeks after Kim's death that I actually got
9 everything arranged with the vehicle. I had actually
10 gotten the 1975 Cutlass Supreme and traded in my Ranchero,
11 got it licensed, got insurance on it, got the rest of my
12 financial situation stabilized enough. I went and took
13 the Cutlass Supreme and got new tires on it and left for
14 Louisiana. And in my memory, that was about ten days to
15 two weeks after Kim's death.

16 **Q. Now, before you left for Louisiana, did any of**
17 **the police officers from any of the various police**
18 **agencies come to talk to you?**

19 A. No, sir. At no time during that period was I
20 ever questioned by any authorities at all.

21 **Q. During that ten days to two weeks, did there**
22 **continue to be a lot of talk about Kim's murder around**
23 **town?**

24 A. Man, the talk about Kim's death was -- I mean,
25 you couldn't go anywhere without people talking -- That's

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1 all people were talking about. And I'm not talking just
2 general conversations of the fact that she was dead.
3 There were -- there were stories about who may have done
4 this. There was a lot of information about the crime
5 scene floating around town, different bits and pieces of
6 information, you know, from people going down there and
7 looking at the crime scene.

8 There were a lot of people that were talking about
9 they'd been on the train bridge and seen the body. I
10 mean, just all kinds of information. Everybody --
11 everywhere you went. If you went to the Tastee Freeze or
12 to the grocery store or to the school or anywhere you may
13 end up going in Poplar, everybody was talking about it.

14 **Q. You so left and you headed down to Louisiana to
15 stay with your father?**

16 A. Yes, sir. That's correct.

17 **Q. And you worked down there while you were down
18 there?**

19 A. I actually went back to work for a person -- a
20 cousin of mine that I'd worked for previously by the name
21 of Ron Houck (phonetic). He did construction work, which
22 I found very fascinating. And in fact, at that particular
23 time in 1979 when I got back to Louisiana, he had
24 subcontracted to a guy by the name of Brad Tullis to build
25 a Holiday Inn on Interstate 20. And I spent that summer

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1 back at that time, not just because of Christmas time, but
2 I had to enroll in school for the next semester prior to
3 the break.

4 **Q. You came back and stayed with your mother?**

5 A. Yes, sir. I moved back in with my mother in
6 Montana. Yes.

7 **Q. When you came back up to Poplar, then, in
8 December of '79, did you have contact with any law
9 enforcement people about Kim Nees's murder?**

10 A. I had been back in Poplar for probably about a
11 month and a half before I was ever informed that the law
12 enforcement wanted to talk to me. I remember coming home
13 from school sometime in early January of 1980 and being
14 informed by my mother that Dean Mahlum of the sheriff's
15 department wanted to talk to me. And we actually made
16 arrangements, my mother had made arrangements for me to go
17 and talk to him the next morning, which I did. And it was
18 at the Poplar tribal jail that I went and seen
19 Sheriff Dean Mahlum and undersheriff -- or Deputy Sheriff
20 Ron Wilson.

21 **Q. Did your mother take you up there?**

22 A. Yes, sir.

23 **Q. And did you meet with Sheriff Mahlum and
24 Deputy Wilson with your mother present, or was she not
25 present?**

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1 working on that Holiday Inn as a construction carpenter.

2 **Q. Now, did you -- When did you come back to Poplar
3 after working the summer of '79 and going down to see your
4 dad?**

5 A. My intentions were to return to Poplar for the
6 beginning of the school year. I was just going to go down
7 there for the summer and live with my dad. But
8 unfortunately, when I first got to Louisiana, I got
9 two DUIs in my Cutlass Supreme when I first got down
10 there. And as was the custom of our family, the
11 responsibility for those DUIs fell on me to pay the fines,
12 to do the time, or whatever it took to straighten that
13 out. So I -- being that I had a construction job, I made
14 the decision that I was going to drop out of school for
15 that semester and pay off these fines. And if I remember
16 correctly, I had to pay off almost \$1200 worth of fines in
17 those two DUIs.

18 **Q. Now, back in that time period of your life, it
19 would be fair to say you were drinking a lot and you were
20 smoking a lot of dope?**

21 A. Yes, sir. I was definitely an alcoholic and drug
22 addict.

23 **Q. When did you come back to Poplar?**

24 A. I returned to Poplar just before Christmas in
25 December of 1979, because I -- one of the reasons I came

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1 A. Actually, Mom just took me up there. She was in
2 the building, and in fact, she was in the hallway right
3 out of the room -- outside of the room that I talked to
4 Mr. Mahlum and Mr. Wilson in, but I talked to Mr. Mahlum
5 and Mr. Wilson on my own.

6 **Q. How long did they talk to you?**

7 A. We probably talked for about a half an hour or
8 better, just about my general activities on June 15th and
9 June 16th.

10 **Q. Did they ask you whether you -- you killed Kim?**

11 A. Yes, they did.

12 **Q. What did you say?**

13 A. I told them that, no, I did not kill Kim Nees.

14 **Q. Did they ask you whether you knew anything about
15 her death?**

16 A. Yes. They asked me if I knew anything, and I --
17 I actually had repeated to them some of the rumors that
18 I'd heard around town, but that I had no direct knowledge
19 of Kim Nees's murder.

20 **Q. Did they ask you to do anything while you were at
21 the police station?**

22 A. Yes. They asked me if I'd be willing to submit
23 what they called major case prints, which I did. I gave
24 them fingerprints. I gave them a palm print where they
25 actually put ink on my palm and then they taped the paper

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9 (Pages 24 to 27)

1 over, I believe it was a Folger's can and had me roll my
2 palm over this Folger's can. And then they did the same
3 thing with my foot, where they inked the bottom of my
4 right foot and had me roll my foot over the top of that
5 same coffee can.

6 **Q. Did they ask you to do anything else?**

7 A. Yeah. They also asked me to submit a skin sample
8 that they scraped off the inside of my -- my arm.

9 **Q. Okay. How about a polygraph exam?**

10 A. It was actually several days later that they
11 asked me if I would submit to a polygraph exam. I'd like
12 to say three or four days later, I was informed by
13 Mr. Mahlum that none of the physical evidence had matched
14 me, you know, or did not match the crime, but he wanted --
15 just to completely eliminate me as a suspect, he asked me
16 if I'd be willing to take a polygraph test, which I said
17 yes, I would.

18 **Q. And did you go to do that?**

19 A. Yes, I did. Sometime in February of 1980, my
20 mother and my stepfather, Silas Clincher, actually drove
21 me to Glasgow, Montana, which is 73 miles away, and we
22 went up to the FBI office in Glasgow, Montana, to do the
23 polygraph test.

24 **Q. Do you remember who gave you the test?**

25 A. Yes. It was an FBI agent by the name of

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1 **February of 1980.**

2 A. Yes.

3 **Q. You're back in school, then?**

4 A. Yes, sir, I was.

5 **Q. It was your senior year?**

6 A. It was my senior year in high school, yes.

7 **Q. During your senior year, at some point, did you**
8 **have contact with Pam Nees?**

9 A. Yes. Actually, Pam Nees, at that point in time,
10 had moved from Poplar, Montana, to Billings, Montana, but
11 her and I were still in touch. Pam and I had a, kind of a
12 strange relationship in the aspect that even though we
13 were girlfriend and boyfriend at one time, we just didn't
14 really fit, you know, as far as going steady and stuff,
15 but we did stay in touch with each other quite a bit.

16 And there was a time, sometime, I would like to say
17 March of 1980 -- and I'm not exact about that. All I can
18 remember is it was a cold, snowy day that I was asked to
19 go to Billings, Montana, with Caleb Gorneau. And at that
20 time, Shannon O'Brien had also moved to Billings, and she
21 was going to school at the university there in Billings,
22 and she had an apartment in Billings. And so Caleb and I
23 went to Billings and we were at Shannon O'Brien's
24 apartment there in Billings, and Pam come over to see me.

25 **Q. Now, the trip -- the trip down to Billings, who**

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1 Bob West, is the one who administered the polygraph test
2 to me in Glasgow.

3 **Q. Was Sheriff Mahlum present?**

4 A. Yes, he was. He was in the room with Mr. West
5 prior to the taking of the polygraph test and then
6 afterwards during the post-test interview.

7 **Q. Did they talk to you after you took the test?**

8 A. Yes, they did.

9 **Q. What did they tell you?**

10 A. I was informed -- And in fact, my mother was back
11 in the room at that point in time. I was informed that
12 the polygraph test showed that I did not commit the crime,
13 but that I had hot spots or knowledge about the crime.

14 **Q. Did they interview you further about any**
15 **knowledge you might have about Kim's death?**

16 A. Yes. Actually, Mr. West himself asked me if I
17 had any direct knowledge about the Kim Nees murder, and at
18 that point in time, I didn't think that I did. I honestly
19 didn't think that I did. I thought the only knowledge I
20 had was just what was public knowledge or general
21 knowledge, because everybody in town was talking about it.
22 There's no way that anybody living in Poplar, Montana,
23 could not have knowledge about the Kim Nees murder. There
24 was just too much talk about it.

25 **Q. Now, this is -- You took this test sometime in**

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1 **asked you to go down there?**

2 A. If I'm not mistaken, it was actually Pam that
3 asked me if I would come and talk to her.

4 **Q. And did you spend some time with Pam while you**
5 **were in Billings?**

6 A. Yes, I did. We spent about three or four hours
7 together that evening just sitting and talking, just her
8 and I.

9 **Q. And did the subject of her sister's death come**
10 **up?**

11 A. That actually was the majority of our
12 conversation that night. Because at that point in time,
13 Pam was really -- really having a hard time and struggling
14 with the death of her sister. She felt like she didn't
15 have nobody, you know, that -- that she could really talk
16 to. And her and I spent several hours that night talking
17 about the death of her sister, yes.

18 **Q. Did she talk to you about some of the things she**
19 **knew about the death of her sister?**

20 A. Yeah. That was -- that was the first time that I
21 can remember in my own mind piecing the whole situation
22 with Caleb Gorneau together. Because I remember Pam
23 telling me that night that her sister's diamond necklace
24 had been stolen from her body and that the diamond
25 necklace was important to the family. And that's the very

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1 first time that it clicked in my mind what -- what I
2 actually knew, you know.

3 **Q. So you spent about, you said a few hours with**
4 **Pam?**

5 A. Yes. We spent about three or four hours together
6 that night.

7 **Q. And then you go back to -- go back to Poplar and**
8 **back to school?**

9 A. Yeah. It was just an overnight trip. I actually
10 drove back that night, I believe, because we had to get
11 back for school.

12 **Q. At some point during the school year, did you get**
13 **in some trouble again?**

14 A. I actually got a traffic ticket there in Poplar
15 for running a stoplight. And it created a lot of problems
16 for me because of the DUIs that I had received down in
17 Louisiana. Receiving the two DUIs down in Louisiana added
18 points to my driver's license in Montana, and then when I
19 got the running-the-stoplight there in Poplar, it pushed
20 my points into what they call an habitual traffic
21 offender.

22 So I had to go to court in Wolf Point at
23 Roosevelt County and was actually convicted of being a
24 traffic offender, and I was sentenced to 22 days in jail.
25 But the judge at that time, Judge Sorte, allowed me to

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1 day, I again informed Mr. Mahlum that I did not kill
2 Kim Nees, because he asked me that directly. And he says,
3 "Barry, I believe that you didn't kill her," he says, "but
4 you're withholding information from me." He says, "And I
5 know that you're withholding information." He says,
6 "Would you be willing to submit to another polygraph test
7 and let's get this cleared up once and for all?"

8 And I informed Mr. Mahlum at that time that I had
9 already made plans, once again, to return to Louisiana,
10 not just to see my dad at that time. Because I was going
11 back to Louisiana at that time, not to just see my dad,
12 but I already had a job lined up for the summer working
13 with Tulles General Contractors again building another
14 Holiday Inn. And I had already made all those
15 arrangements, while I was sitting in the jail, to do that.

16 **Q. So --**

17 A. And it was my sister Barb that was going to take
18 me down there at that time. She had a red Chevy Chevelle,
19 and we were going to take that car down to Louisiana.

20 **Q. Did Sheriff Mahlum -- or Undersheriff Mahlum**
21 **arrange for you to take another polygraph before you left?**

22 A. No, he did not.

23 **Q. Did he get in touch with you again?**

24 A. No, he did not.

25 **Q. And so then you left and you went down to**

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1 finish high school before I had to serve my sentence.

2 **Q. Where did you serve your sentence?**

3 A. I served my sentence in the Roosevelt County
4 Jail. I did 22 days from -- I graduated -- or the
5 graduation ceremony at Poplar High School was on May 18th.
6 It was the night that Mt. St. Helens erupted. And I
7 checked myself in to the Roosevelt County Jail about
8 8 o'clock on the morning of May 19th.

9 **Q. During the time that you did in the jail, the**
10 **22 days, did any police officers come to talk to you?**

11 A. Not during the 22-day stay in jail, no; at no
12 time during my incarceration. However, on the morning
13 that I was being released, Dean Mahlum, who was still an
14 undersheriff at that time, asked me if he could talk to me
15 further about the possible knowledge that I had of the
16 Kim Nees murder.

17 **Q. And did you talk to him at that time?**

18 A. Yes, I agreed to talk to him once again. I had
19 nothing to hide. And I'd been raised from the time I was
20 a kid -- My mother has a degree in law and justice, and
21 we'd been raised from the time that we were kids that if
22 you do something wrong, you pay for it, and you always
23 cooperate with the authorities.

24 **Q. Did Undersheriff Mahlum want you to do anything?**

25 A. Yes. Actually, during the questioning of that

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1 Louisiana?

2 A. That is correct.

3 **Q. And you stayed with your father again?**

4 A. Yes, sir. Between my father and my Uncle Tim.

5 **Q. Now, while you're down there, staying down there,**
6 **did anybody from law enforcement contact you?**

7 A. No, sir.

8 **Q. At some point, do you make a decision, while**
9 **you're living down there, to enlist in the Navy?**

10 A. Yes, I did. And it actually was a little bit
11 more than a decision. It was very calculated. Me and my
12 father had numerous conversations about the fact he was in
13 the Air Force during the Vietnam era. My father actually
14 spent 16 years in the military and then he dropped out
15 because he got stationed at Great Falls, Malmstrom Air
16 Force Base, down in what he called a tunnel, but it was
17 actually a missile silo. And he was in the missile silo
18 for over nine-and-a-half years and they wouldn't move him
19 out of the missile silo, so he so quit the military.

20 And I used to tease him about how foolish he was
21 because he was four years shy of his retirement when he
22 did that, and I couldn't understand, you know, why, four
23 years shy of military retirement, you would quit. So it
24 became my goal during these conversations with my dad to
25 actually go into the military and retire. I wanted to do

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1 what he couldn't do, I wanted to make it to retirement.

2 **Q. And so did you actually enlist in the Navy?**

3 A. Yes, I did. I enlisted in the military at the
4 Monroe, Louisiana recruitment office.

5 **Q. When did you actually go in?**

6 A. I actually entered the military out of
7 Shreveport, Louisiana, in October of 1981.

8 **Q. And then I take it you went through boot camp
9 somewhere?**

10 A. I went to boot camp in Orlando, Florida.

11 **Q. And then where were you stationed?**

12 A. I was stationed in Norfolk, Virginia, on the
13 USS Spruance DD-963. It was the first nuclear-powered
14 destroyer of the U.S. fleet. We were an escort ship to
15 the USS Nimitz.

16 **Q. Now, at some point after you were stationed in
17 Norfolk, did -- did a problem come up?**

18 A. Yes. During that time period, the American
19 military had just lost two planes to the Lebanese army,
20 and so the Nimitz and some other DesRon 10 fleets were
21 preparing to go over to the Mediterranean Sea. I guess
22 they ran a background check or a security check or
23 whatever on me or whatever, I don't know. But I was
24 called to DesRon 10 headquarters by a master chief,
25 Matthew Smith, I believe was his name, and informed that

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1 A. In fact, my mother took me up to Wolf Point and

2 we went to the Wolf Point Jail and met with Mr. Mahlum in
3 his office.

4 **Q. What was the conversation at that time?**

5 A. I actually asked Mr. Mahlum at that time why
6 would the FBI have a letter stating that I was a suspect
7 in this crime when he in fact had informed me on several
8 occasions that the fingerprints didn't match me, the palm
9 prints didn't match me, the footprints didn't match me,
10 and I was told by Bob West that the polygraph showed that
11 I in fact did not commit the crime, and Dean Mahlum
12 himself had informed me at one time that I was not a
13 suspect but he was just trying to eliminate me out of the
14 group of people. And in fact, they'd been doing that with
15 everybody in Poplar. Almost all of us high school
16 students got fingerprinted.

17 **Q. Were all your friends fingerprinted?**

18 A. Oh, yes.

19 **Q. And interviewed?**

20 A. Yes.

21 **Q. When you met with Undersheriff Mahlum after the
22 discharge from the Navy, did he interview you again about
23 Kim Nees's death?**

24 A. Not other than the conversation with me and my --
25 he and my mom, you know, which was more about how I was a

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1 they had received a letter from the FBI office in Butte,
2 Montana, that I was a possible suspect in the Kim Nees
3 murder.

4 **Q. And as a result of that, did you have to take a
5 discharge from the Navy?**

6 A. Yes. I had to take -- Well, the agreement was
7 with Master Chief Smith that I receive an honorable
8 discharge for the convenience of the Government and that I
9 would voluntarily return to Roosevelt County to once again
10 talk to Dean Mahlum. And they told me at that time that
11 if I could get a letter from Dean Mahlum stating that I
12 was no longer a suspect in this crime, that I could then
13 reenlist back into the military.

14 **Q. And so after being discharged, where did you go?**

15 A. I returned to Poplar, Montana.

16 **Q. When was that?**

17 A. That was in April of 1982.

18 **Q. When you got back to Poplar, did you go see
19 Mr. Mahlum? Was he sheriff by then?**

20 A. In 1982, no. He was still the undersheriff. I'm
21 not sure, I believe it was still Don Carpenter who was the
22 sheriff at that time.

23 **Q. Did you go see Undersheriff Mahlum?**

24 A. Yes, I did.

25 **Q. And what was --**

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1 suspect. And at that point in time, Mr. Mahlum again
2 informed me that he did not believe I committed the crime
3 of killing Kim Nees, but at the same time, he was not
4 willing to write a letter for me to the military.

5 **Q. Okay. Did you stay in Poplar at that point?**

6 A. I stayed around Poplar for about two-and-a-half
7 months, yes.

8 **Q. Then where did you go?**

9 A. I returned to Louisiana for the final time.

10 **Q. And did you get a job down there?**

11 A. Yes, I did.

12 **Q. Were you back living with your father?**

13 A. Yes, I was.

14 **Q. Okay. Did that -- At some point, did living with
15 your father change? Did you get your own place?**

16 A. Yes. It actually -- What had happened is on
17 October 31st of 1982, I actually got arrested in
18 West Monroe, Louisiana, for theft and criminal
19 trespassing. I'd broken into a junkyard to siphon some
20 gas for my vehicle and was arrested for that. But it was
21 in the paper, and that was an embarrassment to the Beach
22 family that I was arrested.

23 I was released on December 23rd of 1982, I believe is
24 the date that I was released from jail. And when I got
25 back to my father's house, there was actually a big

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12 (Pages 36 to 39)

1 argument between my stepmother, Carolyn Beach, and my dad
2 over me living in the house any longer. And it
3 actually -- you know, it actually extended beyond that,
4 because the argument wasn't just about me living in the
5 house, but she was trying to convince my dad that I wasn't
6 his. And so Carolyn and I actually got into a pretty
7 large argument and they kicked me out of the house over
8 that argument.

9 **Q. Did you end up getting your own apartment as a**
10 **result --**

11 A. Yes, I did.

12 **Q. I want to take you to January 4th of 1983.**

13 A. Yes.

14 **Q. Okay. At that time, you had your own apartment?**

15 A. Yes.

16 **Q. Okay. Did you end up getting arrested that day?**

17 A. Yes, I did. I was arrested for the contributing
18 to the delinquency of a minor.

19 **Q. Who is the minor that was involved?**

20 A. As a result of the argument between me and my
21 stepmother -- There was a lot of talk also at that time
22 that my dad and my stepmother were going to get a divorce.
23 Because of everything that was going on and them kicking
24 me out of the house -- I had a, I think she was 13 or 14
25 or at that time, I don't remember, a stepsister by the

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1 contributing to the delinquency of a minor.

2 **Q. Now, was your sister at your apartment?**

3 A. No, she was not. Her and her friend had actually
4 left -- Well, actually, I dropped them off at an underpass
5 just up on the freeway, because where Dad lived was
6 just -- was down the freeway.

7 **Q. When you were arrested, what police agency**
8 **arrested you?**

9 A. I was -- I was arrested by the Ouachita Parish
10 Sheriff's Department by a deputy by the name of
11 Mr. Strutz.

12 **Q. And where were you taken?**

13 A. I was taken to the Ouachita Parish Jail at that
14 time.

15 **Q. And were you charged with a particular crime?**

16 A. Yes. I was charged with contributing to the
17 delinquency of a minor.

18 **Q. And was bail set?**

19 A. Bail -- I was told that night when they booked me
20 in that I had a bond of \$1500, yes.

21 **Q. You spent the night of January 4th in jail?**

22 A. Yes, I did.

23 **Q. And did anybody come question you on January 4th?**

24 A. I actually was questioned on the night of
25 January 4th by Deputy Strutz, but that only included the

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1 name of Melanie Allison. And she had called me at work
2 and told me that her and a friend of hers were going to
3 run away to the streets of Houston, Texas, and see if she
4 couldn't find her dad, because she had information that he
5 was living in Houston. And I told her I wasn't going to
6 let that happen.

7 So I told her to think about it and that if she still
8 felt she really wanted to get away, that I would come and
9 get her and take the time to talk to Dad. And that was my
10 plan. I went to the school and I picked my sister up at
11 the school on January 4th. My plan was to take her to my
12 apartment, call my dad, and see if I couldn't sit down and
13 talk to Dad about what was going on with Melanie.

14 I called my dad's house at least six or seven times,
15 and I couldn't get ahold of him. Next thing I know, my
16 stepmother, Carolyn Beach, actually kicked the door of my
17 apartment in and started screaming and yelling at me. And
18 I just -- you know, I told her, I says, "Listen, this is
19 my apartment. You're not going to come in here and scream
20 and yell at me. You already kicked me out of your house,
21 and now I'm going to kick you out of mine." And I slammed
22 the door on her.

23 **Q. She ended up calling the police?**

24 A. And she called the police on me, yes, and I was
25 arrested several hours later in my apartment for

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1 contributing to the delinquency of a minor; it was about
2 the original charge that night.

3 **Q. And were you still in custody on January 5th?**

4 A. Yes. On January 5th, they actually moved me from
5 the Ouachita Parish Jail to a minimum security work farm
6 outside town, outside of Monroe called the P-Farm.

7 **Q. On January 5th, did any law enforcement people**
8 **come to talk to you?**

9 A. No, they did not.

10 **Q. So let's now talk about January 6th. What**
11 **happened on January 6th? You're still in custody, I take**
12 **it?**

13 A. Yes, I was. I was out at the Ouachita Parish
14 P-Farm, and I had actually, that morning, been assigned to
15 mop the barracks. Now, I call it a barracks because on
16 the Ouachita Parish P-Farm, they were 165-man open dorms,
17 where you walk in and there was an open section on the
18 right-hand side, there were showers, but on the left-hand
19 side, there was five rows across of two-story bunks that
20 went, I mean forever, it seemed like. But there were
21 165 of us that lived in these open dorms, and people were
22 assigned to keep the area clean, you know, on work
23 details.

24 **Q. Now, who came to see you that day?**

25 A. Later that day -- and I don't know what time.

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1 The only thing I can remember is it was right after
2 breakfast, in my own mind, because I was still mopping the
3 barracks at that time, when I was called to the front
4 office, and there was a Deputy Jay Via and a
5 Richard Medaries who had come to see me.

6 **Q. Did they take you anywhere?**

7 A. There was a trailer on the back side of the
8 P-Farm, and they actually took me through the
9 administration building to this trailer on the back side
10 of the P-Farm. Yes.

11 **Q. Did they tell you why they wanted to talk to you?**

12 A. They informed me that they wanted to talk to me
13 about some background information on my travels between
14 Montana and Louisiana, because they had three unsolved
15 homicides there in the Louisiana area.

16 **Q. And for how long a period of time that day did
17 they talk to you?**

18 A. It's my memory that we talked for approximately
19 two hours that day, you know, about my general activities
20 and my general lifestyle.

21 **Q. Was anything at all brought up that day, on
22 January 6th, about the Kim Nees murder?**

23 A. I was asked by Deputy Jay Via if it was in fact
24 true that at one time I was a suspect in a homicide in
25 Montana, and I told him yes.

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1 **Q. Did he question you about whether or not you were
2 involved in Kim Nees's death?**

3 A. I don't remember him questioning me as to whether
4 or not I was involved with the death of Kim Nees, but I do
5 remember telling him that I did not kill Kim Nees and, in
6 fact, that it was my understanding at that point in time
7 that I had been cleared as a suspect in the Kim Nees
8 murder.

9 **Q. Did he -- Was there any questioning of you about
10 whether you were responsible for any of the Louisiana
11 homicides?**

12 A. No. They just basically asked me my general
13 whereabouts and the times and the dates that I had been
14 traveling back and forth between Montana and Louisiana.
15 They asked a lot about my general character as far as what
16 kind of cars I liked to drive, what kind of clothes I
17 liked to wear, my friends, what did my friends think of
18 me, what was my social status in high school, you know,
19 stuff like that. It was just general information about me
20 and my life.

21 **Q. What was the demeanor of the -- of the police
22 officers, Via and Medaries, when they were talking to you
23 on January 6th?**

24 A. They were calm, they were -- they were very
25 polite to me. You know, they were southern gentlemen,

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1 basically. We didn't have any riff, we didn't have any --
2 we had a good rapport, basically, I mean, during that
3 questioning session.

4 **Q. Now let's go to the next day, January 7th of
5 1983. You're still in custody?**

6 A. Yes, sir.

7 **Q. And you're still at the same location?**

8 A. Correct. I was still at the Ouachita Parish
9 P-Farm.

10 **Q. Tell us your best recollection of what happened
11 that day, starting at the beginning of the day, as best
12 you remember.**

13 A. Well, I remember getting up and going to
14 breakfast that morning and then going back and mopping the
15 barracks. But on the night prior to that, I had made a
16 phone call to my mother or with my mother somehow, and I'm
17 not sure how that came about. And it was my understanding
18 from that phone call that I was to have a court hearing at
19 9 o'clock the next morning at the Ouachita Parish
20 Courthouse and they were going to drop the contributing to
21 the delinquency of a minor charge and that my dad was
22 going to drop charges or whatever, the State was going to
23 drop charges, and I was going to be released to the
24 custody of my father that day, at 9 o'clock that morning.
25 I didn't -- you know, I didn't know how all that was going

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1 to happen because I was out at the P-Farm.

2 And it's my recollection that somewhere around 7:30,
3 8 o'clock that morning -- I don't know, I was still, all I
4 can really remember is that I was still mopping the
5 barracks -- that I was called back to the front office and
6 I was told to pack my stuff, which at that time I didn't
7 have much stuff, everything I had belonged to the P-Farm,
8 and bring it to the front office. And when I did, there
9 was -- Deputy Jay Via was there to get me.

10 **Q. By himself?**

11 A. By himself, yes.

12 **Q. And when he picked you up, where did he take you?**

13 A. He took me up to the annex building of the
14 Ouachita Parish Courthouse.

15 **Q. And once you got to the courthouse, where were
16 you taken?**

17 A. I was actually taken into an interrogation room
18 of the Ouachita Parish Annex Building.

19 **Q. Describe the room.**

20 A. The room is a -- probably a ten-foot-by-ten-foot
21 room that was completely carpeted. The floor, the walls,
22 the ceiling and everything had this ugly greenish-brown
23 carpeting on it. There was a table in there with a chair
24 on each side of the table, and then there were three
25 chairs along the wall on the side of the room. On the

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14 (Pages 44 to 47)

1 table was a machine that at that time I didn't -- I didn't
2 have a clue what that machine was, but it was basically a
3 reel-to-reel recorder with a microphone, and attached to
4 the machine was like a graph machine like off of a
5 polygraph machine.

6 **Q. Now, when -- when Sergeant Via put you in that**
7 **room, did he stay with you or did he leave?**

8 A. No. I was put in there by myself and left there
9 for -- in my mind, it was a long time.

10 **Q. At some time -- at some point in time, did**
11 **Sergeant Via or anyone else return?**

12 A. Yes. Actually, after I sat there for quite some
13 time, I believe it was Joe Cummings came and actually took
14 me to use the restroom and then returned me to that room.

15 **Q. And then did you stay there again for a while?**

16 A. Yes. I still -- I sat there after Mr. Cummings
17 returned me. Again, in my mind, at that point, it seemed
18 like forever. Because in mind, at that point in time, I
19 was there to go to court and I was supposed to be released
20 on these contributing to the delinquency of a minor.
21 That's why I went to the courthouse. That's why I went to
22 the annex building. I was to be taken to court on these
23 contributing to the delinquency of a minor. I had no idea
24 about all the rest of what was about to happen.

25 **Q. At some point in time, did Sergeant Via return?**

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1 A. Yes. It was later on after I used the restroom
2 that Sergeant Via came into the room by himself and asked
3 me if I would be willing -- before I went to court, if I
4 would be willing to talk to him a little bit about the
5 Louisiana homicides.

6 **Q. And so what happened?**

7 A. I agreed to talk to him, and he -- I believe at
8 that point in time, he read me my Miranda rights and had
9 me sign a waiver, which I would have done. I mean, I had
10 no problem. I had absolutely nothing to hide. I knew in
11 my heart and in my mind that I had no involvement
12 whatsoever in any of the Louisiana homicides, nor did I
13 have any involvement whatsoever in the death of Kim Nees.
14 I had no problem talking to these people, I had no problem
15 signing their waivers. You know, I was raised that way.

16 **Q. Did Sergeant Via then begin to talk to you about**
17 **the Louisiana homicides?**

18 A. Yes. He actually informed me that they had the
19 three unsolved murders, you know, on January 6th. But
20 again on January 7th, he informed me that they had three
21 unsolved homicides and that they'd actually formed a task
22 force and they were investigating these homicides. And he
23 told me that some of my activities between Montana and
24 Louisiana were suspicious to him and he would like to
25 clarify some of those -- that movement between Montana and

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1 Louisiana. And he began to question me about these
2 homicides in Louisiana and where I was.

3 **Q. When he first started questioning you, what was**
4 **his demeanor?**

5 A. Oh, he -- he was very polite and soft-spoken and,
6 you know, nonaggressive, I guess is the term that, you
7 know -- It was casual conversation to start with.

8 **Q. Did that change?**

9 A. Yes. It actually changed sometime after that.
10 And I don't know how long Sergeant Via and I talked alone,
11 but it's my memory that sometime after that, Deputy
12 Richard Medaries and Joe Cummings entered the room. And
13 at first, they just came in and sat down in the chairs
14 that were over there and were listening to Jay Via and I's
15 conversation. And then Richard Medaries actually left the
16 room and he came back, and when he came back is when
17 things really changed for me.

18 **Q. In what way?**

19 A. When Richard Medaries came back into the room, he
20 actually had some photos of different crime scenes from
21 there in Louisiana. And I remember him coming over and
22 asking me -- at first, he just came over and asked me, he
23 says, "Would you be willing to look at some of these
24 photos and see if you can identify any of this or remember
25 any of this?"

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1 And I can't remember all of the photos that were
2 there, but there were two of them that really stick in my
3 mind to this day. I'll never forget looking at those
4 photos. One of them was of a dead body that was laying in
5 between these trees, and it was partially covered with
6 these leaves; and the other one was of a cream-colored
7 vehicle, and you could see bullet holes in the driver's
8 window, and there was blood splatters all over the window,
9 all over the windshield.

10 And he asked me -- Richard Medaries asked me, he says,
11 "Do you remember doing this?" And I said, "What?" You
12 know, I mean -- He said, "You did this." He said, "Do you
13 remember doing this?" And I said, "I never did this." I
14 says, "I don't know what you're talking about." I says,
15 "I have never killed anybody in my life."

16 And that's when the interrogation started going from
17 being aggressive to calm to, you know -- and then
18 Richard Medaries and Joe Cummings left, and I don't know
19 how long that period was or anything, but I do remember
20 it.

21 **Q. At some point, were you asked to take some kind**
22 **of a test?**

23 A. After Joe Cummings and Richard Medaries left, I
24 was actually left alone again for a period of time to just
25 sit in that room. And then Jay Via came back into the

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1 room by himself, and he started asking me questions again,
2 just general questions. And at that point in time, he
3 asked me if I would be willing to take what he called -- I
4 believe he called it a pre-voice-stress-test test. And
5 believe me, I don't -- to this day, I don't quite
6 understand. But I told him yes, I would be willing to do
7 that. And he explained to me that what this test would be
8 made up of is a bunch of hypothetical questions dealing
9 with different types of clothing, different types of
10 weapons, and different types of motives that a person
11 would use in a homicide.

12 And so I agreed to take that test, and he started
13 giving me all this information about different types of
14 clothing and different types of weapons and then different
15 types of motives that would be used to commit a murder.
16 And it was my understanding at that point in time that
17 this voice stress test was going to be on the Louisiana
18 murders and that this task force was only interested in
19 the Louisiana murders.

20 **Q. Now, did that change?**

21 A. Did what change?

22 **Q. Did the questioning at some point turn -- turn to**
23 **Kim Nees?**

24 A. Well, actually, the questioning changed to
25 Kim Nees way later on in the day.

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1 because of the way that Jay Via was talking to me, I
2 actually asked Jay Via if I could have a lawyer. And when
3 I asked that, Jay Via left the room, and I was actually
4 left in the interrogation room again by myself. And I sat
5 there again for, I would say, in my own mind -- and I
6 didn't have a clock, I didn't have a watch, I didn't have
7 anything, but I felt like I sat there for 15, 20 minutes,
8 maybe longer. And then Jay Via came back in, and again --
9 at that point, he was calm again and everything. And he
10 asked me, "Barry," he says, "would you be willing to try
11 and clear this up once and for all?" And I said, "Yes."
12 He says, "Would you be willing to have another person come
13 in and take another voice stress test?" And he explained
14 to me at that time that this would be a truth versus lie,
15 or something like that, and that it would be administered
16 by Alfred Calhoun, yes.

17 **Q. So that was when you were first introduced to**
18 **Mr. Calhoun?**

19 A. Yeah. Jay Via actually went out and got
20 Mr. Calhoun and brought him into the room, yes.

21 **Q. Okay. And then what happened?**

22 A. Mr. Calhoun -- Jay Via, at that time, he went and
23 sat down over on the chairs by the side of the wall and
24 Alfred Calhoun actually sat in the chair across the table
25 from me. And at that point in time, Alfred Calhoun,

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1 **Q. Okay.**

2 A. I actually took two -- two voice stress tests
3 with Mr. Jay Via. Each of those voice stress tests
4 included a pre-test, where I was given a whole bunch of
5 information. Then I would take the voice stress test, and
6 then he would come back and do an interrogation and what
7 he called a post stress test, where every single time I
8 went through that process, he accused me of being
9 deceptive and accused me of committing the murders in
10 Louisiana or being involved, showing involvement in those
11 murders.

12 **Q. When he told you that you failed the test and he**
13 **accused you of being involved, what was his demeanor?**

14 A. That's the first time that Jay Via actually got
15 aggressive with me at different points in time. I can't
16 ever say that he actually leaned up over the table, but he
17 leaned forward in his chair. His tone of voice changed
18 drastically. He accused me -- adamantly accused me of
19 lying to him about the cases in Louisiana, adamantly
20 stated that I had showed deception in these voice stress
21 tests and that I'd failed these tests and I had knowledge
22 or involvement in the homicides.

23 **Q. Now, did there come a time -- a point in time**
24 **where another investigator, Alfred Calhoun, came in?**

25 A. Well, actually before Alfred Calhoun came in,

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1 before he started any of his tests or anything, started to
2 explain to me that he knew that I was guilty of these
3 murders and that the only way that I could ever clear my
4 conscience before God Almighty was to tell him and to
5 confess to him that I had killed these girls. And I
6 remember telling -- In fact, we even prayed together, he
7 actually prayed with me and asked God in his prayer to
8 forgive me for, you know, killing these girls.

9 And at that point in time, I remember telling
10 Alfred Calhoun that I never killed anybody, but if it was
11 up to God to forgive me, then God would be the one that I
12 would talk to when I got there. And when I said that to
13 him, he got angry, you know. But he didn't blow off the
14 handle, but he just got angry. You could tell his
15 demeanor changed. But then he calmed down and actually
16 started leading me into this, what he called a pre-test of
17 the voice stress test. And again, I was given a series of
18 information that was supposedly related or not related to
19 these homicides, then I was given a voice stress test, and
20 then I was given a post test. And it was actually during
21 the post test that things really changed. I mean, it was
22 at that point in time during the post test that...

23 **Q. What happened?**

24 A. I was told by Alfred Calhoun that he knew I was
25 guilty of those murders and that no matter what it took

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16 (Pages 52 to 55)

1 him, he would see me fry in the electric chair of the
 2 state of the Louisiana. And he went into pretty lengthy
 3 details of explaining to me how the process of the
 4 electric chair works and how, when the electricity goes
 5 through the human body, that the first thing that happens
 6 is their hair singes and catches on fire, and then their
 7 eyeballs pop out from the pressure of the brain cooking,
 8 and that after that, the process is that the skin begins
 9 to turn black and cook; and how he couldn't wait to be the
 10 one to push the button and watch that happen to me because
 11 he knew without question that I was the one who killed
 12 them girls and that -- that the only way that it could
 13 ever get taken care of is if I would confess to him that I
 14 killed these girls and it would be straightened out. And
 15 I had to tell him and I had to tell God.

16 And I told him again at that point in time, I says,
 17 "Alfred Calhoun," I says, "I didn't kill anyone. I did
 18 not kill any of these girls in Louisiana and I did not
 19 kill Kim Nees."

20 Now, one of the ironic things that I remember when I
 21 seen Mr. Calhoun on the video yesterday -- or day before
 22 yesterday is when he was screaming at me, when he was
 23 leaning up over and screaming at me, he has this blood
 24 vein right down the middle of his forehead, and I remember
 25 that blood vein just standing out, and his eyes would just

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1 grow and his face was red and he was just screaming at me
 2 and yelling at me. And I broke down, and I began to cry.
 3 I was so scared. I was so scared at that point, I would
 4 have said anything, I would have done anything to get away
 5 from him. Because I honestly believe, with everything
 6 inside of me, that at that point in time, that man would
 7 have done what he said he was going to do.

8 **Q. How old were you at the time?**

9 A. I was 20 years old.

10 **Q. Did the interrogation continue?**

11 A. Actually, when I broke down and started crying,
 12 trying to get away from him, I actually asked him to let
 13 me speak to Jay Via. Because at least with Jay Via, the
 14 mood swings were -- you know, he'd go from being nice to
 15 being mean to being angry, you know. But with Calhoun,
 16 man, I just wanted to get away from him.

17 **Q. And so did -- did Sergeant Via come back?**

18 A. Yes, he did.

19 **Q. What happened when he returned?**

20 A. It was at that point in time that I remember the
 21 interrogation process solely focusing on the death of
 22 Kim Nees. And that was the first time during that day
 23 that I can remember being questioned only about the murder
 24 of Kim Nees, and it was with Jay Via after all this other
 25 process had taken place.

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1 **Q. How did he interrogate you about Kim Nees's**
 2 **death?**

3 A. The interrogation about the death of Kim Nees
 4 started off with just general information and, again, him
 5 just asking me general information about my activities in
 6 Montana and this and that. Then once again, he asked me
 7 if I'd be willing to take a voice stress test concerning
 8 the Kim Nees murder, and I said that I would. At that
 9 time, I remember Jay Via once again asking me to take this
 10 pre-test analysis, where he fed me information about
 11 different items of clothing and different weapons and
 12 different motives for the murder.

13 And one thing that I forgot to say here today is that
 14 on several different occasions throughout this process,
 15 not just on the Kim Nees murder, but during that process
 16 of the pre-test to the voice stress test, on almost every
 17 single one of those voice stress tests I took, I was asked
 18 to envision or hypothetically tell Jay Via how I felt that
 19 these victims were killed or how I felt that these
 20 homicides, hypothetically speaking, were committed. And
 21 it was all tied in -- and I'm not saying it was a part of
 22 the pre-test, but it was all tied into the questioning
 23 that he was presenting to me, you know.

24 **Q. Did he ask --**

25 A. So he did the same thing with Kim Nees prior to

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1 that pre-test, you know, when he was telling me different
 2 information about clothing and weapons and motives.

3 **Q. So did you -- did you do one of these stress**
 4 **tests for Jay Via with regard to Kim Nees's murder?**

5 A. I don't remember that we ever got to taking a
 6 voice stress test in the Kim Nees homicide specifically.
 7 I think that I did take another voice stress test after
 8 that process took place, yes.

9 **Q. Do you have any idea what time it was by this**
 10 **point?**

11 A. No, I don't.

12 **Q. What do you remember happening next?**

13 A. What I actually remember happening next is
 14 Mr. Jay Via asking me to tell a hypothetical story of how
 15 I felt Kim Nees was murdered. And then as I began to tell
 16 this story of how I felt that Kim Nees -- he stopped me at
 17 one point in time and he told me, and I remember this very
 18 clearly, he told me, he says, "You know, Mr. Beach," he
 19 says, "it's been shown and believed that you have
 20 knowledge about the Kim Nees murder." He says, "The only
 21 way we're going to truthfully get to the bottom of this is
 22 if you place yourself as the perpetrator of the crime."
 23 He says, "If you do that, your subconscious memory will
 24 recall rumors, stories, and information that you have
 25 gathered or may have."

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1 And so that's what I did, is I hypothetically put
2 myself as the perpetrator and I told Jay Via this story of
3 how I felt or believed that Kim Nees may have been
4 murdered.

5 **Q. Was that -- was that part of the integration**
6 **recorded, do you know?**

7 A. To be honest with you, I don't know what was and
8 was not recorded during that whole entire day. What I do
9 know is that the voice stress machine that sat there, it
10 sat there all day long. And that's what it was, is it was
11 a reel-to-reel recorder with a microphone sitting in front
12 of me, and that microphone sat in front of me all day long
13 throughout the whole entire process. But I'm not sure,
14 you know, what was and was not recorded throughout that
15 whole entire process.

16 I know that all the pre -- allegedly, all the
17 pre-tests were recorded, all the voice stress tests were
18 recorded, all the post stress tests were recorded, and
19 some of -- I don't know if there was any of the
20 information in between. But I was being interrogated in
21 the meantime of all this happening, and it was -- you
22 know, man, it was confusing. I was tired by that time.
23 And more importantly, I just wanted to get away from them.
24 My belief at that time was that Louisiana would have
25 prosecuted me for them murders. I believe that.

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1 That sounded logical. I could see that; you're carrying
2 all this stuff. I mean, you know...

3 **Q. Now, how do you explain the fact that you say you**
4 **can't recall segments or parts of the latter part of that**
5 **day?**

6 A. By that time of the day, I was so tired and I
7 was -- you know, there had been so much stuff thrown at me
8 and so many accusations, and, you know, I just wanted to
9 sleep. I just wanted to go home, I just wanted to go to
10 bed, I just wanted to sleep. Wherever home was, wherever
11 I had to go, I just wanted to get out of that
12 interrogation room.

13 And more importantly than anything, I was never taken
14 to court. I went in there that day under the presumption
15 that I was going to be taken to court and that the charges
16 of contributing to the delinquency of a minor were going
17 to be dismissed, and at no time that day did that happen.
18 And I was like, you know, what's going on, man? I mean,
19 I'm a 20-year-old kid just -- And they wouldn't believe
20 me. No matter what I said, they wouldn't believe me. I
21 could have said anything. I could have said that Mom was
22 Roberta Clincher and they wouldn't have believed me.

23 **Q. Do you remember actually giving a tape-recorded**
24 **confession where you admitted that you killed Kim Nees and**
25 **described how you did it?**

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1 **Q. Do you remember what happened next?**

2 A. I really don't remember what happened next, no.
3 The next thing that I clearly remember is at some point in
4 time that evening, I was given a meal. And I've always
5 felt that the meal was administered to me prior to this
6 so-called confession being taken, but I don't know. The
7 next thing I remember is I was brought a meal. And
8 Jay Via was sitting across the table from me, there was
9 myself, and it was either -- I still believe to this day
10 it was Richard Medaries that brought the hamburgers and
11 stuff in. I don't know for certain whether it was Joe --
12 Joe Cummings or Richard Medaries, but one of those two
13 individuals is the one that actually brought the meals
14 into the room.

15 Now, when the meals were brought into the room, one of
16 the things that I noticed was that the milkshake that was
17 given to me -- and they were all three strawberry
18 milkshakes, they were all three Big Mac hamburgers, and
19 they were all three -- I mean, all three meals were the
20 same, so there wasn't no difference in the meals or
21 anything like that. But I noticed that the lid off of one
22 of the milkshakes was missing. And it didn't mean nothing
23 to me at that time, really, even though I asked him, you
24 know, what had happened. He said it got dropped down into
25 his arm and he had to catch it and the lid popped off.

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1 A. I do not remember actually giving this so-called
2 confession, no. I don't. I don't remember at any point
3 in time. And when I say that I don't remember, I don't
4 remember any point in time that that machine was turned
5 back on and I admitted adamantly, in my own mind, decided
6 that I was going to sit down and give this confession.
7 That's not the way I remember it, and I don't remember
8 that ever taking place, you know.

9 And I would like to say at that point, when I say that
10 I don't remember, I would never -- I would never say that
11 I didn't give this confession. That's not what I'm
12 saying. There was so much that happened that day,
13 anything could have happened. And I wouldn't disrespect
14 the Nees family or the past 27 years of this whole
15 situation by ever saying or failing to take credit for
16 what happened. At some point in time, I broke weak and I
17 made the biggest mistake of my life, my breaking weak.
18 But I can't change that. It happened and I can't change
19 it.

20 **Q. And when you say you broke weak, what are you**
21 **talking about?**

22 A. They broke me. I mean, I just wanted out of
23 there, and I didn't care what it took to get out of there.
24 I didn't want to go through what Alfred Calhoun told me.
25 Alfred Calhoun told me he would watch me fry in the

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18 (Pages 60 to 63)

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1 electric chair. He told me he would watch my eyeballs pop
2 out of my head. He told me he'd watch my skin singe. And
3 I didn't want to go through that.

4 **Q. Barry, the recording of the confession -- in the**
5 **recording of the confession, they have you saying that you**
6 **killed Kim Nees. Is that true?**

7 A. In their recording of the confession, yes.

8 **Q. Okay. But did you kill her?**

9 A. I did not kill Kim Nees. And I have never once,
10 at any time in talking with Dean Mahlum or anybody other
11 than Jay Via have I ever failed to deny that I killed
12 Kim Nees.

13 **Q. Were you down at the park in the early morning**
14 **hours of June 16th of 1979 when Kim was killed?**

15 A. No, I wasn't. I had no involvement with
16 Kim Nees's murder whatsoever.

17 **Q. At some point, you've -- at different points,**
18 **you've given statements where you've expressed concern**
19 **about whether or not something was put in your milkshake.**
20 **Why did you ever say anything like?**

21 A. I would actually like to state that that's not an
22 allegation I'm trying to make. But I wish you would put
23 yourself in my shoes, you know, and try to explain why you
24 can't remember events happening that evening, you know.
25 There reached a point in time that evening where I no

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1 **crime for which you have been doing this time?**

2 A. That is not only my claim today, but that's been
3 my claim throughout this whole entire process. I have
4 never, never claimed that I killed Kim Nees outside of
5 this alleged recorded confession. And in fact, there's a
6 phone conversation where I talked to Dean Mahlum right
7 after this alleged confession took place, and even in
8 talking to Dean Mahlum, if you'll notice, I did not tell
9 Dean Mahlum that I killed Kim Nees.

10 **Q. Do you remember that phone conversation with**
11 **Dean Mahlum?**

12 A. I do not actually remember that phone
13 conversation. I remember -- What I do remember is I
14 remember being finally taken out of this interrogation
15 room, and I was taken into an office and put in a chair.
16 And I remember going into that office because the lights
17 were really bright. And more importantly, I remember it
18 because I was finally, finally taken out of that
19 interrogation room.

20 **Q. You were -- you were charged with the Kim Nees**
21 **homicide while you were still in Louisiana?**

22 A. Yes, but that -- the actual charge for the murder
23 of Kim Nees actually came a little bit later. The initial
24 charge was a fugitive from justice.

25 **Q. At some point you're extradited back to Montana?**

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1 longer can remember what happened. And I've spent
2 25 years behind bars trying to explain to myself why I
3 can't remember certain things after a certain point in
4 that day. It's never been -- I've never said those words
5 intentionally as an allegation towards anybody.

6 But I've got to explain to myself, as well as anybody
7 else around me -- I've had to try and explain to
8 Centurion Ministries, I've had to try and explain to my
9 family why I can't remember giving this alleged
10 confession. And that's hard to do. You know, that's
11 something -- Even inside of myself as I sit here before
12 you today, I have no real, honest definitive explanation
13 for you as to why I can't remember that tape recorder
14 being turned back on, which it had been turned on and off
15 and on and off all day long, and, in my own mind, making a
16 decision, okay, I'm going to tell them this false lie. I
17 don't remember that. And I'm sorry that I don't remember
18 it, but I can't change it.

19 **Q. Barry, how long have you spent in prison?**

20 A. I've actually been in prison here at Montana
21 State Prison since May 11th of 1984, which is a little bit
22 over 24 years now -- or 23 years, I'm sorry; a little bit
23 over 23 years.

24 **Q. And your -- your claim is that you've spent these**
25 **24-plus years in prison and that you're innocent of the**

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1 A. That is correct. There was a period of time that
2 took place where I fought the extradition, but then I
3 believe -- and I may have the date wrong, but I believe it
4 was on September 29th of 1983 that I was returned to the
5 state of Montana by an airplane.

6 **Q. What did you think was going to happen at the**
7 **trial up in -- up in Montana?**

8 A. Because of what I had been told by Dean Mahlum in
9 previous conversations with him, I actually felt that I
10 was going to be able to go in there and, once and for all,
11 prove that I did not kill Kim Nees; and that, once and for
12 all, I was going to put this whole entire situation behind
13 me and be able to go -- I actually, at that point, still
14 wanted to reenlist into the military. That was still my
15 goal, was to go back into the military, you know. Even
16 though things hadn't worked out to that goal at that point
17 in time, you know, it was still in the back of my mind.

18 **Q. Did you think you were going to be convicted?**

19 A. Absolutely not.

20 **Q. Why not?**

21 A. I had already been informed on numerous occasions
22 by Dean Mahlum that there was no physical evidence that
23 connected me to this crime. I had been informed by
24 Dean Mahlum that I had passed the polygraph test, and I'd
25 been informed by Dean Mahlum that it was his belief that I

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19 (Pages 64 to 67)

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1 did not kill Kim Nees. So I thought that if I could get
2 back to Montana and sit down with Dean Mahlum and talk to
3 him, that we could straighten this out.

4 **Q. That's not what happened.**

5 A. No, sir.

6 **Q. And have you been fighting for your freedom since
7 you were convicted?**

8 A. Yes, I have. I've done everything in my power to
9 try and maintain legal counsel and do whatever my legal
10 counsel advised me to do in order to keep an appeal
11 process going.

12 MR. CAMIEL: I have nothing further.

13 CHAIR McCANN O'CONNOR: The time is 9:25. We'll
14 take a 15-minute break and begin again at 20 minutes
15 to 10.

16 (A brief recess was taken.)

17 CHAIR McCANN O'CONNOR: All right, we'll come
18 back into session.

19 Proceed, please.

20 CROSS-EXAMINATION

21 BY MR. WELLENSTEIN:

22 **Q. Good morning, Mr. Beach. My name is
23 Mike Wellenstein. You probably recognize my name from the
24 post-conviction proceeding documents and habeas corpus
25 documents.**

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1 A. Yes.

2 **Q. Okay.**

3 A. Yes.

4 **Q. Now, isn't it true that you never mentioned in
5 your 1994 clemency application and in your 2005 clemency
6 application an alibi witness?**

7 A. That's true that it wasn't put in the application
8 itself, correct.

9 **Q. And you never mentioned an alibi witness at
10 trial? You never --**

11 A. No.

12 **Q. You never produced an alibi witness at trial?**

13 A. The -- the trial process that took place in
14 Glasgow, Montana, I was under the advisement of legal
15 counsel, Timer Moses at that time. And it was
16 Timer Moses's advice not to put the alibi witness or
17 myself on the stand.

18 Part of the reasoning behind that was at that point in
19 the trial, it was not only my belief, but it was
20 Timer Moses's belief that there was absolutely no way that
21 I was going to be convicted. Because not just the defense
22 counsel, but also Dean Mahlum had been on the stand at the
23 trial and admitted to the fact that there was absolutely
24 no physical evidence to connect me to this crime, and so
25 we were under the belief that I would not be convicted,

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1 and therefore, he advised both myself and my sister not to
2 testify at trial.

3 **Q. So after you were convicted and after your
4 conviction was affirmed by the Montana Supreme Court, you
5 had a post-conviction proceeding, and you never mentioned
6 an alibi witness there, you never had an affidavit from an
7 alibi witness in your post-conviction proceeding, did you?
8 Isn't that right?**

9 A. It is correct that none of it went into the
10 paperwork. That is true. Because when you're in a
11 post-conviction proceeding, as you well know,
12 Mr. Wellenstein, you have to address issues of law. The
13 only thing you can present to a court on appeal is an
14 issue of law. In other words, you have to find something
15 within the statutes of the state of Montana that can be
16 presented on appeal.

17 **Q. Okay --**

18 A. And it was the decision of my lawyers to select
19 what information they put into those briefs.

20 **Q. In that post-conviction proceeding, isn't it true
21 that you were trying to make the standard of actual
22 innocence to get around some procedural bars, and you
23 attached an affidavit that had nothing to do -- it wasn't
24 a legal issue, of Paul Kidd? You could have just as
25 easily attached an affidavit from some alibi witness;**

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1 **isn't that true?**

2 A. If it was the decision of my lawyer, then, yes --

3 **Q. So your attorney was -- was Wendy Holton?**

4 A. I've had several attorneys, yes.

5 **Q. In the post-conviction proceedings --**

6 A. Actually, I --

7 **Q. -- is that correct?**

8 **In your post-conviction proceeding, was Wendy Holton
9 your attorney?**

10 A. During the process before the federal courts,
11 yes.

12 **Q. And in state court also?**

13 A. I do believe that at one point in time,
14 Wendy Holton tried to take this case back into the
15 Montana Supreme Court with the affidavit from Paul Kidd.

16 **Q. And you're aware that the Board has all of the
17 documents from not only the federal habeas corpus
18 proceedings but the post-conviction proceedings?**

19 A. Yes, I am aware of that.

20 **Q. Okay. So you were trying to make an actual
21 innocence standard both in federal court and in the
22 post-conviction proceedings; is that true?**

23 A. That -- that is true. Yes.

24 **Q. Okay. And you never mentioned an alibi witness,
25 you never included an affidavit from an alibi witness in**

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20 (Pages 68 to 71)

1 any of those proceedings.

2 A. It was the decisions of my lawyers, throughout
3 the process of the appeals, not to do that, yes.

4 Q. In your interview with Richard Leo -- You
5 remember your interview with Richard Leo?

6 A. Yes.

7 Q. In that interview, isn't it true that you stated
8 you were satisfied with Wendy Holton as your attorney?

9 A. Oh, yes.

10 Q. Okay. So the first time there was ever mention
11 of an alibi witness was yesterday in these proceedings.

12 A. The first time that it's become public knowledge
13 would be here in these proceedings, yes.

14 Q. So you knew about -- you knew about your sister
15 providing you an alibi before these proceedings and you
16 never mentioned it at any legal proceeding.

17 A. I believe it was the testimony of my sister
18 yesterday that she provided that information to every one
19 of my legal counsel during this entire process. What
20 happens with that information was not necessarily under my
21 control. The decisions that were being made during this
22 appeal process were being made by my legal counsel as to
23 what they thought was most effective to present to the
24 courts.

25 Q. Did you ever mention an alibi witness in your DNA

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1 legal counsel.

2 Q. So you provided the information to --

3 A. Yes.

4 Q. -- your legal counsel.

5 And then -- So you provided that information to your
6 legal counsel in the federal habeas proceedings?

7 A. Excuse me. Again, Mr. Wellenstein.

8 Q. So you provided that same information regarding
9 the necklace, the fight, and the beaded key chain to
10 Wendy Holton, your legal counsel, in the federal habeas
11 proceedings?

12 A. It is my understanding that, yes, she had that
13 information. Whether she chose to use it in the
14 proceedings or not was a legal decision that she was
15 making.

16 Q. So it's Wendy Holton's fault for not bringing
17 that out.

18 A. No. It's -- it's not necessarily her fault. I'm
19 saying that she was making legal decisions on what would
20 be best to present to the courts. The best that I can do
21 as a defendant, as you well know as an attorney, is
22 provide the information. And once the information is
23 provided to your legal counsel, they make decisions based
24 on legal information, you know --

25 Q. That's fine. So it's up to your legal counsel to

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1 petition filed by Peter Camiel?

2 A. I believe at that time, all we were attempting to
3 do was get DNA testing done on the towel. And again, it
4 was under the legal advisement of my attorneys what went
5 into that petition and what did not go into that petition.

6 Q. And your attorney there was Peter Camiel?

7 A. Yes.

8 Q. But you mentioned in that DNA petition a number
9 of other things that showed your innocence, didn't you?

10 A. I believe we did, yes.

11 Q. Okay. You called -- During your trial, you
12 called Joanne Jackson and Caleb Gorneau at trial, but you
13 never questioned them regarding this fight and this
14 necklace or the exchange of a beaded key chain, did you?

15 A. I do not believe that -- If it's my understanding
16 correctly, Mr. Moses didn't want to open that up in a
17 court of law because it was something that could not be
18 fully substantiated other than the fact that Caleb Gorneau
19 is one of the people who took a piece of the necklace to
20 the jail.

21 Q. But Caleb Gorneau was your friend, right?

22 A. Yes.

23 Q. And you never raised -- you never raised that
24 argument in your post-conviction proceedings?

25 A. No, but I did provide that information to my

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1 get that information and present that information.

2 A. Well --

3 Q. Well, that's what you just said.

4 A. If that's your interpretation of that, yes, sir.

5 Q. Okay. And now you're represented by
6 Peter Camiel, aren't you?

7 A. Yes, I am.

8 Q. And you haven't called Joanne Jackson or
9 Caleb Gorneau in these proceedings to question them about
10 the necklace, the beaded key chain, and the fight.

11 A. No, we have not.

12 Q. And you subpoenaed them, didn't you?

13 A. I am not sure if they've been subpoenaed or not.
14 I haven't seen our actual subpoena list.

15 Q. But they're not listed on your witness -- they
16 weren't on your witness list.

17 A. To be quite honest with you, Mr. Wellenstein, I
18 haven't even seen the actual witness list for these
19 proceedings.

20 Q. You haven't seen it.

21 A. No, sir.

22 Q. But they're not going to be called today; that's
23 a given, isn't it?

24 A. That is something that would be up to my legal
25 team.

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1 **Q. Okay. Now, your -- your memory regarding**
 2 **January 7th, I want to talk to you about January 7th. It**
 3 **seems to me, from listening to your testimony, you can**
 4 **remember everything that benefited you on January 7th, but**
 5 **anything that hurts you, your memory has gone hazy or you**
 6 **can't remember. Isn't that true?**

7 A. Actually, Mr. Wellenstein, I don't know that
 8 anything on January 7th benefited me, but my memory did
 9 begin to fade later on in the evening, and there were a
 10 lot of things that supposedly took place in the evening
 11 time of January 7 --

12 **Q. Well, let's --**

13 A. -- that I don't recall.

14 **Q. Let's talk about what would benefit you as far as**
 15 **attacking the voluntariness of your confession, some of**
 16 **the statements you made, okay? All right?**

17 **Richard Medaries putting pictures in front of you of**
 18 **the Louisiana homicide and accusing you of killing these**
 19 **women in Louisiana, that would benefit -- that's pretty**
 20 **egregious police misconduct if one believes your story.**

21 A. Well, to be quite honest with you, I don't
 22 consider that being an event that took place that
 23 benefited me. That was actually a pretty traumatic
 24 experience.

25 **Q. That was a traumatic experience.**

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1 **You know what I find interesting about that, too? In**
 2 **your statement to Richard Leo -- Do you remember when you**
 3 **gave your statement to Richard Leo?**

4 A. Yes.

5 **Q. Okay. You stated -- isn't it true that you**
 6 **stated it was Joe Cummings who put those pictures in front**
 7 **of you and now you've switched it to Richard Medaries?**

8 A. Actually, I'm not sure if that's factual or not.
 9 But if you want to show it to me, I'll gladly take a look
 10 at it. And it wouldn't surprise me if I did have the
 11 two of them confused.

12 MR. WELLENSTEIN: Can I give this to Mr. Beach?

13 CHAIR McCANN O'CONNOR: Yes.

14 THE WITNESS: Mr. Wellenstein, do you have a
 15 specific page --

16 **Q. (By Mr. Wellenstein) I will. Hold on a second,**
 17 **please.**

18 **I'm looking at page 22. And there's an "I" that says,**
 19 **"What did Joe Cummings come in with? Pictures of what?"**
 20 **And you say, "Joe Cummings came in with a stack of**
 21 **pictures of different crime scenes there in Louisiana,**
 22 **pictures of a body."**

23 A. Yes, that's what the transcript reads.

24 **Q. And today you've said it was -- today you've said**
 25 **it was Medaries that did that.**

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1 A. Correct. But at the same time, I would like to
 2 state that in my mind, it's easy to confuse the two,
 3 because in all reality, the two of those individuals were
 4 in and out of the room inadvertently -- I mean, you know,
 5 when the main activity I was having that day was with
 6 Jay Via and Alfred Calhoun. Richard Medaries and
 7 Joe Cummings were alternately in and out of the room at
 8 different periods that, you know...

9 **Q. Just so we're clear, you can remember**
 10 **Richard Medaries taking part in this -- in the activities**
 11 **on January 7th in Monroe, Louisiana?**

12 A. I know that -- I know that all four members of
 13 the task force were in and out of that room during that
 14 day at different periods of time. The majority of my day
 15 that day was with Jay Via and Alfred Calhoun. The
 16 activities of the other two, like I said, were
 17 intermittent. They were in and out of the room at
 18 different times, and even when they were in the room,
 19 usually it was off to the side while I was dealing with
 20 Jay Via.

21 **Q. So if Richard Medaries testified yesterday that**
 22 **he took no part in the activities on January 7th in the**
 23 **Louisiana sheriff's office regarding you, he's wrong,**
 24 **then?**

25 A. I would say in my memory, he's wrong. And I'm

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1 not trying to -- I'm saying the way I remember the events
 2 taking place.

3 **Q. So it's the way you remember the events taking**
 4 **place.**

5 A. Yes.

6 **Q. And those events were 25 years ago.**

7 A. Yes, sir.

8 **Q. You know, in your -- in your interview with**
 9 **Richard Leo, isn't it true that you said that**
 10 **Alfred Calhoun gave you a polygraph test and actually**
 11 **hooked you up to a polygraph machine?**

12 A. The -- the voice stress --

13 **Q. I'm not talking about a voice stress test.**

14 A. If I may have a little latitude to explain my
 15 interpretation of what you asked me. The voice stress
 16 machine that was in the room all day long, it had an
 17 additional -- it was a reel-to-reel recording machine, is
 18 what it was. But attached to the reel-to-reel recording
 19 machine was another machine that made a graph or read a
 20 graph as a polygraph machine does.

21 Now, you're talking about the difference, and I'm no
 22 expert by no means at all. Trust me, I'm no expert. But
 23 from my memory of the different tests that I've taken,
 24 when you're taking a polygraph test, there's three
 25 different attachments that they -- or four different

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22 (Pages 76 to 79)

1 attachments that they hook to your body. There's one that
2 goes on your finger, if I remember correctly, there's one
3 that goes around your arm, and then there's two straps
4 that go around your chest and belly, on a polygraph
5 machine.

6 If I remember correctly, and I'm just going by my
7 memory, this voice stress machine that sat there, and it
8 had this machine that was attached, the graph. Attached
9 to the reel-to-reel section of that machine was a
10 microphone. Attached to the graph section of that was a
11 single, it was only one, strap that they would put around
12 my chest. And I don't -- you know, that's just my memory
13 of how that machine operated. And I don't know, I'm not
14 an expert in that by no means, even though they
15 administered that to me on numerous occasions that day.
16 And that was my reference there with Dr. Leo.

17 And in fact, even yesterday when Jay Via was
18 testifying, even Jay Via had a difficult time explaining
19 the difference between a polygraph test and this voice
20 stress test. So...

21 **Q. You're aware -- You were here yesterday when the**
22 **officer said that there's no strapping in --**

23 A. Yes, I was.

24 **Q. -- on a voice stress test --**

25 A. Yes, sir.

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1 **Q. -- is that right?**

2 A. Yes, sir.

3 **Q. Could you turn to page 36 of your interview with**
4 **Richard Leo.**

5 A. (Witness complies.)

6 **Q. It's on the very top of the page.**

7 A. Yes.

8 **Q. And what's -- what is the -- After "I," and**
9 **that's the interviewer, that's Richard Leo, what does it**
10 **say there?**

11 A. It says, "Being strapped."

12 **Q. And then what do you say?**

13 A. "I remember being strapped in and the things on
14 the finger and everything, and I had the polygraph test up
15 in Montana, so it was familiar."

16 **Q. Okay. In your interview with Richard Leo, isn't**
17 **it true that you said that Jay Via made a homosexual**
18 **advance towards you?**

19 A. I believe your interpretation of that is pretty
20 broad, Mr. Wellenstein, with no disrespect. At one point
21 during the interrogation process, when it was just Jay Via
22 and myself in the room, he actually reached over and
23 grabbed my hand. And it wasn't so much that he reached
24 over and grabbed my hand, it was the way that he done it.
25 Because he put one hand underneath and he put the other

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1 hand over the top and began to rub the top of my hand.
2 And I actually pulled my hand back away from him. You
3 know, my interpretation of that -- that act of him holding
4 my hand, at that point in my life, was something I was
5 very uncomfortable with, yes.

6 **Q. But that's what you told your interviewer,**
7 **Richard Leo.**

8 A. If that's what the transcripts reflect, I will --
9 I'm not denying anything that I've ever said at any point
10 in time, you know. That event actually took place, yes.

11 **Q. And you understand that -- that Richard Leo, when**
12 **he interviewed you, he was getting background information**
13 **about your story of what occurred and he was relying on**
14 **that to form his opinion? You understood that fact,**
15 **right?**

16 A. Yes. I understood that he was there to do a full
17 interview on background information, yes.

18 **Q. I want to go through some of the things that**
19 **you -- that you can't remember, okay, after having dinner.**
20 **Is that what you told Richard Leo, after having a**
21 **milkshake and a Big Mac?**

22 A. It was after I ate the meal that --

23 **Q. You can't remember. So you can't remember giving**
24 **your confession.**

25 A. Correct.

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1 **Q. You can't remember the officer recording your**
2 **confession.**

3 A. No, I do not.

4 **Q. Even though -- even though you're not denying**
5 **that you actually gave the confession.**

6 A. I'll never deny that this took place. Look at
7 what it's cost. I will never fail to take
8 responsibility --

9 **Q. Well --**

10 A. -- for what happened, no.

11 **Q. And you can't remember them turning on the tape**
12 **recorder?**

13 A. No. They turned that machine on and off so many
14 times throughout the day that I have no specific
15 recollection of them turning the machine on and saying
16 that we are -- we want you to confess, or, in my own mind,
17 even thinking that I was going to sit down and give a
18 confession, false or true or otherwise.

19 **Q. You can't remember signing the Miranda waiver at**
20 **7:08 that was introduced at trial?**

21 A. No. And again, I would like to say that if they
22 would have came to me and asked me to sign a Miranda
23 waiver, I would have had no problem doing so. I had
24 nothing to hide. At no time have I ever refused to talk
25 to anybody about my involvement on January -- or

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1 June 15th.
 2 **Q. And you can remember talking to Dean Mahlum after**
 3 **you gave -- after you gave your confession; isn't that**
 4 **right?**
 5 A. I actually don't remember talking to Dean Mahlum
 6 on the phone. I do remember being finally taken out of
 7 the interrogation room and placed into an office room. I
 8 remember that, but I do not remember the actual phone
 9 conversation, no.
 10 **Q. So you can't -- you can't remember telling**
 11 **Dean that you wanted to keep it out of the Wolf Point and**
 12 **Poplar area?**
 13 A. No, I do not.
 14 **Q. Okay. And that -- and that your mom is going to**
 15 **take it pretty hard?**
 16 A. No, I do not.
 17 **Q. Okay. And that you just wanted to keep it away**
 18 **from your mother if you got a chance to talk to her; you**
 19 **don't remember that?**
 20 A. I don't remember telling Dean -- I don't remember
 21 talking to Dean Mahlum or what I told him. I do remember
 22 being finally taken out of the interrogation room and put
 23 in this office room, you know.
 24 **Q. And you understand that there's a tape**
 25 **recording -- there's a tape recording of that**

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1 conversation?
 2 A. Yes, I understand that.
 3 I do not deny that it took place; I'm simply saying
 4 that my memory at that point in time, I was not
 5 remembering things.
 6 **Q. And then you had a -- you had a suppression**
 7 **hearing in state district court, you would agree, and you**
 8 **testified at that suppression hearing?**
 9 A. Yes, I did, under advisement of my lawyer.
 10 **Q. Okay. And do you remember when the prosecutor**
 11 **asked you what was the primary reason that you gave your**
 12 **confession?**
 13 A. I believe in my suppression testimony, I
 14 explained to the prosecutor and to the court at that time
 15 that the -- that I was afraid of Alfred Calhoun, and I
 16 explained that I had been threatened with the electric
 17 chair, yes, and that was my testimony at the suppression
 18 hearing.
 19 **Q. And do you remember -- do you remember that the**
 20 **Louisiana officers testified, and they testified that that**
 21 **threat never occurred and they made -- and they stated the**
 22 **same thing here in the clemency hearing?**
 23 A. Yes, I understand that.
 24 **Q. Do you understand that you're supposed to present**
 25 **new evidence here at this clemency hearing?**

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1 A. I believe we have presented new evidence to this
 2 Board of Pardons. There has never, never been anybody in
 3 28 years who has heard the testimony of Carl Four Star --
 4 **Q. Do you --**
 5 A. -- never in 28 --
 6 **Q. Hold on a minute. You can go over those things**
 7 **with your counsel if you want.**
 8 **Do you understand when you raised the allegation of**
 9 **Calhoun threatening you -- I mean, the State presented**
 10 **evidence of Calhoun -- You presented evidence, you**
 11 **testified that Calhoun threatened you, and Calhoun**
 12 **testified at the suppression hearing that he didn't**
 13 **threaten you and Via testified that he didn't hear any**
 14 **threat. Okay? So that was in front of the state district**
 15 **court. And then the state district court denied your**
 16 **suppression hearing and specifically stated in their order**
 17 **that there was no police misconduct. Isn't that right?**
 18 A. At this moment in time, I -- without reading the
 19 actual court order that was signed by Judge Sorte, I don't
 20 believe that I can specifically tell you that the court
 21 stated that there was no police misconduct in making their
 22 ruling. Now, if you have it with you, I would be glad to
 23 read it and agree with it.
 24 CHAIR McCANN O'CONNOR: We've seen it.
 25 **Q. (By Mr. Wellenstein) Well, the Board has it, and**

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1 **I don't need to go over it with them.**
 2 **So at the suppression hearing -- I just want to**
 3 **make -- you never mentioned any of the events that you**
 4 **talked about today, about the officers questioning you**
 5 **about the Louisiana homicides, the officers giving you**
 6 **voice stress tests about the Louisiana homicides, the**
 7 **officers putting pictures in front of you regarding the**
 8 **Louisiana homicides and accusing you of committing those;**
 9 **isn't that true?**
 10 A. Madam Chair, Mr. Wellenstein, if you'll read the
 11 transcripts of my testimony, at the suppression hearing,
 12 you'll notice that one of the very first things that
 13 Timer Moses said to me when he led me into my testimony is
 14 that he was going to ask me very limited questions.
 15 My attorney, Timer Moses, had talked to me prior to
 16 that suppression hearing, and he informed me that at the
 17 suppression hearing, he didn't want to try and open up a
 18 whole can of worms, he simply wanted to ask -- and in
 19 fact, if I remember correctly, he told me very
 20 specifically before he put me on the stand that he was
 21 only going to ask me three questions. And I don't
 22 remember if that's the number that was asked, but he
 23 started, and it's in the transcript of -- he started off
 24 by saying, "I'm going to ask you very limited questions."
 25 And that was something that was previously determined by

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1 my legal counsel. I would have asked anything, I would
2 have answered anything. But I will also follow the advice
3 of my legal counsel.

4 **Q. And he attempted and he wanted to limit those**
5 **questions in order to prevent the prosecutor from**
6 **cross-examining you; isn't that right?**

7 A. As a 21-year-old kid with no legal knowledge, I
8 cannot tell you why Timer Moses decided to make that legal
9 decision.

10 **Q. But Timer Moses was a very experienced defense**
11 **attorney at the time; isn't that right?**

12 A. It was part of the reason that we hired him.
13 Yes.

14 **Q. So you were -- so can I go over all of the**
15 **attorneys you were represented by with you?**

16 A. Yes, sir.

17 **Q. Okay. Paul Kidd.**

18 A. Yes, sir.

19 **Q. And in your statement to Richard Leo, your**
20 **interview with Richard Leo, you stated that Paul Kidd**
21 **never went over your confession -- never went over the**
22 **confession with you.**

23 A. We didn't actually go over --

24 **Q. Excuse me.**

25 **Go ahead.**

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1 of what was said in the legal report. We did discuss the
2 confession, but he didn't tell me what was in the
3 confession. Because I informed --

4 **Q. I think what --**

5 A. -- Mr. Kidd that I --

6 **Q. I think he also said that he went over the**
7 **confession with you, that he actually went over what was**
8 **in the confession with you. And the Board can -- if I'm**
9 **mistaken, the Board can look at that testimony.**
10 **Isn't that true?**

11 A. We did not actually go over the confession
12 itself, no.

13 **Q. Okay. And I think you testified today, and I**
14 **know this was in the Leo report, that the first time you**
15 **knew about the confession was at trial, what was**
16 **actually -- what you actually said in the confession.**

17 A. Yes. In fact, all of my legal counsel, including
18 Timer Moses, had kept the actual transcript of the
19 confession from me up until the time of trial.

20 MR. WELLENSTEIN: We have no further questions.

21 REDIRECT EXAMINATION

22 BY MR. CAMIEL:

23 **Q. Barry, did you -- From the point that you were**
24 **first arrested in Louisiana, starting with Paul Kidd,**
25 **through all of the attorneys that you've had, have you**

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1 A. Mr. Kidd and I never actually went over my
2 confession. When Mr. Kidd come to see me on January 8th
3 in the Ouachita Parish Jail, he asked me if I could
4 remember giving the confession. At that point in time, I
5 told even Mr. Kidd that I couldn't remember actually
6 giving the confession, but that I remembered a
7 hypothetical story that Jay Via asked me to tell him. I
8 began to tell Mr. Kidd at that time what I could remember
9 of this hypothetical story, and about halfway through what
10 I was telling Mr. Kidd, he finally stopped me and he says,
11 "I'm going to stop you right there and we'll save this for
12 trial."

13 And at that point in time, I asked Mr. Kidd if he
14 would tell me what was in the confession. And this is
15 what I'm referring to in the Dr. Leo report. I asked
16 Mr. Kidd if he would tell me what was in the confession,
17 and he says, "No." He says, "I don't want you to know
18 what you actually said until we're in the trial."

19 **Q. But you were here when Kidd -- Mr. Kidd testified**
20 **yesterday, weren't you?**

21 A. Yes.

22 **Q. And he testified that he discussed the confession**
23 **with you and that it was his normal practice to do so;**
24 **isn't that true?**

25 A. Mr. Wellenstein, I understand your interpretation

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1 **relied on them in terms of representing you?**

2 A. Absolutely. As a defendant fighting for your
3 life, you know, you trust that who you hire as a lawyer --
4 You know, you're putting your life in their hands, so
5 whatever they tell you, you trust that what they're
6 telling you has a legal reason behind it.

7 **Q. And you accepted their advice?**

8 A. Absolutely.

9 **Q. Do you blame any of your lawyers for your being**
10 **here right now?**

11 A. Not at all. No.

12 MR. CAMIEL: That's all I have.

13 RECROSS-EXAMINATION

14 BY MR. WELLENSTEIN:

15 **Q. In some of this material that you testified --**
16 **some of the story you testified today wasn't in the**
17 **clemency application that you filed regarding this**
18 **proceeding; is that correct?**

19 A. Excuse me. Now, I've -- This application --

20 **Q. This application, the one you filed before the**
21 **Board.**

22 A. Okay.

23 **Q. Some things that you testified today weren't in**
24 **that clemency application.**

25 A. Can you be more specific as to what I testified

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EXECUTIVE CLEMENCY HEARING - TESTIMONY OF BARRY ALAN BEACH

1 today that's not in that application?
2 **Q. Things like -- things like the milkshake, the**
3 **threats by Richard Medaries or Joe Cummings, depending --**
4 **depending on who you take, the asking for an attorney, the**
5 **polygraph, the alibi testimony that we heard yesterday.**

6 A. It's my understanding that in preparing and
7 presenting this application for executive clemency to this
8 Board of Pardons, that what we were trying to focus on in
9 that application is the new information and the new
10 witnesses that had come forward. It had been clearly
11 documented what my belief was about all of those events
12 you just named. And this is the first time that I have
13 ever, ever been able to give public testimony, including
14 at my trial, as to all these events in the combination.

15 **Q. So in other words, if the -- You understand that**
16 **a hearing in front of a clemency board like this, where we**
17 **have a number of witnesses and we have cross-examination**
18 **and questioning, is an extraordinary thing?**

19 A. Yes, I do understand that. Yes.

20 **Q. And that the Board could -- the Board could just**
21 **deny your, deny clemency just based upon reviewing your**
22 **actual clemency application; do you understand that?**

23 A. I understand that, yes.

24 **Q. So the Board could have just addressed this, so**
25 **to speak, on the briefs and you would -- and none of this**

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1 **would have ever come before the Board.**

2 A. I do believe that as a part of this application
3 before the Parole Board, that we submitted my testimony at
4 the suppression hearing, and in my testimony at the
5 suppression hearing, I addressed the fact that I was
6 threatened with the electric chair.

7 **Q. I'm not talking about that. I'm talking about**
8 **the other things we discussed today.**

9 A. I believe that all of that was submitted in
10 Dr. Leo's report, and I do believe that in that report,
11 that I addressed all these issues.

12 MR. WELLENSTEIN: No further questions.

13 CHAIR McCANN O'CONNOR: Mr. Wellenstein, would
14 you please mark and submit this statement. Though we have
15 read a train carload of documents, I do not believe that
16 we have read this. This is the statement to Dr. Leo.

17 MR. WELLENSTEIN: Yes.

18 MS. PLUBELL: We did forward it, but we can
19 certainly --

20 CHAIR McCANN O'CONNOR: I don't -- The three of
21 us have not read this statement.

22 MR. WELLENSTEIN: That's (indicating) a clean
23 copy.

24 CHAIR McCANN O'CONNOR: So would you submit it
25 and just have it marked?

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1 MR. WELLENSTEIN: Yes.

2 CHAIR McCANN O'CONNOR: Mr. Curtiss, do you have
3 questions?

4 BOARD MEMBER CURTISS: Yes, Madam Chair, I do
5 have questions.

6 EXAMINATION

7 BY BOARD MEMBER CURTISS:

8 **Q. Mr. Barry Beach, sir.**

9 A. Yes, Mr. Curtiss.

10 **Q. I want you to know that I'm one of them that**
11 **signed your application to approve you being here.**

12 A. Yes, sir.

13 **Q. So I do have more of an invested interest than**
14 **just another hearing, which we do many, many of them every**
15 **month; not so much in this extent of import or**
16 **seriousness, but we do a lot of them. I'm glad that all**
17 **that's taken place has taken place in the last few days.**

18 **Now, I wanted to ask you this, sir: Were you -- were**
19 **you on active duty in the military when all of this**
20 **happened?**

21 A. Sir --

22 **Q. You said you wanted -- Excuse me. You said you**
23 **wanted to stay in the military. Were you in the military**
24 **when this took place?**

25 A. The only time I was in the military, I was

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1 actively in the United States Navy, stationed on board the
2 USS Spruance, from October of 1981 until April of 1982.

3 **Q. Okay. After this --**

4 A. After the homicide. Yes, sir.

5 **Q. Okay.**

6 A. Yes, sir.

7 **Q. Now, you mentioned that -- you mentioned that you**
8 **were given a bad time in Louisiana by these law**
9 **enforcement officers, you felt at least.**

10 A. Oh, yes, sir.

11 **Q. You had signed a waiver that you did not want an**
12 **attorney. Were you knowledgeable of the fact that when**
13 **things like this started happening, that you had a right**
14 **to have an attorney at any time?**

15 A. Yes. In fact, as I have already testified here
16 today, at one point in time I asked Jay Via for an
17 attorney; and at that point when I asked for the attorney,
18 they all left the room and they left me sitting there for
19 15 or 20 minutes. And then when they came back in, they
20 were all calm and polite and everything and asked me if
21 they could ask a few more questions. And, Mr. Curtiss, I
22 would have signed another waiver, because I had nothing to
23 hide. I would have answered any question they wanted to
24 ask.

25 **Q. Okay. That answers that.**

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26 (Pages 92 to 95)

EXECUTIVE CLEMENCY HEARING - TESTIMONY OF BARRY ALAN BEACH

1 **Now, when -- when all of this was taking place, do you**
2 **believe that the LA authorities were being honest with you**
3 **in what you considered honesty?**
4 A. No, sir. I didn't -- I didn't -- I'd like to
5 say -- Because I think I understand what you're asking. I
6 knew that they weren't being honest with me when they were
7 telling me that I was deceptive in these polygraphs.
8 Because if the polygraph is accurate, there's no way I
9 should have been deceptive. I didn't even know about them
10 Louisiana homicides, and yet, they were accusing -- not
11 only accusing me of committing them, but they were
12 accusing me of being deceptive in these stress tests. I
13 mean, you know...
14 **Q. Okay. And I have a very serious question on this**
15 **one. Now, the LA authorities, in your judgment, were**
16 **being very bad to you --**
17 A. Yes.
18 **Q. -- you were scared, and all of these other**
19 **things.**
20 A. Mainly with Alfred Calhoun. Yes, sir.
21 **Q. Okay. Then why did you fight extradition back to**
22 **Montana?**
23 A. The reason I fought extradition was a legal
24 decision that was made by Mr. Kidd. The original
25 extradition papers that were filed, it was for juvenile

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1 delinquency. And you cannot -- This was the information
2 that was provided to me by Mr. Kidd, is that you could not
3 extradite a juvenile across state lines. So he used that
4 as an opportunity to become familiar with the case.
5 Because at that point in time, it was our intentions to
6 have Mr. Kidd come to Montana and represent me at trial,
7 and things just didn't work out for that to happen.
8 **Q. Okay. Did you, in fact, Mr. Beach, did you**
9 **discuss this with Mr. Kidd about you saying or him at**
10 **least reporting that you had killed the three girls --**
11 **that you told him you had killed the three girls in**
12 **Louisiana?**
13 A. I didn't discuss that to Mr. Kidd until it became
14 knowledgeable at my hearings, my proceedings. We had no
15 knowledge that some of that took -- had allegedly taken
16 place until we got to the court proceedings, and Jay Via
17 first testifying at my suppression hearing was the first
18 time that we were aware that Mr. Kidd was being accused of
19 saying that I confessed to him these Louisiana homicides.
20 And that was kind of like, you know --
21 **Q. Well, it ended up here (indicating), sir --**
22 A. Yes.
23 **Q. -- that Mr. Kidd did tell them that, and that was**
24 **pretty much reported that it was a ploy for some type of**
25 **mental incompetency for you when you got back to Montana.**

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1 **Were you aware of that?**
2 A. No, I was not.
3 **Q. Okay. It wasn't some kind of planned thing**
4 **between you and Mr. Kidd, who was your appointed lawyer?**
5 A. Not at all, sir. No.
6 **Q. Okay. Now, Mr. Kidd advised that he did not hear**
7 **anyone -- he did not hear you say that you -- And there is**
8 **some admission here, when you are discussing the Louisiana**
9 **homicide case, there was some discussion here that -- and**
10 **I'm not -- The only reason I want to know this, I'm not**
11 **playing lawyer here, I just want to know what is true and**
12 **what is not true. Understand that, Mr. Beach?**
13 A. Mr. Curtiss, I'll answer anything you ask. I
14 have no --
15 **Q. Okay. But I want you to know I'm not trying to**
16 **knock you up and down --**
17 A. Sir, you've given me an opportunity I've never
18 had, so thank you.
19 **Q. Okay, sir, and I appreciate that.**
20 **And this was an interview in the Montana area. Okay,**
21 **it says here that also during the part of this interview**
22 **in the Poplar, Montana area in June '79, Barry Beach**
23 **stated that he knew he had in fact killed Kimberly Nees in**
24 **the Montana area and that it was a big relief to him when**
25 **he got that off his shoulders. This particular statement**

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1 **was made at least two other times according to Paul --**
2 **let's see here now, during an interview with Barry Beach.**
3 **When Barry would make these statements regarding the**
4 **Montana death, Commander Alfred Calhoun and Attorney**
5 **Paul Kidd were present and witnessed these statements.**
6 **Now, something -- something is not right here.**
7 A. Correct.
8 **Q. You're saying you didn't do it. Here, we have**
9 **two people -- Now, Mr. Kidd has denied this emphatically,**
10 **and there is a couple of situations here where it has been**
11 **brought out that he was present and heard you say that.**
12 **Let me hear from you, sir.**
13 A. Sir, I absolutely deny that. At no time, outside
14 of this alleged confession in the presence of Jay Via,
15 have I ever told anybody anywhere that I killed Kim Nees.
16 I have always adamantly denied that I killed Kim Nees to
17 anybody that I've talked to. And even with Jay Via,
18 throughout the entire process, it was my belief that I was
19 adamantly denying that I killed Kim Nees.
20 **Q. Okay. Well, this is kind of clearing a few**
21 **things up, Mr. Beach, and that's what I intend to do, if**
22 **it's all right with you.**
23 **This milkshake thing, had you already given the**
24 **statement when you were given the milkshake and the**
25 **hamburger?**

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27 (Pages 96 to 99)

1 A. According to the documents provided by Jay Via,
2 the milkshake was given to me after this alleged
3 confession took place. It is my memory, not remembering
4 having given the recorded confession, that I had eaten
5 before all this supposedly took place. But I'm not
6 sure -- you know, because I don't remember -- Like I said,
7 I don't remember the machine ever being turned on. And
8 inside of my own mind, you know, making a conscious
9 decision that I'm going to sit down and give this
10 confession, I don't remember that ever taking place.

11 So it's my understanding from my memory that I was fed
12 a meal before this alleged statement took place, but the
13 documents show that I was given the milkshake and the meal
14 after this alleged confession took place. And the
15 documents, I mean by Jay Via's report that this event took
16 place after this alleged confession.

17 **Q. Mr. Barry Beach, sir, what inference or what**
18 **statement are you making in regards to this milkshake?**
19 **What are you saying?**

20 A. The only thing I'm trying to say, Mr. Curtiss, is
21 for 25 years, I've been incarcerated for something I
22 didn't do. That incarceration is based on a confession
23 that they claim I gave. I don't remember giving that
24 confession as they claim it took place. So I have to
25 explain to myself, as I'm having to explain to you now,

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1 why I don't remember that event. And part of the
2 explanation, to me, in my own mind, is that that was one
3 possibility. That's only one possibility in my own mind,
4 you know. And the only reason I say that and the only
5 reason that I bring that up is because for a fact, when my
6 milkshake was delivered to me, there was no lid on it.
7 That doesn't mean it was drugged.

8 **Q. Well, your statement, sir, then, is that you**
9 **thought there was drugs in it. That's the point I'm**
10 **trying to make. Is that --**

11 A. No.

12 **Q. -- what you're making inference to?**

13 A. No. I'm saying that that was just something that
14 I can explain to myself as to why -- I'm not saying there
15 were drugs in the milkshake. I'm not accusing anybody of
16 putting drugs -- I'm saying that's one explanation to
17 myself that --

18 **Q. Okay, that explains kind of what I was -- I was**
19 **wondering if you were saying that they drugged you, and I**
20 **was going to ask you for what reason would they drug you**
21 **after you had already given a statement.**

22 A. Correct.

23 **Q. That wouldn't make much sense to me.**

24 A. No, sir.

25 **Q. Okay. In other words now, pretty much --**

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1 **everything that's wrong, Mr. Beach, pretty much can be**
2 **blamed on your counsel; I mean, not introducing this, not**
3 **introducing that. Do you feel your counsel was not fair**
4 **with you, Mr. Moses and all of these other --**

5 A. I will never say that my counsel wasn't -- You
6 know, you don't hire an attorney to turn around and say
7 that they weren't fair. The only time that I -- And in
8 fact, on appeal, I have raised the issue of ineffective
9 assistance of counsel.

10 **Q. Uh-huh.**

11 A. During my trial process, there was one point in
12 time when I was very upset with Mr. Moses -- actually
13 two times that happened. The first time is I wanted him
14 to call Mr. Kidd. I wanted Mr. Kidd to be able to
15 testify. Mr. Moses said that we couldn't afford to bring
16 him up here. The second time is I definitely wanted to
17 testify at my trial. I absolutely wanted to testify at my
18 trial, and Mr. Moses would not let me. But that's his
19 legal advice.

20 And the reason he told me that he did not want me to
21 testify is because at that point in the trial, first of
22 all, we believed I was going to be found not guilty. We
23 believed that because there was no physical evidence to
24 connect me to the crime. So we believed I was going to be
25 found not guilty. The second part of that is that he

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1 didn't want to put me up on the stand in case this had --
2 just in case we did have to go into an appeal process.

3 **Q. Okay. And I just -- And this is the only comment**
4 **that I have to make on that. I know that if I was going**
5 **into a district court in the state of Montana for first**
6 **degree murder, I know that I would not take it for granted**
7 **that I could not be convicted. Really. I mean, all**
8 **things are possible, so to speak.**

9 **So do you feel that Mr. Moses was not up to snuff as**
10 **far as you say? Somebody has got to be blamed, if you're**
11 **innocent, for you sitting here.**

12 A. I didn't go into that trial with any type of
13 presumption that I would not be found guilty. I went to
14 that trial under the belief that we would have to prove my
15 innocence. And during the course of the trial, it came
16 out several times that there was no physical evidence that
17 connected me to this crime, there were no eyewitnesses who
18 could put me at the scene of this crime, there was
19 absolutely nothing substantiated that could place me
20 anywhere close to this crime outside of this alleged
21 confession.

22 When it came time for my testimony, Mr. Vance, it was
23 on the very last day of my trial, and all this stuff that
24 I just talked about had already been introduced to the
25 tribunal, and it was Mr. Moses's belief and my belief at

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EXECUTIVE CLEMENCY HEARING - TESTIMONY OF BARRY ALAN BEACH

1 that point, knowing that this has been presented to the
2 tribunal, that I was not going to be convicted. I mean,
3 there was nothing to connect me to the crime. And
4 Mr. Moses advised me not to testify, and I took that legal
5 advice from Mr. Moses.

6 **Q. Okay. You're advising the Board, then,**
7 **Mr. Beach, if I understand it correctly, that you have**
8 **never, in your lifetime, ever killed anybody.**

9 A. No, sir, I have never killed anybody in my entire
10 life.

11 BOARD MEMBER CURTISS: Okay. Thank you,
12 Mr. Beach.

13 That's all, Madam Chairman.

14 EXAMINATION

15 BY BOARD MEMBER BOWMAN:

16 **Q. The only questions I have, you've just discussed**
17 **why you personally didn't testify, and I know that that's**
18 **something that attorneys do at discretion, should we let**
19 **them talk for themselves or will it be worse.**

20 **And your mother and your sister were never allowed to**
21 **talk either; is that your understanding?**

22 A. I do believe that my mother was placed on the
23 stand at my trial. I can't remember all of her testimony.
24 It's been some years since I've read it. My sister asked
25 to testify at my trial, and at that point in time,

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1 Mr. Moses advised my sister that it would not be
2 beneficial to put her on the stand, because anything that
3 she may have to say would be discredited as her being my
4 sister and that she would then be tore up by the
5 prosecution for just wanting to cover for me. I can't
6 speak to that conversation. That was between my lawyer
7 and my sister and my mother. I wasn't present when that
8 conversation took place.

9 **Q. I kind of reviewed some of that last night after**
10 **hearing your sister, and I know that the basis of what**
11 **your mom was asked about was the clothing that you had,**
12 **whether something was missing or, you know, in her**
13 **experience of doing your laundry, was there any items**
14 **missing. But you say that Larry Rowe took you home that**
15 **night from the Tastee Freeze --**

16 A. Yes, ma'am.

17 **Q. -- dropped you off at home at some time. Was he**
18 **ever called to trial to talk about the fact that he**
19 **dropped you off at home sometime that evening?**

20 A. I do not believe that Mr. Rowe was called in to
21 trial, but I do believe it was verified that he did take
22 me home.

23 **Q. And then you mention that -- that Joanne Jackson,**
24 **Caleb Gorneau, Shannon O'Brien all had vital information.**
25 **And nothing was ever done with their information either?**

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1 A. By them or by myself, Ms. Bowman?

2 **Q. Well, during -- during the proceedings at any of**
3 **these hearings.**

4 A. No --

5 **Q. I mean, they weren't brought in to this hearing,**
6 **none of them.**

7 A. No, ma'am.

8 **Q. And was there some reason that that was deemed to**
9 **be not important enough? I mean, you know, what -- what**
10 **would be, you know, the reason for holding -- not having**
11 **them show up here and say something to that effect?**

12 A. I have to be honest, Ms. Bowman, bringing them
13 here is something that I haven't even discussed with
14 Mr. Camiel, so I'm not sure what the reasoning of not
15 bringing them in has been.

16 **Q. You made a comment, too, that when you heard that**
17 **Kim Nees had been murdered, that it shocked you that**
18 **someone of her social class had been murdered. What was**
19 **your -- what was your meaning by "her social class"?**

20 A. There was a -- Poplar, being a small reservation
21 community that is part Native American and part White, has
22 many social classes; and especially in 1979, because if
23 you'll remember, that was shortly after the days of
24 Wounded Knee and AIM, and there was still a lot of
25 division and friction and everything in the community.

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1 But even outside of that, Pam and Kim Nees were -- they
2 were the elite. I mean, you know, their grandfather was a
3 state senator, they had a huge, huge farm north of town
4 that their dad owned, you know. In fact, most people who
5 came from large farms in that area were considered, you
6 know, very well to do.

7 **Q. But you had dated Kim's sister --**

8 A. Pam. Yes, ma'am.

9 **Q. -- so did you consider that she was in a**
10 **different social class than yourself?**

11 A. Pam?

12 **Q. Pam or Kim.**

13 A. Oh, yes. I even considered Pam to be of a
14 different social class than myself. Yes, ma'am.

15 BOARD MEMBER BOWMAN: That's all.

16 EXAMINATION

17 BY CHAIR McCANN O'CONNOR:

18 **Q. Mr. Beach, I want you to think and focus**
19 **carefully. You said, and I wrote an exact quotation, "I**
20 **absolutely wanted to testify at my trial, and Mr. Moses**
21 **would not let me," end quote.**

22 **Is it your testimony here today that Mr. Moses, at**
23 **60 years of age and the pinnacle of his legal abilities,**
24 **forbid you from testifying at your own trial?**

25 A. Yes, ma'am.

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EXECUTIVE CLEMENCY HEARING - TESTIMONY OF BARRY ALAN BEACH

1 Q. I see. You're sure about that. I mean, I have
2 some sense. I've given advice to testify, I've given
3 advice not to testify at different times, and I have my
4 reasons. I want to be sure that it's your testimony that
5 he forbid you from testifying at your own trial.

6 A. Yes, ma'am. In fact, we had a very lengthy
7 discussion about that that morning prior to being taken to
8 the courthouse.

9 Q. Well, he can have a lengthy discussion in which
10 he gives you his advice. But it's your testimony that he
11 forbid you.

12 A. Yes, ma'am.

13 Q. Okay. I'm interested, the earlier in the day
14 when you blew the transmission from your car time, did you
15 say you were going to go back to Poplar to get yourself a
16 girl or get yourself a woman, or did you make some
17 reference to women there?

18 A. No, ma'am, I did not. The only thing that I can
19 recall ever telling Caleb Gorneau is that I would go to
20 town and try and send somebody back to pick them up.

21 Q. And did you do that?

22 A. No, ma'am, I did not.

23 Q. So you had a ride back, is your testimony, to
24 your house. I mean, not from -- I mean, I was listening,
25 so you had a ride back from one spot to another.

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1 A. Correct.

2 Q. So why didn't you send them back?

3 A. To be quite honest with you, I figured it served
4 Caleb right to have to walk to town himself, because I
5 did.

6 Q. Uh-huh. And so Caleb is just wrong about this,
7 any kind of comment about coming back to a get woman,
8 coming back to get a girl, whatever that was?

9 I mean, you know the statement I'm talking about?

10 A. Yes, ma'am, I do.

11 Q. Okay.

12 A. By the time I'd gotten back to town, I had
13 completely calmed down --

14 Q. But that isn't -- I'm not asking you whether you
15 did get a girl. I'm asking if you made the comment that
16 you were going to.

17 A. No.

18 And I was simply saying that -- No, I never made that
19 comment. Let me just leave my answer at that.

20 Q. So he was just wrong.

21 A. Yes, ma'am.

22 Q. Now, we're going to have a second part of this
23 hearing the 1st of August. But I have a question for you.
24 For a person who did commit this crime --

25 A. Yes, ma'am.

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1 Q. -- do you think yours would have been an unfair
2 sentence?

3 A. I have done extensive research into that
4 question, ma'am.

5 Q. I'm not asking about the statistics. I saw your
6 statistics. I'm asking you if you think it's an unfair
7 sentence for the person who did commit this, who you say
8 wasn't you.

9 A. For the person who committed this crime?

10 Q. Uh-huh.

11 A. When I look at all of the circumstances
12 involved -- Well, for the person who committed this crime,
13 no.

14 Q. You think it's a fair sentence for that person?

15 A. For whoever committed this crime. When I -- when
16 I look at it and I look at the age that I was at that
17 time, you know, and the fact -- I honestly felt that the
18 no-parole stipulation was very stiff. And especially once
19 I got here to the prison and I started running into a lot
20 of other people of similar age, similar crimes, and
21 similar situations who had the no-parole stipulation.

22 Q. Uh-huh.

23 A. But that's up to the judicial system, and that's,
24 you know...

25 BOARD MEMBER BOWMAN: If it were your sister who

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1 had been murdered, would you feel differently about the
2 person that was convicted?

3 THE WITNESS: Would I -- would I feel -- I've
4 already stated to Ms. O'Connor that I believe that the
5 sentence that I received, if I was guilty, I believe it
6 would have been a fair assessment by the courts.

7 BOARD MEMBER BOWMAN: If it were your sister,
8 would you have expected it to even maybe be stronger?

9 THE WITNESS: I don't know if I would have
10 expected it to be stronger. And don't get me wrong here,
11 because I'm not an opponent of the death penalty, but at
12 the same time, when you go to that extremes, you need to
13 be absolutely sure that the judicial system has properly
14 done what it needs to do. I mean, that's extreme, you
15 know, as is my sentence.

16 Q. (By Chair McCann O'Connor) At some point in your
17 discussions, you raised the possibility of a split
18 personality and it was the other guy, the other part of
19 your personality that did this. You've said you don't
20 remember your confession. Do you remember that
21 conversation?

22 A. Actually, if I'm correct in my memory of the
23 documents, it was actually Mr. Kidd that stated that I had
24 told him that I had this -- and I don't remember ever
25 telling Mr. Kidd that I had a split personality. I don't

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30 (Pages 108 to 111)

1 know who Ray Woods is. I've never -- you know -- And in
2 fact, I believe that the records of the Montana State
3 Prison will show that at no time during my incarceration
4 at Montana State Prison have I had a mental evaluation
5 where I was determined to have a split personality.

6 **Q. I'm not trying to make a determination that you
7 have a split personality --**

8 A. Yes, ma'am.

9 **Q. -- I'm asking you if you remember your claim that
10 you did.**

11 A. No, ma'am. I don't think I ever told Mr. Kidd
12 that I had a split personality.

13 **Q. So you think Mr. Kidd just made that up?**

14 A. As was testified here, that it was allegedly one
15 of Mr. Kidd's ploys to present to the court. I don't
16 know -- and that was something that was never discussed by
17 Mr. Kidd and myself. The only thing that I remember as a
18 legal strategy ever being discussed with Mr. Kidd and
19 myself was the aspect to fight the extradition, and that
20 was to give him an opportunity to prepare for this case
21 back in Montana.

22 **Q. How about the saying you committed the other
23 three murders in Louisiana?**

24 A. Absolutely not. I never at any time told
25 Mr. Kidd that I committed the three murders in Louisiana.

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1 And that's just something that I feel that, you know -- In
2 a hypothetical situation, as I was asked by Jay Via, I do
3 remember making a statement similar to that, yes.

4 **Q. So your statement was in a hypothetical
5 situation, you hypothetically would have gone home and
6 talked yourself out of its happening.**

7 A. In a hypothetical situation. But -- And I'd like
8 to say, Ms. Chair, at no time have I ever denied any
9 statement that was in that alleged confession. I will
10 always take responsibility for breaking weak and making
11 that statement. I'm not ever trying to say that. I'm
12 just not exactly sure how and at what point in time during
13 that day that that alleged statement took place.

14 **Q. Now, I started here and I'll end here: Besides
15 your testimony that Timer Moses forbade you from
16 testifying in your own defense, is it also your testimony,
17 upon a few minutes more reflection, as it was a few
18 minutes ago, Timer Moses told you there was absolutely no
19 way you were going to be convicted?**

20 A. Yeah. He did not believe that I was going to be
21 convicted of this crime. That is true.

22 CHAIR McCANN O'CONNOR: I have nothing more.

23 You said you had another question?

24 BOARD MEMBER CURTISS: Yeah.

25 ///

///

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1 **Q. Okay. When is the first time that you have
2 testified or put in a court document that you asked
3 Jay Via for an attorney?**

4 A. I can't remember correctly or not whether that
5 came out at the suppression hearing. But I do believe
6 that this is actually the first time that my public
7 testimony has been that I asked Jay Via for an attorney.
8 I have stated that on numerous other occasions, and I
9 think that it was even in the Dr. Leo report, but I'm not
10 positive at this point in time.

11 **Q. "The Dr. Leo report," your statement to Dr. Leo
12 so he could render his opinion --**

13 A. Yes, ma'am.

14 **Q. What about your comment that you went home and
15 told yourself it didn't happen; do you remember making
16 that comment to law enforcement people?**

17 A. I do actually remember during the hypothetical
18 story that I relayed to Jay Via making up common sense
19 scenarios --

20 **Q. Uh-huh.**

21 A. -- such as that one right there that you say.

22 **Q. Uh-huh.**

23 A. In that process, I do believe that had a person
24 committed this crime, one of the first things they would
25 try to do is somehow try to act like it didn't happen.

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FURTHER EXAMINATION

2 BY BOARD MEMBER CURTISS:

3 **Q. Just one more, Mr. Beach. First of all, I want
4 you to place -- You've done a lot of visualization,
5 apparently, by Mr. Via and all the LA authorities and all
6 of these other people. And I just want you to remember
7 that there's three of us here that, for two-and-a-half
8 days, have taken a lot of information under our belt.**

9 A. Yes, sir.

10 **Q. I have not made up my mind under any circumstance
11 at this point in time. But I want you to understand,
12 we're dealing with, first of all, you were convicted by a
13 jury of 12. And we also understand that jury came by that
14 conviction with the information presented by the
15 prosecuting attorney and that which was not or either
16 presented by the defense attorney. That's how convictions
17 are made. So with that in mind, whatever comes out of
18 this hearing, I want you to understand that we have taken
19 a lot of information under consideration.**

20 **Okay. To me, there has been a lot of deception
21 under -- I'm talking about denials by lawyers, denial
22 by -- or at least one, and the legal counsel and LA
23 authorities, and, you know, they've all -- they've all --
24 it's all been pointed out that they're lying or they're
25 wrong or they're being deceptive.**

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EXECUTIVE CLEMENCY HEARING - TESTIMONY OF BARRY ALAN BEACH

1 A. Yes, sir.
2 Q. And that's why we, the three board members, have
3 asked you all the questions we have. We're trying to
4 filter this out. And I can't think of any three more
5 people in this world that could be more fair than us,
6 regardless of what this outcome is going to be.

7 So Ms. O'Connor is going to set the deadline as to the
8 next hearing, all of this other type of information, but
9 you understand where we're coming from?

10 A. Mr. Curtiss, I absolutely understand the
11 difficult position that the parole board members are in.
12 And I once again thank you with all my heart for giving me
13 this chance.

14 Never, never since 1984 has this offer to me been
15 presented to anybody in this case, whether it's myself or
16 the family of the victim or the citizens of Poplar. And
17 it was this parole board members here that gave me that
18 opportunity. And I gravely appreciate that with utmost
19 respect for everything you've done for me, including even
20 the administration going out of their way to allow this to
21 happen as it has. And I understand that fully. In my
22 24 years at Montana State Prison, nothing, nothing like
23 this has ever even remotely happened. And I thank my God
24 in Heaven for what has been given to me.

25 BOARD MEMBER CURTISS: And I want to say to the

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COURT REPORTER'S CERTIFICATE

STATE OF MONTANA)
SS.
COUNTY OF LEWIS AND CLARK)

I, CHERYL ROMSA, Court Reporter, Notary Public in
and for the County of Lewis and Clark, State of Montana,
do hereby certify:

That the foregoing proceedings were reported by
me in shorthand and later transcribed into typewriting;
and that the -117- pages contain a true record of the
proceedings to the best of my ability.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed my notarial seal this 22nd day of July 2007.

CHERYL A. ROMSA
Court Reporter - Notary Public
My Commission Expires 8/4/2007

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1 correctional authorities, thanks a million for setting
2 this stage for us; to the Board of Pardons, some of the
3 most qualified people I've ever met in my life; to all the
4 people that showed up for this hearing. That's what our
5 judicial system and our society is all about.

6 So that's all I have, Madam Chair.

7 CHAIR McCANN O'CONNOR: Do you have more
8 questions, Mr. Camiel?

9 MR. CAMIEL: No. Thank you.

10 CHAIR McCANN O'CONNOR: Do you have questions?

11 MR. WELLENSTEIN: No.

12 CHAIR McCANN O'CONNOR: You may be excused.
13 Is that your last witness?

14 MR. CAMIEL: It is. Thank you.

15 CHAIR McCANN O'CONNOR: We'll take a ten-minute
16 break. We'll reconvene at a few minutes before 11.

17 (A brief recess was taken.)

18 (Exhibit No. 6 was marked.)

19 * * * * *

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32 (Pages 116 to 118)

SENTENCE REVIEW DIVISION OF THE SUPREME COURT OF MONTANA

FROM: The District Court of the Fifteenth Judicial District.

County of Roosevelt

STATE OF MONTANA,

Plaintiff,

No. DC-84-373

vs.

BARRY ALLAN BEACH

DECISION

Defendant.

The application of the above-named defendant for a review of the sentence of
100 years; and is restricted from eligibility for parole for Deliberate Homicide
imposed on May 11, 19⁸⁴, was fully heard and after a careful
consideration of the entire matter it is decided that:

the sentence shall remain the same as originally imposed.

We wish to thank Dick Carstensen, Attorney from Billings, for
his assistance to the Defendant and to this Court.

DATED this 6th day of November 19⁸⁵.

Copies mailed this 26th day of
November 19⁸⁵, to:

Clerk of Court (Original)
District Judge
Defendant (2)
County Attorney
Warden of the Prison
Clerk of the Supreme Court

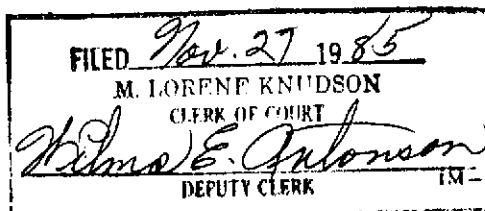
Karen Sedlock
Secretary

SENTENCE REVIEW DIVISION

Chairman, Hon. John Henson

Member, Hon. Thomas Olson

Member, Hon. Frank Davis



1 IN THE DISTRICT COURT OF THE FIFTEENTH
2 JUDICIAL DISTRICT OF THE STATE OF MONTANA,
3 IN AND FOR THE STATE OF MONTANA

4 * * * * *

5 THE STATE OF MONTANA,

6 -versus-

7 BARRY ALLAN BEACH,

8 Defendant.

9 * * * * *

NO. 1068-C

CONVICTION AND SENTENCE

FOR DELIBERATE HOMICIDE,

A FELONY

10 The Roosevelt County Attorney, James A. McCann, with the
11 Defendant, Barry Allan Beach, and his counsel, Charles F. Moses,
12 came into Court.

13 The Defendant having been charged with the offense of
14 Deliberate Homicide committed at Poplar, Montana, Roosevelt County
15 Montana on or about the 16th day of June, 1979, and having on his
16 arraignment entered a plea of Not Guilty; whereupon the matter
17 came on regularly for trial before a jury on the 9th day of April,
18 1984; and, the Defendant having been present in Court at all times
19 during the said trial and having been fully represented by his
20 attorney, Charles F. Moses, at all times during the trial; and,
21 upon the entry of the verdict of Guilty of the Deliberate Homicide
22 of Kimberley Nees by the jury duly sworn to try the case; and,
23 whereupon the matter was continued to the ²⁰10th day of May, 1984,
24 for sentencing;

25 No sufficient cause being shown or appearing to the Court why
26 judgment should not be pronounced, thereupon the Court rendered
27 its judgment;

28 That whereas Barry Allan Beach having been duly convicted by
29 jury verdict in this Court of the crime of Deliberate Homicide of
30 Kimberley Nees committed in the County of Roosevelt, State of
31 Montana, on or about June 16th, 1979;

32 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, and this

135 May 11 84
- 1 - M. Leanne Thompson

EXHIBIT A

1 does order, adjudge and decree, that the said Barry Allan Beach
2 is guilty of the crime of Deliberate Homicide of Kimberly Nees,
3 a felony, which was committed in the County of Roosevelt, State of
4 Montana, on or about the 16th day of June, 1979, and that the said
5 Barry Allan Beach shall be punished by confinement in the State
6 Prison in Powell County, State of Montana, for One Hundred Years,
7 (100 years) as prescribed in Section 45-5-102 (2) Montana Code
8 Annotated.

9 That the Court has determined that Barry Allan Beach is not
10 eligible for designation as a nondangerous offender for purposes
11 of parole eligibility pursuant to Section 46-18-404, Montana Code
12 Annotated, and further pursuant to Section 46-18-202 (2), Montana
13 Code Annotated, the Court determines that Barry Allan Beach is
14 restricted from eligibility for parole and participation in the
15 supervised release program while serving his term. These
16 determinations are made by the Court in that the Court deems them
17 necessary for the protection of society from Barry Allan Beach.

18 The Defendant, Barry Allan Beach, is remanded and placed in
19 the custody of the Roosevelt County Sheriff. The Sheriff shall
20 transport Barry Allan Beach to the Montana State Prison for
21 execution of this sentence.

22 Dated this 11th day of May, 1984.

23
24 
25 JUDGE OF THE DISTRICT COURT

26 REASONS FOR SENTENCE

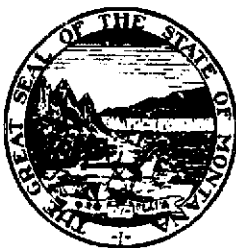
27 In deliberating and considering and setting the sentence,
28 the Court considered all of the evidence that came before it at
29 the time of trial, and that information that was contained in the
30 pre-sentence investigation report of the Department of Institutions,
31 and having considered the same carefully, it is the opinion of the
32 Court that Barry Allan Beach represents a substantial danger to

1 society and restrictions on parole and supervised release are
2 necessary to protect society.

3 The evidence adduced at the trial proved that Barry Allan
4 Beach killed Kimberley Nees with cold blooded deliberatness and in
5 a savage and vicious manner by beating her on the head more than
6 thirty times with a twelve inch crescent wrench and a lug wrench.
7 The evidence proved that Kimberley Nees attempted to flee and save
8 her life but Barry Allan Beach pursued her and murdered her. The
9 Defendant then carefully concealed the crescent wrench and lug
10 wrench in the river. He also tried to hide the body in the river.
11 The Defendant represents a very substantial threat to society and
12 it is the duty of this Court and necessary for the protection of
13 society that this Defendant be effectively removed from society.

14 Dated this 11th day of May, 1984.

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16 
17 JUDGE OF THE DISTRICT COURT
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MONTANA STATE PRISON

To: All concerned

From: Greg Budd, Unit Manager

Re: Beach, B. # AO21520

Date: 8-3-2007

The intention of this letter is express my opinions concerning Mr. Beach's morale character. I served as Mr. Beach's Unit Manager from 2004 to 2007. I have also known Mr. Beach from the time he has been incarcerated.

On two different occasions Mr. Beach has comprised female staff, which resulted in staff dismissals. These events took place at Montana State Prison and the Cross Roads Correctional center in Shelby. My experience with Mr. Beach over the years has been that he is manipulative and very smooth at coning staff. This is evidenced by the above mentioned incidents.

Lastly during an interview with Mr. Beach in B unit several months ago we discussed his current issues regarding his incarceration and his claim of innocence. During the entire interview, based on my experience with inmates, I believe he portrayed an attitude of "I am getting one over on the state." This was evidenced to me by his facial expressions "a smirk or smudge look and the lack of eye contact. In the past when I have witnesses these visual ques it tells me the individual is lying.

Cc file

washingtonpost.com

Burden of Proof

Advertisement

Jim McCloskey desperately wanted to save Roger Coleman from the electric chair. Maybe a little too desperately

By Glenn Frankel
Sunday, May 14, 2006; W08

Jim McCloskey stands by the phone in a Richmond hotel room on this frosty January morning, waiting to fulfill a solemn pledge he made 14 years ago to a condemned man.

An hour before Roger Keith Coleman was executed for rape and murder, McCloskey had locked eyes with him through the bars of his cell a few yards from the electric chair and promised that someday he would prove Coleman's innocence. McCloskey is a lion of a man -- proud, powerful and self-assured -- but he emerged from death row that night in May 1992 looking drained and frail as he repeated his pledge before dozens of reporters and television cameras, and read out Coleman's last words:

"An innocent man is going to be murdered tonight. When my innocence is proven, I hope Americans will realize the injustice of the death penalty as all other civilized countries have."

An unordained Presbyterian minister and self-ordained seeker of truth, McCloskey runs a small nonprofit organization that investigates cases of prisoners who claim they were wrongly accused. Over the years, he and his dedicated band have freed 36 people, many of whom had spent decades behind bars for crimes they didn't commit. It was too late to free Roger Coleman -- the electric chair has no reverse switch -- but not too late to prove his innocence. For sitting in a locked evidence freezer in a lab in California was less than a Q-Tip's worth of semen taken from the body of the dead woman.

McCloskey had petitioned Virginia Gov. Mark Warner to permit a new test of the sample's DNA. No sitting governor had ever agreed to allow DNA testing of an already executed man. And no one who has been executed since the death penalty was reinstituted in 1976 has been proved definitively innocent.

Now, as he waits for the phone to ring with the DNA results, McCloskey is well aware that history is looking over his shoulder. He's rented a small conference room at the Berkeley Hotel in Richmond to receive the phone call from the crime lab and a larger room to hold a press conference afterward. He's even agreed to allow a crew from ABC's "Nightline" to be there to record his reaction to the news. He's written out two statements -- one in case Coleman is exonerated, the other in case he isn't. But McCloskey is confident he will need only the first. Finally, at 10:45 a.m. the call comes. "Jim, we have the results," says Ray Prime, director of the Center of Forensic Sciences in Toronto, one of the world's most highly regarded crime labs.

The "Nightline" camera captures the rest. "Uh-huh, he is the source," says McCloskey. "Uh-huh, one in 19 million." A heavy sigh. "Oh boy. All right. Bye."

He hangs up and turns to Paul Enzinna, the Washington attorney who helped him make his appeal for DNA testing. "He's guilty."

SIX WEEKS LATER, SITTING IN HIS ETERNALLY CLUTTERED OFFICE IN PRINCETON, N.J., Jim McCloskey is still perplexed. "I don't argue at all with the DNA results," he says, "but there are elements to this case that are still a mystery to me."

Part of the puzzle is the circumstances of the crime. McCloskey still sees nagging holes in the prosecution's case. Chief among them is the timeline: He can't figure out how Coleman had enough time to rape and murder his sister-in-law Wanda McCoy and still be seen in various places by various people that March evening in 1981. He still harbors strong suspicions about a neighbor of the murder victim whom he believes had the character, motive and

opportunity to commit the crime.

And part of it is the convicted killer himself. Soft-spoken and thoughtful, Roger Coleman had presented his case calmly and articulately, with logical explanations and apparent sincerity. He also was a model prisoner who founded a program to counsel young men in trouble. He convinced not only McCloskey, a self-taught and experienced investigator with a skeptical nose. He also won the admiration and affection of three strong, intelligent women.

Foremost among them was Kathleen Behan, an attorney with Arnold & Porter, the high-powered Washington law firm that pursued Coleman's legal appeal without fee for eight years. There was Marie Deans, who headed a small shoestring operation that counseled and comforted Virginia's death row inmates and who came to think of Coleman as a son. And Sharon Paul, a former elementary schoolteacher who as a college student started a pen-pal friendship with Coleman and who eventually fell in love with him.

Each came to believe in Coleman's innocence. And each worked hard to help him prove his case. Between them, McCloskey and Behan made more than a dozen trips to Grundy, the coal-mining town in southwest Virginia where the murder took place, interviewing dozens of people. They concluded that Coleman had been framed by police and prosecutors, defended by incompetent lawyers and condemned to death by a small-town jury bent upon vengeance. They pushed for a new blood test of the evidence, and when the test implicated Coleman as the killer, they sought to discredit their own expert. And they accused a local man of being the "real killer," a claim they stuck with even after they learned of information indicating he had the wrong blood type.

When their efforts to get a stay of execution failed, they conducted a high-profile media campaign to compel then-Gov. L. Douglas Wilder to commute, or at least delay, the sentence. In the weeks before Coleman was put to death, his picture was on the cover of Time magazine ("This Man Might Be Innocent. This Man Is Due to Die"). He was interviewed from death row on "Larry King Live," the "Today" show, "Primetime Live," "Good Morning America" and "The Phil Donahue Show."

Opponents of the death penalty also seized on the case, staging vigils outside the governor's mansion in Richmond and the Greensville Correctional Center, where the execution was due to take place. Pope John Paul II made a public plea for mercy, and Mother Teresa personally phoned the governor's chief counsel. What started out as a shocking crime in a remote corner of Virginia became an international cause celebre.

"The anti-death penalty movement has never had much in the way of sympathetic visuals or symbols," says Richard Dieter, executive director of the Death Penalty Information Center in Washington. "Other movements have trees and whales, positive images. Well, an innocent person is a positive image."

Back in Grundy, a scrappy community of 1,500 in the heart of Appalachia, many people were appalled. They viewed Coleman's supporters as a powerful group of lawyers, activists and journalists who were blinded by their loathing of the death penalty and taken in by a clever psychopath. "They were trying to build this case for Roger's innocence, and they didn't care who they threw to the dogs," says Pat Hatfield, the victim of an earlier incident, in which Coleman had exposed himself and masturbated in front of her at the public library. "It didn't matter whose life was destroyed as long as they could save Roger."

Two years after Coleman's execution, Arnold & Porter paid a substantial sum to settle a libel claim by the man it had identified as the "real killer." After that, Behan and the firm stopped commenting publicly on the case. They declined to discuss it for this article, except for a brief statement issued by the firm: "We complied with our professional responsibility and stand by our representation of Roger Coleman."

Jim McCloskey has taken a much different approach. Within hours of the DNA test results in January, he told a press conference that he was wrong and that Roger Coleman had betrayed his trust. Like a patient determined to take his medicine, he answered every question, proclaimed the DNA result a victory for the truth -- "even though this particular truth feels like a kick in the stomach." And he spent hours with a reporter going over the case, sifting

the clues, acknowledging errors of judgment.

He concedes that someone looking in from the outside, with the benefit of hindsight, would ask: "How in the hell did McCloskey ever believe that Coleman was innocent, given what we know today?"

"I keep asking myself: Where did I go wrong? What did I miss?" And so he begins to go over it all again, starting with the night nearly 25 years ago when a young woman was brutally raped and murdered.

THEY WERE HIGH SCHOOL SWEETHEARTS, Brad McCoy and Wanda Faye Thompson, married after his graduation from Grundy Senior High in 1978, when he was 18 and she was 16. He got a job as a United Coal parts clerk, while she dropped out of school and stayed at home. Brad says his wife "was a good-hearted person. Just very quiet, considerate of others." They rented a small house amid Grundy's hills and hollows, across Slate Creek from the main highway.

On the night of March 10, 1981, Brad came home from the swing shift shortly after 11 to find Wanda's body on the bedroom floor in a pool of warm blood. She had been stabbed twice in the chest, and her throat had been slashed with such force that she was nearly decapitated. She was 19 years old.

Investigators quickly focused on Roger Coleman, 22, a bright but troubled young man who was married to Wanda's 16-year-old sister and worked at the TJ&M Coal Co. mine up on Looney's Creek. Raised mostly by his grandparents and his uncle after his parents separated, Coleman first got in trouble with the authorities for making obscene phone calls as a teenager. Just before graduating from high school in 1977, he was accused of attempting to rape a local schoolteacher. She testified that he gained entry to her home, forced her to tie up her terrified 6-year-old daughter and threatened her with a gun before she was able to escape. He denied the charge, and his high school principal testified that he had seen Coleman at school at the time of the crime. But the jury believed the victim -- Coleman served 20 months in prison. Then, two months before the murder, there was the library incident. All of that, plus Coleman's family ties to Wanda, led police to his door.

At first, Brad McCoy didn't believe it. He had played sandlot baseball with his brother-in-law and believed Roger had been wrongly accused in the rape case. And there was no bad blood between Roger and Wanda -- she had doted on her little sister and treated Roger like family. Roger had even served as a pallbearer at her funeral. But police said the evidence was persuasive, and Brad quickly came to accept that Coleman was a cold-blooded killer.

The trial opened on March 15, 1982. At a gas station next to the courthouse, someone posted a sign "Time to Bring Back the Hanging Tree." The defense team -- two local lawyers, neither of whom had ever tried a major criminal case -- asked for a change of venue. But presiding Judge Nicholas Persin ruled Coleman could get a fair trial in Grundy.

The prosecution's case was built upon circumstantial evidence -- there were no witnesses to the crime. Brad McCoy testified that Wanda was a timid and anxious person who would have opened her front door at night only to a man she knew and trusted, such as her brother-in-law. The prosecution's forensics expert said three small spots of blood on Coleman's dungarees matched Wanda's blood type, and that two pubic hairs found on her body had similar characteristics to his. The state's serologist said the rapist's semen contained traces of type B blood -- the same as Coleman's and 10 percent of the male population. The pants Coleman handed over to investigators the day after the murder were wet on the bottom 10 inches of each leg. Prosecutors theorized that Coleman had parked his pickup truck across Slate Creek from the McCoy house, committed the deed and then fled across the shallow stream to avoid being seen by neighbors. And they heard from a cellmate, who said Coleman had confessed the crime to him.

Coleman claimed he had an alibi for the time of the murder. After learning that his evening shift had been canceled, he had stopped to shoot the breeze with his good friend Phillip VanDyke, then had gone to a nearby trailer park to pick up an eight-track Supertramp tape he had left at Sandra and Scott Stiltner's place. After that, he said, he went to a public bathhouse in town to shower, as miners customarily did, and change into clean clothes. There simply wasn't time, he insisted, for him to have pulled up near Slate Creek, made his way to Wanda McCoy's house, and

raped and killed her before Brad McCoy got home. VanDyke corroborated his story, saying the two men parted company at about 10:30. But Sandra Stiltner testified that Coleman had come and gone from her place at about 10:20, leaving a 45-minute window -- just long enough for a rapist-killer in a hurry, according to the prosecution.

"Bear in mind rapists are women haters, not women lovers," says Thomas Scott, one of the prosecutors. "He didn't go there to engage in foreplay; he went there to kill her. It could have easily occurred in 10 minutes or less."

The trial started on a Monday morning and ended on a Thursday afternoon. The jurors took 3 hours 30 minutes that evening to find Coleman guilty. The next day, they decided on the death penalty.

Judge Persin had never sentenced a man to die before. "I hated it," he recalls. "I knew what I had to do, and it bothered me so much I hardly slept that night." But given the evidence and Coleman's history, the judge says, he believes the verdict and the penalty were correct.

At his sentencing hearing, Coleman told the court he didn't much care whether he lived or died. His wife had filed for divorce. "Last night when the verdict of guilty came back, I lost the only thing that ever meant anything to me, my freedom, my life and my wife, whom I love very much. At this point, the death penalty or life, it doesn't matter. It's up to the Lord now, anyway."

Once he got to death row, however, Roger Coleman changed his mind.

SITTING AT THE KITCHEN TABLE in her small Charlottesville townhouse, Marie Deans smiles softly, recalling the first time she met Coleman on death row. "He was really feeling sorry for himself. You know: 'My life was good, and everything was fine, and now I'm in this situation.' " He told her he was considering dropping his appeal. She listened for a while before losing patience. "Look, Roger," she recalls telling him. "If you're really innocent, I'd think you would want to get out of here rather than be executed."

"He just sat there for a few minutes, and then he got this little grin on his face, and he said, 'Okay, I want to work with you.'"

Deans became involved in prison reform after her mother-in-law was murdered in 1972 by an escaped convict. She and her grieving husband asked themselves why so many people came out of prison even more violent and antisocial than when they went in. The couple started doing volunteer work with inmates, and, when she moved from her native South Carolina to Richmond in early 1983, she opened the Virginia Coalition of Jails and Prisons. She quickly discovered that the state's death row inmates were among the most neglected, and she began counseling them. She hooked them up with lawyers and made sure they filed their appeals. She became fiercely dedicated to one goal: keeping them alive.

From the start, Coleman intrigued her. "He was very bright; he read all the time -- science books and science fiction were his favorites." They talked once a week on the phone, and she saw him every six weeks or so when she visited the row. She grew to hold him in such high regard that she put him on the board of her organization.

For Deans, Coleman's guilt or innocence wasn't primary. She worked with plenty of men she knew were guilty. But he was different: quiet, brainy, direct. He told her about his dreams, including one in which he was strapped to the electric chair and she was holding him by his toe, pulling him away from death.

Deans never bought most of the pathetic "I was framed" stories she heard from inmates. But she came to believe that Coleman was either innocent or had no memory of committing the murder. "I have worked with psychopaths, and they're sort of obvious," says Deans. "They're unable to be in touch with their own consciences, but they are able to be in touch with what moves you and to feed you that." Roger, she says, was never smooth or slick, never seemed to be performing for her benefit. "I just did not get the sense that he thought he could pull the wool over my eyes, or that he was trying to."

He made a similar impression on Sharon Paul, a University of Virginia sophomore who responded to his ad in a student newspaper: "Thirteen steps from eternity. Death Row prisoner seeks sincere people to correspond with and for possible visits." He described himself and asked for photos, but added: "Sincerity is what counts."

"I was captured by the vulnerability: 'Here's me, and all I want is someone to write to me,' " Paul recalls. "It was letting the world see his loneliness. I guess I admired that honesty and openness from the very start."

She wrote to him, and within days he wrote back, describing his life in Grundy and on death row. He offered to answer any questions she had about the crime. "For what it's worth, I didn't do it," he told her.

He was charming and solicitous. He insisted on buying her gifts, even though he had little money. He sent her clippings from mail-order catalogues, asked her to send back multiple selections to ensure he chose something she liked that would still be a surprise. He made her cassette tapes of love songs he recorded off the radio. She recalls that he was devastated by the 1986 Challenger explosion. If they ever had a daughter, he wanted to name her after Christa McAuliffe, the teacher who died during the disaster.

They seldom talked of the future. "I was in denial of the possibility of anything other than his release," says Paul. "Roger, on the other hand, was much more realistic. He called himself an optimistic pessimist -- he hoped for the best but expected the worst."

Coleman needed a new lawyer to launch his appeal, and Deans hooked him up with Arnold & Porter, which takes great pride in doing pro bono work. The firm's lawyers filed a writ of habeas corpus -- a standard legal tool of prisoners seeking judicial review. When they lost in circuit court, the lawyers went to the Virginia Supreme Court, which rejected their appeal on the grounds that it was filed one day late. The U.S. Supreme Court upheld the rejection by 6 to 3.

"This is a case about federalism," wrote Justice Sandra Day O'Connor for the majority, seemingly more concerned about state court prerogatives than the fact that Coleman's life was at stake.

The ruling became a rallying cry for opponents of capital punishment who saw it as a part of a campaign by the justices to streamline the appeals process and deliver condemned prisoners to the executioner more swiftly. But to cheat the electric chair, Roger Coleman needed to be more than just a cause. He needed new evidence -- and someone dedicated to finding it.

THE BACK WALL OF JIM MCCLOSKEY'S OFFICE IS HIS RÉSUMÉ. It holds a remarkable collection of photographs of the three dozen innocent people he has helped free from prison, most of them taken at the moment they emerged from behind bars.

Some of the faces are grim and frozen, as if all of the anger from years of incarceration has taken command of their features and won't let go. Others are locked in wide loopy smiles with glazed eyes that betray their amazement. And there in almost every photo, eyes glistening, is McCloskey.

He grew up outside Philadelphia, graduated from Bucknell University, joined the Navy, then became a management consultant. A lifelong bachelor, he woke up one day in 1979 at age 37, looked closely at himself and didn't much care for what he saw. "My life was like a rainbow -- it might have looked pretty, but it was vapor," McCloskey recalls. "I wanted to lead what I felt to be an authentic life. I wanted to get to the real stuff of the world."

He quit his job, entered a theological seminary in New Jersey and made plans to become a minister. Then, in his second year, he began doing field work as a student chaplain at Trenton State Prison. There he met an inmate named Jorge "Chiefie" de los Santos, who was serving life for a murder he claimed he had not committed. De los Santos was so adamant that McCloskey agreed to read the trial transcript. He found that de los Santos's conviction had hinged largely on an alleged confession he made to a fellow inmate. McCloskey tracked down the inmate and got him to admit he had lied. In the summer of 1983, de los Santos won his freedom, and McCloskey found his

calling. "I felt this is what God has ordained for me to do," he says. "Chiefie would say I saved his life. But he saved mine."

Centurion Ministries started out as a one-man shop that McCloskey operated from his living room. It now boasts five full-time and four part-time employees, and a \$1 million annual budget, financed by foundations and private donors. From the start, innocence was the watchword. McCloskey wasn't interested in whether someone got a fair trial -- he says plenty of guilty defendants get a less than perfect one. "Innocence came to me -- I didn't go seeking it. And being a lay person, not a lawyer, that's all I was interested in."

He was shocked to discover that some police and prosecutors routinely lied or cut corners to make their cases. "I've come to see the criminal justice system as fraught with flaws and frailties."

Yet he sometimes engages in his own sleight of hand, wearing a priest's collar in the field, knowing that it helps get people to talk. "I'm a graduate of the Princeton Theological Seminary, but I'm not an ordained person. I introduce myself as Jim McCloskey, not as Reverend or Father," he says.

McCloskey and his team have never lacked for work. Their list of successes includes Clarence Brandley, freed after 10 years on death row in Texas for murder after Centurion found an eyewitness who identified the real killers; David Milgaard, who spent 23 years in a Canadian prison for murder and rape until DNA testing confirmed his innocence; and Clarence Chance and Benny Powell, imprisoned for more than 17 years for the murder of a Los Angeles deputy sheriff until Centurion proved that investigators had coerced witnesses into false testimony. Not every case has been a triumph. McCloskey reckons that four of the inmates his group has worked for turned out to have been guilty. In two of those cases, DNA testing proved the prisoners' guilt. In the other two, the prisoners' accounts unraveled when McCloskey re-interviewed witnesses. He immediately dropped each case, even if he had worked on it for several years.

When Coleman contacted Centurion in 1987, McCloskey read the trial transcript, then spent three hours talking to Coleman. "We went through everything: what he did that night and why, who he encountered." He told McCloskey about The Choice Is Yours, a program that Coleman had organized with help from the Catholic Diocese of Richmond in which he lectured potential young offenders about the price of crime and the miseries of prison.

"He was very calm, collected, rational, didn't come off as slick at all. He wasn't a salesman. He didn't try to persuade me. But he answered whatever questions I had." McCloskey was impressed, and he trusted his instincts. "I walked away believing he was not the kind of person who would commit such a brutal murder."

McCloskey drove straight from the prison to Grundy, where he spent nearly a month investigating the case. He persuaded Judge Persin to let him examine the evidence file. He interviewed those who had seen Coleman that night, and he reenacted the timeline.

He discovered that the jury had never heard about Phillip VanDyke's timecard, which he punched at 10:41 on the night of the murder -- just minutes, VanDyke said, after he had finished chatting with Coleman. He noted that the Stiltners had originally told investigators that Coleman had visited sometime between 10 and 10:30 that night. Only when Sandra Stiltner testified in court did she nail the time as exactly 10:20. McCloskey believed VanDyke and his timecard rather than Stiltner's testimony. And there were other nagging details: Why did Wanda McCoy have dirt on her hands and arms? What about the medical examiner's conclusion that she had been sodomized as well as raped, a fact the jury never heard? How could one attacker have committed both acts within the space of a few minutes?

In McCloskey's view, the police had jumped on the first plausible suspect, ignoring other possibilities. "A crime of this nature is very rare, and it just inflames the passions and prejudices of everybody in a community. And that was my view of what happened with Roger: They shoehorned him into this conviction."

On his way back to Princeton, McCloskey stopped in Washington to see Coleman's lawyers at Arnold & Porter.

The easiest way to prove Coleman's innocence, he told them, was to have the blood and sperm samples from the victim re-tested using newly developed DNA techniques. But the lawyers were not interested. They said the judge was unlikely to order a test and, in any event, samples that had been lying around in an unprotected evidence box for eight years were unlikely to yield a definitive result. But the real surprise was that Coleman himself was not interested in DNA testing. He told McCloskey that after his arrest he had had sex in jail with a female guard, and he feared the authorities had planted his semen from that encounter as evidence. McCloskey dismissed Coleman's fears as classic jailhouse paranoia, "but I also felt a certain amount of discomfort in my mind as to why he wasn't eager for DNA testing."

Enough discomfort that McCloskey says he dropped out of the Coleman case for nearly a year and concentrated on other, more promising clients. Then in 1990, he found a reason to get back into it.

TALL, SLIM AND DEEPLY EARNEST, Kathleen Behan, came to Arnold & Porter in July 1990 as a 28-year-old legal associate with an abiding hostility toward the death penalty. One of the first cases she was handed was Roger Coleman's appeal.

She went down to Mecklenburg Correctional Center in southern Virginia to meet her client and was struck by Coleman's sincerity and mastery of the details of his case. Then she met with McCloskey, who was immediately impressed with her. "She was the kind of lawyer I love to work with -- as much fact-driven as law-driven," he recalls. "She realized pretty fast that if Roger was going to be freed we needed to develop new evidence."

Kitty Behan reversed the firm's previous position and agreed to DNA testing. Judge Persin consented to having the evidence shipped to Edward Blake of Forensic Science Associates in California, one of the pioneers in the newly developing field.

Coleman's legal team got another potential break after Behan placed an ad in the Virginia Mountaineer newspaper seeking new leads in the case. On the day it ran, Arnold & Porter fielded a phone call from Teresa Horn, a 22-year-old woman who claimed that an unemployed miner named Bobby Donnie Ramey had attempted to sexually assault her one night in 1987 at a friend's house. When she resisted, she said, Ramey warned her that he would do to her the same thing he had "done to that woman on Slate Creek."

Ramey and his family lived just 50 yards uphill from Wanda McCoy's house. Over the years Ramey, a high school dropout, had had a number of scrapes with the law, ranging from fishing without a license to assaulting a police officer. His nickname was "Trouble."

But the DNA result that came back in November 1990 was far from helpful to the defense. Blake had had to work from an extremely limited sample -- the cotton swab of semen from the victim had disappeared from the evidence bag, and he was forced to scrape DNA samples from the stick it had been attached to. Nonetheless, he found enough to determine there were two sets of sperm in the victim. One presumably came from Brad McCoy, who testified he had had sex with his wife two nights before the murder. Blake narrowed down the other to approximately 2 percent of the population, including Coleman. The state of Virginia's experts would later argue that the proportion of men who had both type B blood and the DNA match was even narrower -- 0.2 percent.

McCloskey remembers exactly where he was when he heard the news: at a pay phone in Lancaster, Pa., where he was working on another case. "My first thought was, 'Son of a bitch, the guy did it.'"

But Behan was undaunted. She found other experts who claimed that the mixed sperm sample made an accurate DNA reading impossible, and who also challenged the studies on which the percentages were based. And she and McCloskey seized on another possibility -- that the second sample of sperm came not from Brad McCoy but from a second rapist. Since even the police accepted that Coleman was alone that night, the two-attackers thesis, if proved, could have exonerated him. McCloskey put his doubts aside, and he and Behan went back to work.

Blake says that this was the moment when Coleman's defenders lost their ethical bearings. Fixated on Coleman's

innocence, they ignored or discredited evidence that pointed to his guilt: "Somewhere along the way these people who were supposed to be in the fact-finding business abandoned their responsibility to facts and truth, and started operating on belief."

McCloskey insists he went where the facts led him. And, by late 1990, the facts were leading him to Donnie Ramey's door.

MCCLOSKEY TAKES A FADING POLAROID FROM A STACK: "This is Wanda's house, and this is the Ramey home. There's a perfect way to get down the hill, kill her and get back up without being seen."

McCloskey and Behan eventually found three other women who claimed to have been attacked by Donnie Ramey. Horn and two of the women gave affidavits. The day after Horn gave an interview to a Roanoke television station repeating her allegations, she died of a drug overdose. Police found no evidence of foul play, but McCloskey was suspicious.

"I interviewed each of these women, I was with them in their living rooms, I saw how frightened they were," he says.

McCloskey and Behan also interviewed Keester Shortridge, a neighbor of Ramey's, who claimed he had found a plastic bag containing clothes and bloody sheets in the back of his pickup truck on the day after the murder. Shortridge said he had dumped the bag in a ravine after police expressed no interest in examining the contents. Behan even rented a backhoe to dig up the evidence from the spot. All she found was a small patch of dirty sheet whose contents were too degraded to be analyzed. Nonetheless, in October 1991, Behan filed a petition with Judge Persin citing newly discovered evidence suggesting that Ramey was Wanda McCoy's killer. In its response, the state attorney general's office poked holes in Behan's claim. Miners are required to provide their blood type in case of accident, and Ramey's employment card identified his as type A, whereas Wanda McCoy's rapist's was type B. Also, Teresa Horn was a known drug user who had had a child out of wedlock and wasn't sure who the father was. Neither she nor Ramey's other purported victims had ever filed charges nor told the police of their suspicions.

"I had serious problems with that woman's credibility," says Tommy Scott, the former prosecutor. "But Arnold & Porter and Jim McCloskey and the national media bought into it hook, line and sinker."

While McCloskey was lining up Donnie Ramey's alleged victims, he did not interview Roger Coleman's surviving victims. Brenda Ratliff, the schoolteacher who had accused Coleman of attempted rape in 1977, refused to talk to him. And he did not attempt to speak with the two librarians who had been confronted by Coleman in January 1981, two months before the murder. By the time he heard about them, he says, he was so immersed in a last-gasp search for new evidence of Coleman's innocence that he didn't have time. And because Coleman wasn't charged with the library incident until after his murder arrest, McCloskey assumed the librarians hadn't identified him until police told them he was a suspected killer; he decided their testimony was unreliable.

Had he talked to Pat Hatfield, the chief librarian, he might have concluded differently.

Hatfield and Jean Gilbert were about to close up on a stormy Monday evening when a young man in a navy blue jacket and dark pants came through the front door. "He had his pants unzipped, and he was masturbating," Hatfield recalls. "He got all the way up to about five feet from the front desk. By then, I had actually looked at him in the face. And that's what really scared me because he had this dead look in his eyes. A cold dead stare. Never blinked. And then he ejaculated on the floor and on the desk. He never said one word to me . . . But what I saw in his eyes, it was so scary. It was like a dead soul."

The man ran out the door, and Gilbert called the police. At an investigator's suggestion, Hatfield and Gilbert pored through old high school yearbooks, and within days they had each identified Roger Coleman. But police persuaded them not to file charges. "I told them it was a pretty serious case, but they told me it's not a big deal, and at the most he'd get a \$30 fine. And I knew better, but I let them talk me into it."

Two months later she got a phone call from her mother, "She said, 'Pat, there's been a girl murdered, and it's Roger Coleman's sister-in-law.' And I tell you, I think the blood just left my body because I knew, I knew then."

Hatfield takes out a letter. It's a firm but polite note from Coleman, written from death row six years later. He writes that he's tired of being accused of the library incident. He's got an alibi for that evening, and he accuses another local man who supposedly looks like him. He signs off, "Sincerely, Roger Coleman." What Coleman didn't know is that Pat Hatfield had tutored the other man in high school and knew it wasn't him. "Just an outrageous lie," she says.

In December 1991, Judge Persin dismissed Behan's petition implicating Ramey. Two months later, he set Coleman's execution date for May 20.

"IS IT DIFFICULT TO BE OPTIMISTIC?" Bryant Gumbel asked Coleman on the "Today" show, 15 days before the execution date.

With six days to go, Larry King wanted to know: "How do you feel? Are you bitter? Angry?"

Five days later, Phil Donahue went straight to the point: "Wow. You've 30 hours left to live."

Having failed in the legal process, Jim McCloskey and Kitty Behan turned to the court of public opinion. They sent out press kits to dozens of publications, eliciting a parade of newspaper and magazine stories that tended to portray Coleman as an innocent victim and the citizens of Grundy as hillbillies run amok.

In a piece headlined "Hung on a Technicality," Newsweek portrayed a "small, sooted town" from which had "spun the kind of twisted tale that gives Southern Gothic a good name." As for the original trial, "the courthouse should have had a big top." The Washington Post reported that the crime had "whipped this Appalachian town of 1,500 into a frenzy of hatred and suspicion," and quoted Coleman's claim that "every minute of my time that night was accounted for." The Los Angeles Times reported that "startling new evidence has emerged" in the form of the Ramey allegation and Teresa Horn's untimely death, but neglected to mention Blake's DNA test implicating Coleman.

Then came the television cameras. Coleman made excellent, even mesmerizing TV, as he patiently explained the timeline and the witness statements, analyzed the DNA evidence and coolly dissected his own emotions.

"There's a lot of anger," he told Larry King. "There's a lot of bitterness, and a lot of frustration." During his first years of incarceration, he said, "I had a tremendous amount of hate, and it was consuming me. I had to deal with it, and I did a pretty good job of getting a handle on it . . . But now I'm six days away from being executed, and those feelings are back, and they're multiplied by a factor of 10."

Tom Scott and fellow prosecutor Michael McGlothlin, Pat Hatfield, Jean Gilbert, Brad McCoy and Brenda Ratliff, the woman whom Coleman had attempted to rape in 1977, all journeyed to Richmond to support Coleman's execution. "We tried to set the story straight, but no one ever really listened to us," McCoy recalls. The media had decided that Coleman was the victim. "No one ever really understood that Wanda was the real victim."

McCoy even consented to appear on "Today" to confront his former brother-in-law. Asked by Bryant Gumbel if he had anything to say to Coleman, Brad replied: "Yes, I would like to ask him why he did it, and I would also like to ask him to admit it."

Coleman for once seemed to lose his cool. "I did not kill Wanda, Brad! I didn't have anything to do with it! And if you'd open your eyes and look at the evidence we have now, evidence that the state has withheld . . . I mean, you just listened to what they've said, and you bought their theory, and you just closed your mind to everything that we've uncovered."

Behan and her associates at Arnold & Porter wrote to dozens of celebrities seeking their support, and the firm issued press statements claiming to have uncovered "the real killer." One release claimed "the murderer still lives in Grundy and has continued attacking women ever since."

Behan, who was battling the disease lupus at the same time she was struggling to save Coleman's life, felt crushed by an enormous sense of responsibility. "I'm the only person that stands between Roger and the electric chair," she later told author John C. Tucker. "And, you know, I'm a pathetic substitute for Superman, which is the only person who can save this guy."

Marie Deans says she was uncomfortable with the defense team's strategy. She recalls participating alongside McCloskey at a media briefing in which he pointed the finger at Ramey. "Jim said some things that were just shocking to me, because we didn't have any proof," she says.

If the media were convinced, the courts were not. "After a review of the alleged 'new evidence,' " declared a federal judge in dismissing Coleman's final appeal eight days before the execution date, "this court finds the case against Coleman as strong or stronger than the evidence adduced at trial."

Behan and McCloskey made a last-ditch effort to persuade Gov. Wilder to intervene. The governor's office received more than 6,000 messages, 95 percent of which favored Coleman. McCloskey and Behan were elated when Time put Coleman on the cover, figuring the governor would have no choice but to delay the execution. But Wilder, a proud and prickly man who resented the pressure, wasn't about to cave. Instead he offered Coleman the chance to take a polygraph.

The defense attorneys were outraged by the gesture. They believed it was unfair to compel a condemned man to take a test under such stressful circumstances. But in the end they felt they had no choice. Coleman was helicoptered to state police headquarters on the morning of execution day. He emerged in manacles, his arms lifted above his face to shade his eyes from the harsh sunlight, shuffling slowly through the door with armed state troopers on either side. None of his lawyers or friends was allowed to attend. Later in the day, Wilder's office announced Coleman had failed.

That evening, McCloskey and Behan sat on the concrete floor next to Coleman's cell; they were on one side of the bars, Coleman on the other. For his last meal, he requested a Pizza Hut pizza, fudge cookies and Sprite. When it arrived, the pizza was cold and the Sprite warm. Still, Coleman wolfed it down.

"He showed no sign of fear, even anxiety," McCloskey recalls. "It was surreal. Here we are sitting with a man we all know is about to die, and we're talking about everyday life. We were all floating."

Coleman told McCloskey he saw a positive side to his ordeal. "He said, 'If I hadn't been wrongly convicted, I would be a nobody from Grundy for my entire life. And here I am, I've met Sharon, she means the world to me, I'm famous, my face is on Time magazine. I'm a somebody.' "

The guards said it was time to go. McCloskey met Coleman's eyes and solemnly promised to prove his innocence. Then he and Behan left Coleman with the death row chaplain. Neither McCloskey nor Behan witnessed the execution.

One of the journalists who did, Kathy Still of the Bristol (Va.) Herald Courier, vividly recalls Coleman entering the execution chamber. He was a few steps ahead of the chaplain and the guards, and he walked directly to the electric chair. Then he rapidly read his last words, which he had written on a paper towel, proclaiming his innocence and declaring his love for Sharon. "He held his head up the whole time," Still recalls.

AFTER THE EXECUTION, a devastated McCloskey spent a week at a religious retreat. "I reflected, and I grieved and came out of that with no answers at all." He eased the pain by plunging into other cases.

Donnie Ramey filed a libel suit against Arnold & Porter, Behan and Deans for \$5 million that the firm eventually settled for an undisclosed amount. But not before the defense lawyers deposed Ramey, who denied he had attacked any of the women who accused him of sexual misconduct. He also vehemently denied that he had anything to do with Wanda McCoy's murder and rape or that he had ever claimed otherwise.

"We weren't saying he was a model citizen," says Charles H. Smith III, Ramey's attorney. "But he wasn't a rapist and a murderer. They had no justification for the claim."

Behan, who argued that her accusations against Ramey were "well-founded and reasonable," adamantly opposed the settlement. Still, she made partner at the firm and became one of its most influential rainmakers. In 1998, she made Washingtonian magazine's list of "Young Guns" -- top lawyers under 40.

The libel suit dried up funding for Marie Deans's small organization, and she was forced to close it down in 1993. Inmates on Virginia's death row lost their guardian angel. Deans says that before his execution Coleman had elicited a promise that Arnold & Porter would donate funds to her group for the many hours she put in on his behalf. But when the time came, "I got a call from Kitty to say they had decided to put that money somewhere else."

Looking back, Deans says she believes McCloskey and Behan did their best for Coleman but shouldn't have accused Ramey without solid proof. "I don't blame Kitty. She was young and had never done one of these before, and she worked very hard. But I didn't like the spin. I felt used, I guess."

For eight years, McCloskey did little to redeem his pledge to Roger Coleman. It was, he says, just too painful, and he was immersed in other work. But, with DNA testing becoming more sophisticated, he decided it was time to seek a re-testing of the evidence. Then-Gov. Warner broke precedent by deciding to authorize the test. "I believe we must always follow the available facts to a more complete picture of guilt or innocence," he said in a statement.

By then, most of the evidence in the Coleman case had been lost or destroyed. But Edward Blake, the California forensics expert, had adamantly refused to return to Virginia authorities the DNA extract from his 1990 test -- less than a drop of fluid in a thimble-size microfuge tube. He agreed to provide the material to the Toronto crime lab.

Many activists in the anti-death penalty movement enthusiastically embraced the re-testing effort. Here was a chance for the Holy Grail: proof from a test tube that an innocent person had been executed. But others, citing Blake's earlier results, were wary. "We already knew the odds were 49 out of 50 that he was guilty," says David Bruck, director of the Virginia Capital Case Clearinghouse at Washington and Lee University. "I warned people to be cautious."

McCloskey was not unaware that a finding of innocence could strike a huge blow to the death penalty. But he says this was not his motive. "We're part of no movement except ourselves and those we serve. I believed in Roger Coleman, I made a promise to Roger Coleman, spent our precious resources on him. I wanted the truth to be known."

IT'S TWO MONTHS AFTER THE FINDINGS WERE ANNOUNCED, and McCloskey has finally removed from his wall the framed Time cover of Coleman in chains. Gone as well is a sheet of drawing paper with the handwritten inscription: "This certificate is awarded to Jim McCloskey in recognition for being the best darn investigator [sic] in the whole US of A! [signed] Roger K. Coleman, Chairman, Selection Committee."

"The last file boxes are going into storage," says McCloskey. "We've erased him from our Web site and our brochure."

Each of Coleman's closest supporters had expected the test results to exonerate him, and each has had to deal with the news of his guilt. Marie Deans and Sharon Paul say they do not feel betrayed. "I have to believe something," says Paul, "and what I believe is, if Roger committed the crime, he had no memory of it, and that's why he was able

to be such a strong advocate for his own innocence right until the end."

Still, the result has made her wonder about Jim McCloskey and Kitty Behan. "I just can't believe they were so wrong. I mean, these are people who do this for a living; they're not naive, they don't get duped. And that Roger, this little person from southwest Virginia, could have fooled them for so long -- that's the most difficult part for me to believe."

Behan has told friends that she still believes Coleman was innocent and that she doesn't accept the test findings. "This was a huge piece of Kitty Behan's life and how she sees herself," says author John C. Tucker, who wrote the 1997 book *May God Have Mercy* about the case. "It was not easy for anybody to find out that you were wrong. It's easy to try and rationalize these results."

Unlike Paul and Deans, McCloskey doesn't buy the theory that Coleman somehow had erased Wanda McCoy's murder from his memory, but he's not surprised that Coleman stuck to his claim of innocence even when sitting in the electric chair. "It was too late to tell the truth," says McCloskey. "What would all those who were near and dear to him think if he ever admitted that he did this? He couldn't allow that to happen. So he had to go down to the end drowning in the lies."

McCloskey points to photos of the 24 inmates whom Centurion is currently working to exonerate. At the top of the list is Walter Lomax, who has spent 38 years in Maryland's prison system in the killing of a night manager during a Baltimore grocery store robbery. There's Barry Beach, locked away in a Montana prison for 22 years in the killing of a young woman after police falsely claimed to have recorded his confession. And Timothy Howard, sentenced to death in 1977 for bank robbery and murder, and whom McCloskey recently helped win a verdict of "actual innocence" from a Columbus, Ohio, jury.

This is his work, his life and his answer, finally, to the Roger Coleman case. "I don't think I'll ever put the pieces together. I've tried, and I can't, and I'm just moving on."

Glenn Frankel is a Magazine staff writer. He will be fielding questions and comments about this article Monday at noon at washingtonpost.com/liveonline.

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