

**STATE'S CLOSING REMARKS IN
THE MATTER OF
BARRY ALLAN BEACH'S
APPLICATION FOR CLEMENCY,
PARDON OR COMMUTATION**

Dated June 21, 2007

CLOSING REMARKS

The State agrees with Barry Beach on one matter--the hearing the Montana Board of Pardons and Parole afforded him on June 13, 14, 15, 2007 was an extraordinary proceeding. The State disagrees, however, with Beach's theory that it was extraordinary because it was his first opportunity to finally tell his story. Six reputable attorneys have represented Beach over the last twenty plus years. He had a suppression hearing, a jury trial, a direct appeal, a post-conviction proceeding, a federal habeas corpus proceeding and two prior requests for clemency. Barry Beach has been afforded every opportunity to prove he was wrongly accused and convicted, and he has never been able to do so.

Beach has made very serious allegations against attorneys like Paul Kidd, Timer Moses and Marc Racicot to name a few. He has personally attacked law enforcement officers like Dean Mahlum, Jay Via, Richard Medaries, Joe Cummings and Alfred Calhoun, who have dedicated their lives to the criminal justice system. He has accused Sissy Atkinson, Maude Greyhawk, Joanne Jackson, Jordis Ferguson, Kara Red Dog and Rhea Red Dog of murdering Kim Nees. Consequently, their names have appeared in newspapers as suspected murderers, and they have no resources to defend themselves. Kim Nees was Barry Beach's first victim, but she was not his last.

The State therefore has the awesome responsibility of speaking for Kim and all of the people whose lives she touched; for Kim's mother, Diane Nees who has been to hell and back and does not need Beach's sympathy, but rather, needs him to finally take responsibility for his actions; for Billie McClammy, one of Kim's best friends who, because of the turmoil Beach has created in her own community, has never really been able to put her grief behind her; for Dean Mahlum, who worked professionally, diligently and fairly to obtain Beach's conviction; for the Louisiana officers--Jay Via, Richard Medaries and Alfred Calhoun who are guilty of nothing but devoting their lives to exemplary police work; and finally for women like Sissy, Maude, Joanne, Jordis, Kara and Rhea who have put their trust in the State and this Board to finally put these rumors to an end.

Kim Nees' family and friends had to wait a long time before her murderer was brought to justice. Her parents walked a long, lonely road between receiving that dreaded phone call on June 16, 1979, announcing Kim's brutal death until April 13, 1984, when a jury of twelve of Barry Beach's peers concluded, beyond a reasonable doubt, that he murdered Kim Nees during the early morning hours of June 16, 1979. The jury's verdict was undeniably based upon Beach's confession to the crime given to Sergeant Jay Via and Commander Alfred Calhoun in Monroe, Louisiana on January 7, 1983.

The State met its burden of proving Beach's guilt back in 1984. The burden now falls on Beach as he asks that you set him free from responsibility of Kim's brutal murder. He argues that a pardon, an extraordinary exercise of power, is justified first and foremost, because he claims the Louisiana officers intimidated him, emotionally abused him, made sexual advances towards him and drugged his milk shake, which resulted in him giving both an involuntary and a false confession. Beach's claim is neither "new" nor does it have merit. Beach has been making the same tired claim since 1984.

Beach secondly argues that a pardon is warranted because he alleges certain witnesses have come forward with "new evidence," which demonstrates that it was actually a "gang" of wild girls who murdered Kim Nees. This theory is also not "new evidence" since according to Beach's own witnesses at the clemency hearing, the speculation about people like Sissy, Maude, Joanne and others has percolated, to no avail, since June 16, 1979. Further, the quality of the evidence Beach presented to the Board to support this theory is suspect.

In one form or another, since his conviction, Beach has been arguing that his confession was coerced and later added the allegation it was false. Every court that has considered his claim has rejected it. Through the years Beach has spruced up his allegation that he falsely confessed to Kim's murder as a result of coercive tactics, and now even supports the claim with the report and testimony of

Dr. Richard Leo, a professor who testifies routinely as a “false confession” expert. Adding the testimony of Richard Leo, however, does not somehow transform the claim into something new.

Beach raised the issue of the voluntariness of his confession before the district court, and when he did not prevail appealed to the Montana Supreme Court. (See State’s Ex. 11, attached to Response.) On appeal, the Montana Supreme Court upheld the district court’s decision that his confession was voluntary, and in so doing observed that Beach signed eight advisements of rights related to questioning in connection with the Nees’ homicide and further concluded that:

The questioning sessions were not long, arduous, or designed to take advantage of his fatigue. Via and Calhoun testified that no promises or benefits or threats of harm were made to the defendant. Particularly, defendant’s allegation, disputed by Calhoun and Via, concerning Calhoun’s ‘fry’ comment was obviously not credited by the district court.

(State v. Beach, 217 Mont. 132, 152, 705 P.2d 94, 107, (1985), attached to State’s Response as Ex. 11; See State’s Response at 26-35 for Entire Procedural History.)

The Montana Supreme Court also later concluded that Beach’s false confession claim was barred by the doctrine of res judicata since Beach could have raised the claim on direct appeal and failed to do so. (Beach v. Day, 275 Mont. 370, 913 P.2d 622, 624, (1996), attached to State’s Response as Ex. 28.) The Court rejected Beach’s invitation to overlook certain procedural hurdles, because

Beach had offered no “new evidence” that had come to light since his appeal was completed that would support such an extraordinary remedy.

The federal district court carefully considered Beach’s claim that his confession was false in conjunction with his claim he was actually innocent. At the clemency hearing, Beach hammered on the tape-recorded conversation between Jay Via and Dean Mahlum after the confession, and how that conversation proved that his confession was coerced. The federal courts already rejected this claim. (See State’s Ex. 29 at 35, attached to State’s Response.) During Beach’s cross-examination of Via, he badgered him about the fact that Beach did not correctly identify what Kim Nees was wearing. Once again, the federal courts have already considered and rejected this claim. (See State’s Ex. 29 at 34-35, State’s Exs. 30, 33, attached to State’s Response.)

The flaw in Beach’s coerced/false confession theory is exemplified through the testimony of his own expert--Richard Leo. Leo’s opinion is based upon Beach’s version of events. Period. Beach did not disclose this version of events, however, until 2002. As the suppression hearing transcript reflects, he certainly did not disclose all of these officers’ “wrongdoings” prior to his trial when it would have benefited him the most. Nor did he disclose the “wrongdoings” at trial.

At the suppression hearing, Beach attributed his confession to one thing--he claimed Alfred Calhoun threatened him with the electric chair. He was thereby

motivated to confess just to get out of the grasp of Alfred Calhoun and the State of Louisiana. Yet, he fought his extradition back to Montana. He claimed he was anxious to return to Montana because, according to him, Dean Mahlum had told him numerous times that he knew he was innocent. Thus, he was counting on Mahlum to get this matter cleared up. At the clemency hearing, however, Mahlum denied ever making such statements to Beach and further indicated that he was never able to eliminate Beach as a likely suspect. In fact, during an interview with Mahlum in 1980, Beach never denied killing Kim Nees, but rather indicated he could not remember. After this interview, Mahlum became more convinced of Beach's guilt.

The story Beach told Leo is much different than the one he told Judge Sorte at the suppression hearing. His greatly expanded version of events notably includes things that are not supported by the record. For example, while Beach claims that his first interview with Jay Via and Richard Medaries on January 6, 1983 lasted for about three hours, the logs from the Ouchita Sheriff's Department establish with precision that the interview lasted for one hour. (See Beach's Statement to Leo at 15; State's Ex. 18 attached to Response.)

Further, while Beach claims that Jay Via picked him up at 7:30 a.m. the morning of January 7, 1983, the same records from the Ouchita Sheriff's Department clearly and objectively establish that Via actually picked Beach up at

12:24 p.m., after Beach had eaten lunch. (See Beach's Statement to Leo at 17; State's Ex. 18, attached to Response.) Although it makes for a better claim of police coerciveness if Via had picked Beach up at 7:30 and then denied him food or beverages for the next 12 hours, it simply is not true. Leo opines that it does not matter if Beach was untruthful about certain information, because it still does not cause him to question Beach's credibility. This Board knows better.

Beach now places officers at the scene of his confession who clearly had nothing to do with it. The sheriff reports demonstrate that Via and Calhoun were the two officers who questioned Beach on January 7, 1983. (State's Ex. 19, attached to Response.) Joe Cummings was not even there as Beach now claims. He is also dead and cannot defend his reputation. Richard Medaries was not even there as Beach now claims--let alone part of a scheme to drug his milkshake. You heard from Medaries. He told you that without doubt the only interview with Barry Beach he participated in occurred on January 6, 1983, in the company of Jay Via. Further, during this interview the officers got background information from Beach and did not question him about either the Montana homicide, or the Louisiana homicides.

Beach describes in his interview to Leo how Alfred Calhoun **hooked** him up a polygraph machine. Beach talks about having his fingers strapped in. He even remarks to Leo that he knew about the polygraph because he had already taken a

polygraph in Montana. (Beach's Statement to Leo at 35-36.) Both Calhoun and Via, however, explained that the Ouchita Sheriff's Department did not have a polygraph machine in 1983. In fact, the Sheriff's Department still does not have a polygraph machine. During cross-examination, Beach attempted to explain his way around this discrepancy by saying he was actually referring to the psychological stress evaluation. Both Calhoun and Via explained, however, that a person who is given a psychological stress evaluation is not strapped to anything.

In Beach's statement to Leo, he claims it was Joe Cummings who first began badgering him on January 7, 1983. He also claimed that it was Cummings who peppered him with photographs from the Louisiana crime scenes. (Beach's Statement to Leo at 22.) Once again, Cummings, who is deceased, did not participate in the questioning of Barry Beach on January 7, 1983. Interestingly, at the hearing, Beach changed his story and claimed it was actually Richard Medaries who ruthlessly showed him the crime scene photographs from the Louisiana homicides and badgered him in an effort to gain a confession to these local crimes. When questioned about this discrepancy on cross-examination, Beach merely stated that it was a long time ago and maybe he was just getting the officers confused. Maybe. Or, maybe he just could not keep all of his stories straight.

When Richard Leo provided training to the National Association of Criminal Defense Lawyers, he cautioned them, if you use a "false confession" expert, make

certain to have that expert at least make the request to interview the interrogator. Why? Because in Leo's words, it is important to give the "impression of impartiality." Leo never even made the **request** to talk with Calhoun, Via or Medaries. After he interviewed Beach, he believed he had all of the information he needed to render an impartial opinion. While Leo is content to believe that Beach did not get to tell his full story at the suppression hearing, he is convinced that the officers certainly had nothing more to say in response to Beach's very expanded version of events given in 2002.

Since Leo did not talk with officers, we made certain that you got to hear from each and every one of them who are still living. Even Alfred Calhoun, who is in a fight for his life in a battle against lung cancer, went the extra mile to speak with you and answer questions via MET/NET. These are not the kind of men who would make a sexual advance, yell and scream and pound on the table, make threats about the electric chair and all of those other accusations contained in Beach's statement to Leo. Unlike Leo, these officers did not get paid to testify; they testify, even twenty plus years after a conviction, because the truth remains the truth no matter how much time has passed.

Via took countless confessions in his career, many of which were challenged, but none of which was ever suppressed. Calhoun can make the same claim, with the exception of one case he told you about in which Paul Kidd

maligned the integrity of a deceased officer, and the federal court sent the case back to state court, where the guilty party was ultimately convicted. If these officers really resorted to such tactics, surely those tactics would have been exposed some time between 1983 and now.

Leo and Beach want you to believe, however, that even if Leo was wrong about the involuntary nature of Beach's confession, it does not matter because a lack of corroboration clearly demonstrates Beach's confession was false. As Leo himself admitted, however, he has never been allowed to testify about the ultimate issue of the reliability of a confession in any court in the land. In fact, in the only court Leo has appeared to testify as an expert in the State of Montana, Leo admitted that the federal district court would not allow him to testify.

The jury has already decided that Beach's confession was corroborated by the nature of the crime and the crime scene itself. Marc Racicot spoke eloquently before the Board regarding the corroborated details of Beach's confession. The corroborating facts he talked with the Board about on June 14, 2007, are the same corroborating facts he discussed with the jury on April 13, 1984, during his closing argument. If there is any doubt in the Board Members' minds about the corroborating circumstances, then the State respectfully refers the Board to Marc Racicot's closing argument, on pages 883-900, 928-939 of the trial transcript; to Dean Mahlum's letter submitted to the Board, on pages 9-11; to the

State's Response on pages 40-53; and finally to this quote from Federal Magistrate Anderson who considered this very issue:

In reply Respondent outlines on a point-by-point basis the extent to which the confession matches the physical evidence. Respondent's Response to Petitioner's Habeas Corpus Memorandum at 4-8. In light of this additional evidence of guilt adduced at trial, Petitioner's allegations of inaccuracies are insignificant.

(Beach v. Mahoney, Findings and Recommendations of U.S. Magistrate, attached to State's Response as Ex. 29.)

Try as Centurion Ministries might to make this case into a DNA case--it is not and it never will be. This case was never about Beach's fingerprints or blood being located at the crime scene because his fingerprints and his blood were not there, and the jury knew it. This case was about Barry Beach's confession. Beach's conviction for murdering Kim stands or falls on the basis of his confession. He knows it too. That is why Centurion Ministries has put so much time and money into attacking it. Further, Beach's claim to the contrary, a confession can be corroborated by more than fingerprints or blood.

Centurion Ministries', Leo's and Beach's explanation for the extraordinary details in his confession is either that those were matters of public knowledge or the Louisiana officers fed Beach details about the crime. Why is it then that Beach told Hoyt Moncrief, an independent polygrapher, that he knew so much about the crime because he dreamt about it? Why is it that he did not tell Hoyt Moncrief that

the reason Moncrief detected deception to the question regarding Kim's keys was because he claimed to have seen Caleb Gourneau and Shannon O'Brien with the keys shortly after the homicide? Rather, he told Moncrief he showed deception in this question because he had "surmised" the keys were in the Poplar River.

When the State questioned Leo about how he knew what matters were and were not known to the public, he in essence responded that it was based upon what he learned from Centurion Ministries. During a break, Beach's counsel showed Leo an unidentified, undated copy of a newspaper article and tried to use this article to bolster his testimony. Leo, however, according to his own report, **did not** rely upon that article. Further, at the hearing, Centurion Ministries never did establish where the copy of the article in question came from and when it was dated.

Nothing about Beach's claims of a coerced and a false confession is "new evidence." The only thing that is "new" is the story Beach gave to Richard Leo in 2002, and of course, his surprise alibi testimony, presented for the first time at his clemency hearing. Beach was aware of all of these "facts" prior to his suppression hearing and prior to trial. He had plenty of chances to tell his story. He could have told his story at the suppression hearing; he could have told his story at the trial. He just chose not to do it. What is his explanation for not telling his story back when it would do him the most good? Beach claims that none of his many,

capable attorneys would allow him to do so. This allegation lacks credibility. Moses was clearly committed to getting Beach's confession suppressed and presenting Beach with the best defense possible. He was an adept and experienced criminal defense attorney who was not given to leaving matters to chance. If Moses had ammunition, he would have used it.

That is why the most shocking part of the hearing from the State's perspective was the testimony of Beach's sister, Barb Selinda. For the first time, **ever**, Selinda testified that she saw Beach at home asleep in his bed around 12:30 or 1:00 a.m. on June 16, 1979, just prior to the estimated time of Kim's death. She further testified, for the first time, there is no way Beach could have left the house without her hearing him leave. Once again, Selinda claims to have shared this information with every one of Beach's attorneys, but none of the attorneys ever allowed her to formally give her alibi statement--not even Beach's most recent attorney.

In order to believe Selinda's newly revealed alibi, which happens to conflict with a handwritten statement given by her mother, you would have to really question the process we use to license attorneys to practice law, you would have to marvel at Beach's extremely rotten luck to have hired so many bad attorneys, including Wendy Holton who did all that she could to make a case of Beach's actual innocence in federal court, and you would have to believe that

Dean Mahlum was an evil man, because Selinda claims she told Mahlum about the alibi, and he chose to ignore it.

It is apparent that Beach's claim of a coerced and/or false confession is neither meritorious nor new evidence; what is the Board left to consider? In Beach's Application for Clemency, it appeared that the new evidence were such matters as the "eyewitness" account of Calvin Lester, the insight of Calvin First, the 28 allegedly unidentified fingerprints, and of course the bloody palm print. As set forth below, some of these matters are just plain wrong, some of these matters were not even presented at the hearing, and of the matters presented both the "newness" and the credibility of the evidence are suspect.

In his Application for Clemency, Beach made much of the fact that there were 28 unidentified fingerprints from the crime scene, suggested that most of those prints were lifted from inside the Nees' truck and even informed the Board that Kim Nees' prints were found all over inside of the truck. As evidenced by the stipulated Fingerprint and Palm Print exhibits, Beach's numbers were incorrect and his other assertions are not accurate. (For further explanation, See State's Response at 78-85.)

Even after sitting through the entire clemency hearing, the State is still unclear whom exactly Beach is accusing of murdering Kim Nees. It appears that his primary targets are Sissy Atkinson and Maude Greyhawk. Apparently Sissy is

targeted because of Centurion Ministries' theory that Sissy was jealous of Kim because Kim was involved with Alex Trottier, who is the father of Sissy's daughter. The current Roosevelt County Sheriff interviewed Alex Trottier who denied that he and Kim were involved in any manner. Sissy also appeared before the Board and explained that while she and Trottier had some clandestine encounters, he was not her boyfriend, and she could have cared less if Trottier was involved with Kim.

Apparently Maude is targeted based upon the "eyewitness" account of Calvin Lester, even though Maude has always had an alibi during the time frame of Kim's murder. Maude was with Rose Failing and Denver Atkinson, and to this day, Failing confirms this information. Lester, on the other hand, was 10 years old at the time of the homicide and claims to have witnessed Kim's murder. Lester gave two accounts of what he saw--one to Ron Kemp, while Kemp was an investigator for the Roosevelt County Attorney, and one to Centurion Ministries. Even within these two accounts, Lester provided conflicting information. Nonetheless, Lester places a number of people at the murder scene including: Maude Greyhawk; Sissy Atkinson; Joanne Jackson; and Jordis Ferguson. Depending upon which version of Lester's statement one reviews, he also places Caleb Gourneau, Shannon O'Brien and Ed Van Dover at the murder scene.

In addition to the obvious logistical problems with Lester's claims as well as the conflicts within his own statements, after Lester gave his statements, FBI agent Stacey Smiedala went to Colorado to administer a polygraph on Lester. Smiedala's videotaped deposition has been submitted for the Board's consideration. During the polygraph pre-interview, Lester recanted his statement and admitted he did not witness Kim's homicide. Smiedala denies brow-beating a recantation out of Lester as Centurion Ministries suggests. Further, on March 22, 2007, Lester gave a tape-recorded statement to Ward McKay, an investigator with the Montana Attorney General's Office and again admitted that he did not witness Kim Nees' murder. Perhaps what is most telling about Lester is that he did not testify at Beach's clemency hearing.

Frankly, the State is uncertain exactly how the other women, like Joanne Jackson, Jordis Ferguson and the Red Dog sisters became "suspects." Apparently it was through rumor and guilt by prior association with Sissy and Maude. Perhaps it was due to Richard Holen's recent recollection of seeing a truckload of girls in the Nees' truck heading towards the murder scene--a fact he never shared with Deputy Bob Murray who interviewed Holen within two days of Kim's murder. Nonetheless, each one of the women Beach has accused, gave a tape-recorded statement to Ward McKay. None of those women had any advance knowledge that the State wished to interview them. They had no time to speak

with one another in case they needed to “get their stories straight.” They had nothing to gain by giving their statements, other than trying, for once and for all to vindicate their names.

Notably, Beach had the opportunity to subpoena every one of these women to his hearing along with others whom he has implicated like Caleb Gourneau and Shannon O’Brien. Ultimately, he only decided to call two of the women--Sissy and Maude. When Sissy appeared before the Board, she was in a no-win situation. If she did not appear, it would be inferred she was guilty; when she did appear, it was inferred, by some, she was a liar. Yet, Sissy did appear. Sissy is fighting to maintain sobriety and to live a healthy life from one day to the next. She listened to her brother J.D.’s allegations that she had made some admissions to him back in 2004 that she was at the crime scene--admissions that Sissy adamantly denies making.

J.D. has his own history of drug and alcohol abuse. He has also sustained a brain injury, which clearly could affect his memory, and has served time in prison with Beach. In fact, in a letter J.D. wrote to his former girlfriend, he claimed Beach was helping him out with something, although he did not want to write or talk about it since he believed his letters and phone calls were being monitored. He also has a history of physically abusing Sissy--their brother Bobby verified that.

Bobby also stated under oath that he believes Sissy is telling the truth. It is Bobby, not J.D., who has a caring relationship with his sister, Sissy.

Vonnie Brown also claimed that Sissy made some admissions to her. Of course, Brown clearly does not like Sissy, because Sissy turned Brown into her probation officer. Maybe this was Brown's chance to get even. Once again, Brown has her own history of drug abuse. Maybe that has clouded her memory.

Dunn O'Connor now recalls that he received a phone call from Sissy at 5:00 a.m. on June 16, 1979, during which Sissy told him that Kim had been murdered. Within a year's time, O'Connor learned that law enforcement did not find Kim's body until about 7:00 a.m. Yet, O'Connor never went to law enforcement to report that Sissy seemed to know about the homicide earlier than 7:00 a.m. Why? Maybe it is because Sissy really did call O'Connor, but there was nothing suspect about the timing of her call. By his own admission O'Connor was out partying until 3:00 a.m. on June 16, 1979, and then went home and passed out. Maybe, after he heard years of rumor and speculation, and read articles in the newspaper reporting that an "eyewitness" placed Sissy at the scene he started to convince himself that the call came at 5:00 a.m. If, since 1980, Dunn O'Connor believed that Sissy had been at the crime scene before the police, why did he not speak up sooner? Why did he wait until years after Beach was tried and convicted to come forward?

There is also the statement and testimony of Carl Four Stars, who claims that in the spring of 1984, right after Beach was convicted, he worked with Sissy at A & S Industries when he overheard her tell Stubby Balbinot (now deceased) that Beach was innocent, and she had gotten away with a “capital crime.” Four Stars claimed he agonized about Sissy’s “admission” for years, but, other than sharing the information with a Catholic priest during confession, kept the information to himself until he gave his statement to Centurion Ministries. Yet, the details in his statement written by Centurion Ministries and signed by Four Stars pales in comparison to the details he now claims Sissy disclosed in front of him, and Lawrence Red Eagle, at A & S Industries. If it felt so good to get this information off of his chest, why did he not tell Centurion Ministries everything he knew when he gave his written statement?

Four Stars has backed away from some of the information contained in his written statement. During a tape-recorded interview, Four Stars was certain that when Sissy made all of her admissions he was working alongside Lawrence Red Eagle. According to Red Eagle, and his employment records, however, he did not work at A & S Industries in the spring of 1984. Further, he never heard Sissy make the statements Four Stars attributes to her. Finally, Red Eagle, who had no idea why people from the State wished to speak with him, reported that the noise level at A & S Industries was incredible. In fact, Red Eagle sustained hearing loss

from working there. Four Stars, on the other hand, described A & S Industries as “so quiet you could hear a pin drop.”. At the clemency hearing, Sergeant Richie McDonald of the Roosevelt County Sheriff’s Department, verified the extreme noise level at A & S Industries.

Maude, who lives in Colorado now, did not attend the hearing. While Centurion Ministries did subpoena Maude, they did not provide her with the necessary finances to fund her trip to Deer Lodge until the Friday before the hearing. Perhaps that affected her decision not to attend. Or perhaps she has grown weary of these accusations. Nonetheless, Beach did persist in getting in hearsay statements suggesting that Maude was somehow involved in Kim’s murder.

After Lester named Maude as a participant in Kim’s murder, and prior to his recantation, Ron Kemp, an investigator for the Roosevelt County Attorney’s Office, set up an interview with Maude. Maude did not try to evade Kemp, and she attended her scheduled interview. It was only after Kemp pressed her about why someone would place her at the scene of Kim’s murder that Maude indicated that she used a lot of drugs and alcohol back then. She asked Kemp if he thought she could have done something like this and just could not remember it. Kemp’s response is telling. He told Maude that if she were there, she would remember.

Maude did not confess to Kemp, rather, she struggled to understand why someone would place her at the scene of the murder when she knew that was untrue.

The State suspects that if Maude's telephone conversation with Judy Greyhawk occurred, then it occurred after Maude's interview with Kemp. Perhaps, in light of Kemp's disclosure of an "eyewitness," Maude did believe her arrest was imminent. Nonetheless, even if the phone call occurred and even if Judy has accurately remembered the phone call, the information Maude disclosed did not fit the crime scene. Kim did not sustain any kicking injuries to her head, nor did she sustain injuries consistent with her having been beaten to death by a gang of people. Further, at the time of Kim's murder, Maude was with Rose Failing and Denver Atkinson.

Maude's ex-sister-in-law, Maria Decker, testified about what her dead brother told her that Maude told him. Of course, Dana Kirn physically abused Maude, and right before Kirn made these disclosures to Decker, Maude had gotten an Order of Protection against Kirn. Also, there is no love-loss between Decker and Maude, since Decker clearly holds Maude responsible for her brother's death.

Additionally, while Beach persists in naming Maude and Sissy as his prime suspects in Kim's murder, both Maude and Sissy have given fingerprints, palm prints and hair samples. Like Beach, no fingerprints, palm prints or hair connected either Sissy or Maude to the murder scene. Unlike Beach, neither Maude nor Sissy

has given a detailed, recorded confession to law enforcement admitting their guilt, nor has anyone else come forward to even place them at the crime scene.

Centurion Ministries has no doubt done some fine work on behalf of other people who have been wrongfully convicted. Centurion Ministries just did not do their best work in this case. It is not the first time that Centurion Ministries put their faith in a convicted murderer who lied to them, and it probably will not be the last, because frankly, in their line of work, it is just going to happen sometimes. After all, if an innocent person who has nothing to gain and everything to lose falsely and convincingly confesses to a murder, then certainly a convicted murderer who has everything to gain and nothing to lose can convincingly, at least to some, proclaim his innocence.

In Mr. Racicot's closing argument to the jury he stated:

So then, this all boils down, essentially, to two essential questions, and depending on how you answer those two simple questions, everything else is dispensed with. Those two questions concerns the defendant and his confession and as the Judge instructed you, 'If the confession is voluntarily made' and 'if his confession is true', and there is simply nothing left to determine.?

(Trial Tr. at 884-85.) The jury answered yes to those questions, as did every court that considered Beach's claims of coercion and falsity.

So now Mr. Beach has called upon you, as Board Members to answer the very same questions, and the very same is true today. If this Board does not believe in the legitimacy of Barry Beach's confession, then your job is simple--set

him free. Based upon all of the information, testimony and exhibits this Board has considered can you do that in good conscience? No. Because Barry Beach has not even come close to meeting his burden of demonstrating his innocence even though he has relentlessly and tirelessly projected his guilt onto others.

Let us not forget--Barry Beach is not the victim here. Barry Beach murdered Kim Nees on June 16, 1979. Ironically, last Saturday, after the hearing adjourned, marked the 28th anniversary of Kim's brutal death. On behalf of Kim, her mother Diane, the rest of her family and friends, on behalf of all of the fine law enforcement officers who worked on this case, and finally on behalf of the women who Barry Beach has victimized by naming them as murderers, please put an end to this and deny Barry Beach's request for a pardon. Beach had his chance to say all that he claimed had gone unsaid. Twenty-eight years of turmoil is long enough.

Respectfully submitted this 21st day of June, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing State's Closing Remarks in the Matter of Barry Allen Beach's Application for Clemency Pardon or Commutation to be mailed to:

Mr. Peter Camiel
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Mr. Craig Thomas (also sent via e-mail)
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Deer Lodge, MT 59722

DATED: _____