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Honorable Governor Brian Schweitzer
Office of the Governor
Montana State Capitol Bldg.
P.O. Box 200801
Helena, MT 59620-0801

RE: Application for Clemency, Pardon or Commutation for
Barry Allan Beach

Dear Governor Schweitzer:

This letter sets forth an application on behalf of Montana State Prison inmate Barry Allan Beach for clemency, pardon or a commutation of Mr. Beach=s 100 year, no parole sentence after his having served over 23 years in Montana state prisons for a crime he did not commit. Barry Allan Beach, former resident of Poplar, Montana is serving the 100 year, no parole sentence in the custody of the state of Montana for his 1984 conviction for the crime of deliberate homicide in Roosevelt County case number 1068-C. This request is made as a result of an exhaustive investigation that calls into serious question the validity of Barry Allan Beach=s conviction and the fairness of his 1984 trial.

In summary, Barry Beach was convicted on the basis of a false and coerced confession and on the basis of prosecutorial misconduct related to a discredited scientist=s analysis of hair evidence. New evidence as well as a careful review of existing evidence proves that Barry Beach=s confession was false and that several other suspects are the likely killers of Kim Ness.

The Re-Investigation of Barry Beach=s Conviction

Beginning in 2000, investigators with Centurion Ministries began the re-investigation of Barry Beach=s conviction. Centurion Ministries is a non-profit, prisoner advocacy organization headquartered in Princeton, New Jersey dedicated to working on behalf of convicted, innocent prisoners throughout the United States in an effort to develop new evidence required to overturn wrongful convictions. Centurion Ministries investigations have led to freedom for over 35 wrongfully convicted prisoners throughout the United States and Canada.

Barry Beach first contacted Centurion Ministries in 1991, however, Centurion Ministries is a small organization that receives over 1,000 new appeals from inmates every year. Barry Beach=s file was finally able to be carefully reviewed beginning in 1998. The Centurion Ministries review process is extensive and exhaustive. For two years Centurion Ministries= investigators poured through the record before finally committing to begin the re-investigation in earnest in 2000. Centurion Ministries will not commit to the re-investigation of a new case until it is convinced in the absolute factual innocence of the client. The careful review of Barry Beach=s case convinced Centurion Ministries director James McCloskey and its investigators that Barry Beach was in fact innocent. As a result,

the re-investigation began culminating in over thirty trips to Montana as well as five other trips in search of witnesses and evidence.

In Barry Beach=s case, Centurion Ministries has conducted a six year investigation interviewing over 200 witnesses in six states, including Montana, North Dakota, Louisiana, Colorado, Arizona and Nevada and following all leads attempting to locate missing evidence. The search for missing evidence has included personal inspection of the entire Roosevelt County Sheriff=s Office property room, including every file contained therein, in interviews with crime lab personnel, including Arnold Melnikoff and Kenneth Konzak, attorney general=s staff, employees and sheriff=s office employees. Witnesses have been located and interviewed throughout the United States. The results of this exhaustive investigation led to significant evidence demonstrating Barry Beach=s innocence but have also failed to locate critical pieces of physical evidence that could have been tested in order to confirm Barry Beach=s innocence.

The Murder of Kimberly Nees

On June 16, 1979, the body of Kimberly Nees was discovered in the Poplar River near Poplar, Montana. She had been bludgeoned to death. Several police agencies initially investigated the case, including the FBI, the Poplar City Police, Roosevelt County Sheriff=s Office, the Fort Peck Tribal Police and the Bureau of Indian Affairs. At the time of the investigation, there were no known witnesses to the homicide. Several people were questioned as potential suspects, but no one was charged. The murder weapon was never located. Key pieces of evidence that were clues to the identity of the perpetrator were either ignored or mishandled or have now been lost. Finally, in 1983, Barry Beach was charged with the murder of Kim Nees.

The sole issue at trial in the case against Barry Beach was the validity of an alleged confession that Barry Beach gave to Monroe, Louisiana detectives in 1983. The defense presented at trial was that Barry Beach was not the perpetrator of Kim Nees= murder and that he was not present at the scene of the crime nor did he have any role whatsoever in Kim Nees= murder. The state had no forensic evidence connecting Barry Beach to this crime and no witnesses placing Barry Beach at the crime scene or with Kim Nees on that evening. The only evidence presented to the jury during the trial was the alleged confession of Barry Beach given to the Monroe, Louisiana police officers in January of 1983.

Numerous items of physical evidence that may have identified the true perpetrators of the crime were collected by the authorities at the time of the initial investigation. Twenty-eight sets of still-unidentified fingerprints were found on the inside and outside of Kim Nees= pickup truck. A clear palm print was found on the passenger side door of the pickup truck in blood¹. A heavily blood spattered towel was found hanging on a fence one block from the crime scene on the morning that the murder was discovered. Several hairs were found on this towel. Three separate sets of footprints were left in a trail along which the body of Kimberly Nees was dragged from the pickup truck 256

¹ The palm print was preserved by way of a fingerprint camera used by the FBI and remains available for comparison purposes.

feet to the Poplar River where her body was dumped. Numerous hairs were recovered from the clothing of Kimberly Nees, including one alleged pubic hair that was examined by discredited former Montana State Crime Laboratory forensic scientist Arnold Melnikoff. Although Mr. Melnikoff did not testify at trial, he issued a report claiming that this hair shared common characteristics with defendant Barry Beach. Mr. Melnikoff's hair comparison analysis was never reviewed by any other scientist, that hair was never DNA tested, and to date that hair cannot be located. Numerous cigarette butts were found in the ashtray of the truck which could have been tested but can now not be located. Beer cans were found strewn in the area of the truck and the body and were collected.

Both Barry Beach and Kimberly Nees were eliminated by the FBI as the donors of the bloody palm print found on the outside passenger door of the Nees' truck. No fingerprints matching Barry Beach were found anywhere within or outside the truck. Numerous elimination prints were obtained from the Nees family and friends and the police officers who investigated the crime scene. To date, twenty-eight prints remain unidentified. The bloody towel that was recovered on the morning of the murder discovered hanging on a fence not far from the murder scene was examined. The blood found on the towel does not match either Kim Nees or Barry Beach². Hairs found on the towel were determined to have similar characteristics to Kim Nees, but can now not be located for further testing.

The Crime Scene

The killing for which Barry Allan Beach was sentenced to 100 years in prison occurred on the Fort Peck Sioux-Assiniboine Reservation in Montana. This 80 by 40 mile reservation in the far northeast corner of the state has some 8,000 enrolled members and is also home to a large number of non-natives. At one time, the Fort Peck reservation had the distinction of having the highest per capita murder rate in the United States.

Kimberly Ann Nees was two months from turning 18 years old. She was a pretty, high school honor student who had just graduated from Poplar High School two weeks before her murder.

On the last night of her life, two weeks after graduating as valedictorian of the Poplar High School class of 1979, Kim Nees left home with her boyfriend, Greg Norgaard, to attend the drive-in theater east of town. The two may have argued and Greg Norgaard dropped Kim off at her home immediately following the movie and he went to the Poplar Legion Club to drink. Kim's younger sister, Pam Nees, who was at home when Kim arrived home from the movie, told authorities that Kim stayed at the house for about 15 minutes and then left in her father's pickup truck at about 12:15 a.m. on that warm Friday night. At least a half dozen witnesses observed Kim Nees sitting alone in the parked pickup at the closed Exxon gas station on Highway 2 across the highway from Poplar

² DNA testing of the blood from the towel confirms that neither Kim Nees nor Barry Beach are the donors of those blood stains. The stains were left by a male.

High School on the west end of town between 12:30 and 1:00 a.m. One witness said she saw Kim at the station at about 12:45 a.m. talking through the window to a man standing outside the pickup. Yet another witness who had graduated from high school with Kim Nees said she observed her driving west on Highway 2 at 1:00 a.m. heading down the hill from the Exxon station toward the Poplar River bridge and the turn-off to the road into the river bottom. There were several vehicles ahead of her and the witness said she thought at the time that Kim might be following them.

At 4:00 a.m., two tribal police officers driving through a government housing area on a bluff overlooking the Poplar River and river bottom observed a pickup truck parked close to the river bank on the far end of the deserted field. They saw no need to check it out at that time. At 7:00 a.m., as the two police officers were driving back into Poplar on Highway 2 from the west and crossing the Poplar River bridge, the officers noticed that the pickup was still there and turned off the highway to investigate.

Peering into the locked vehicle, the officers observed that the seat was smeared with blood. There was also a large deposit of blood a short distance from the passenger side of the pickup along with a bloody clump of human hair. Following a drag trail that led from the blood near the pickup truck to the river bank, the officers then discovered Kim Nees= semi-submerged body face up in the river.

A collection of investigators from various law enforcement agencies - including the FBI, the Roosevelt County Sheriff=s Department, the Fort Peck Tribal Police Department, and the Bureau of Indian Affairs descended on the crime scene early that morning. When the victim=s body was removed from the river, massive head injuries strongly suggested she had been bludgeoned to death. Evidence inside the pickup, including the bloodied upholstery and blood spatters on the ceiling and rear windows of the cab led investigators to conclude that Kim Nees was initially attacked inside the cab of the truck, then pulled out through the passenger side door and beaten further as she lay on the ground where the pool of blood was found.

In the drag trail that led through the grass and dirt to the bank of the river, investigators found several differing footprints, including a set of bare footprints. The most significant clue found at the crime scene, however, was a bloody palm print on the driver=s side of the pickup immediately below the window. One of the FBI crime scene investigators stated the obvious: AThat the person who left the palm print on the door panel undoubtedly was responsible for the murder.@ Later analysis of this palm print determined that the palm print was not left by Kim Nees nor was it left by Barry Beach.

The autopsy report listed the cause of death as skull fractures and brain injuries resulting from more than 30 blows to the head. Also, according to the medical examiner, Kim Nees had not been raped nor had she engaged in sexual intercourse for several days before her death. Despite the fact that Kim Nees= clothing had not been disturbed and that she had not been raped, years later at the murder trial of Barry Beach, the state maintained that Barry Beach attacked and murdered Kim Nees because she rejected his sexual advances.

The Initial Investigation by the Police

As the murder of Kim Nees occurred on the Fort Peck Reservation, the FBI initially took charge of the investigation and in the month that followed, virtually all of the information that emerged was funneled through the Bureau's two-man field office in Glasgow, Montana. Within a few days of the murder, lead agent Brent Warberg interviewed more than three dozen witnesses, often times in the presence of Dean Mahlum, Undersheriff of the Roosevelt County Sheriff's Department. For several days following the murder, authorities focused on two primary suspects, both former classmates of the victim who graduated from Poplar High School several years ahead of her. One was Albert Gooch Kirn, a Native American and former all state guard on the Poplar High School basketball team. Investigators found out that Kirn had a reputation for heavy drinking, fighting and forcing his affections on younger women. In addition, a 17 year old Joanne Jackson reported to the FBI two days after the murder that a Aboy@ who lived across the Poplar River from the murder scene had heard Kim Nees scream, ANo, Gooch, no.@

While Joanne Jackson initially declined to identify the source, she ultimately claimed to the police she had heard the story from Caleb Gorneau. Gorneau insisted to the investigators he told Jackson no such thing.

The other police suspect was Kim Nees= boyfriend, Greg Norgaard. It appears that the interest in Norgaard stemmed primarily from the knowledge of investigators that he had a falling out with Kim just before the murder.

Fingerprints lifted from the inside of Nees= pickup truck and the bloody palm print on the door matched neither Norgaard nor Kirn. The investigators focused their attention elsewhere.

Barry Beach=s Actions on the Day of the Murder

Not one person in the twenty-five plus years since the murder, including the over 200 persons Centurion Ministries has interviewed, has ever come forward to say they saw Barry Beach at any time during the evening of Kim Nees= murder out and about in Poplar.

On the afternoon prior to Kim Nees= murder, Barry Beach accompanied his then close friend, Caleb Gorneau, and Gorneau=s girlfriend, Shannon O=Brien, to the swimming hole known as Sandy Beach which is on the Poplar River just a mile or two northeast of town. While there were conflicting accounts of how long they remained there, as they were departing, Beach got the wheels of his car stuck in the sand. When he was unable to dislodge the vehicle, Barry left Caleb Gorneau and Shannon O=Brien with his car and set out to walk to town. Barry maintained that he walked to a service station on Highway 2 on the eastside of Poplar, then hitched a ride in a pickup the rest of the way to his house. He stated that no one was home when he arrived and that after eating a snack, he went upstairs, flopped onto his bed and quickly fell asleep. Barry claimed he didn=t wake until dawn and he didn=t learn about Kim Nees= murder until late that morning when his sister, Barbara Beach, delivered the news to him at their uncle=s ranch, about 15 miles northeast of Poplar where Barry had gone to help with the branding.

Within a few hours of the discovery of Kim Nees= body, Deputy Sheriff Errol ARed@ Wilson was knocking on the doors on the west side of town looking for witnesses who might have observed

anything suspicious the previous night. One of the residents he spoke with was Barry Beach's mother, Bobbie Clincher. Bobbie says she told the deputy what Barry had told her - that he had fallen asleep early the night before and had been in his bed throughout the night. Bobbie said she also informed Wilson that Barry was still sleeping when she looked into his bedroom early that morning and that her son hadn't even taken off the shorts and shirt he had been wearing the previous day.

The morning after the murder Barry Beach went to his uncle's ranch outside of Brockton, Montana and helped out with the calf branding. Two weeks after Kim Nees' murder, Barry Beach left the state on a long planned trip to spend the summer with his father in Monroe, Louisiana. While police logically might have been curious about the timing of Beach's departure, the investigators hadn't bothered to talk with him before he left, nor did they attempt to contact him after he left the state. After returning to Poplar in the fall of 1979, Barry Beach was picked up by the Roosevelt County Sheriff's Department and questioned about Kim Nees' murder for the first time. He also voluntarily submitted to a polygraph. According to the examiner, the results were inconclusive. In June 1980, Sheriff Mahlum summoned Barry Beach to his office and again questioned him. Nothing came of this and Barry left town soon thereafter to return to Louisiana.

Barry Beach's Arrest and Interrogation in Louisiana

On the night of January 4, 1983, Barry Beach was picked up by Monroe, Louisiana police on a misdemeanor charge of contributing to the delinquency of a minor. In conjunction with Barry's arrest on this misdemeanor charge, detectives in Ouachita Parish, Louisiana were working overtime to try to solve the abduction murders of three young women, one of them the daughter of a high school principal. When homicide detective Sgt. Jay Via ran a background check on Barry Beach, he learned about the unsolved Montana murder of Kim Nees in Montana.

After spending several days trying to post his bail, Barry Beach's father, Bob Beach, and uncle, Tim Beach, showed up at the Monroe law office of Paul Henry Kidd on the morning of January 8th and retained him to find out why they had been getting the runaround at the jail. When Kidd appeared at the jail to inquire about the status of his new client, he learned that Barry had signed a murder confession the night before.

Barry Beach also essentially confessed to being involved in the three Louisiana homicides. Those statements have been proven false. All three of those homicides were determined to have been committed by others and Barry Beach was never charged in Louisiana with any of those crimes. As Louisiana Detective Jay Via testified, Barry Beach's statements about the three Louisiana homicides were proven absolutely false. (Tr. Trans. 679)

After Barry Beach had been confined for two days at the rural, minimum security detention facility known as the Apea farm, Detective Jay Via showed up there on January 6th and questioned him briefly about the local murders. Barry denied involvement in these murders. Detective Via returned to the Apea farm the following morning (January 7th) and escorted Barry to the parish sheriff's office in Monroe where he placed Barry in a tiny interrogation room. Without breaking for lunch, Detective Via then grilled Barry on the local murders throughout the morning and into the afternoon. Barry acknowledged having heard about the parish murders, but insisted to Detective Via

that he had not been involved with them. Around 2:00 in the afternoon, Detective Via left the room and Detective Alfred Calhoun took over the interrogation which, by this time, had shifted from the Louisiana murders to the unsolved Kim Nees murder in Montana.

According to Barry Beach, Detective Calhoun put him through an emotional wringer, alternately demeaning him, threatening him, praying with him and describing to him in frightening detail the horrors of being put to death in the Louisiana electric chair. According to Barry, Detective Calhoun told him that unless he admitted to the Montana murder, Calhoun would personally see to it that he went to the electric chair in Louisiana. By the end of several hours of interrogation, the Louisiana detectives had a tape recorded confession to the Kim Nees murder³. During the course of the interrogation of Barry Beach, there were numerous phone calls between the Louisiana detectives and Roosevelt County Sheriff Dean Mahlum who provided the Louisiana detectives with a nine point list of things that Kim Nees= killer should know.

A comparison of Barry Beach=s confession to the crime shows that Barry was wrong on eight of the nine points and that most of his confession was based upon either publicly known facts or is inconsistent with the actual evidence determined from Kim Nees= body at the crime scene.

At Barry Beach=s trial, the prosecutor told the jury that Barry Beach had not only confessed, but had confessed in front of his own lawyer. Paul Kidd, Barry Beach=s Louisiana attorney absolutely denies this assertion in a sworn statement. Kidd was not called to testify at Beach=s trial and did not even know of the prosecutor=s statement until well after Beach=s trial was over. In his sworn statement, attorney Paul Kidd states in part:

At goes without saying that I was outraged over Jay Via=s alleged testimony that Barry Beach confessed to the Montana murders in my presence.@ A...Barry denied any involvement in the Montana murder.@

During the course of the lengthy interrogation in Louisiana, it was reported that Barry Beach had confessed to three murders in Louisiana, as well. Detectives at Barry Beach=s trial in Montana later reported that those confessions were Alater proved unfounded.@ (Tr. 679). In fact, after being interrogated, Barry Beach had given incriminating statements about all three murders in Louisiana, each of which was Aestablished later to be absolutely false.@ (Testimony of Louisiana detective Jay Via, Tr. 679). In fact, another person later confessed to one of those three murders (Tr. 683) and other suspects were later charged with those offenses. The behavior of clearly falsely confessing to the Louisiana murders underscores the coercive tactics that were used to extract the Kim Nees confession from Barry Beach.

³ Curiously, prior to Barry Beach=s trial, the original tape recording of this confession was lost or erased by the Louisiana authorities.

Barry Beach=s Confession was False

A careful analysis of Barry Beach=s alleged confession demonstrates that many of the factual statements reported by Barry to the Louisiana detectives as to how the murder occurred are inconsistent with evidence found at the murder scene. These inconsistencies were never investigated and presented to the jury at the time of Barry Beach=s trial. Some of the more significant factual inconsistencies contained in Barry Beach=s alleged confession include the following:

1. The location of the crime.

Barry Beach=s narrative statement indicates that Kim Nees= truck was parked by the train bridge near the riverbank. In fact, Kim Nees= truck was located 257 feet away from the body. This is significant because later in the alleged confession, Barry describes making three trips from the truck to the river to dispose of evidence. Each of these trips from the truck to the river would have required a round trip distance of over 500 feet within a very short period of time. A review of Barry Beach=s confession indicates his belief that the truck had been parked very near the riverbank and the ultimate site where Kim Nees= body was deposited in the river. Beach claimed to have made separate trips to the river to dispose of the truck keys, later the alleged murder weapon, a crescent wrench and a tire iron, and finally, Kim Nees= body. Indeed, Barry=s confession suggests perhaps a fourth trip where he also retrieved Kim Nees= jacket and threw it over the riverbank.

It should be noted that the Poplar River was searched by divers numerous times for any of these items of evidence. Neither the keys, the crescent wrench, the tire iron or any jacket belonging to Kim Nees were found in or near the river.

2. The manner of depositing Kim Nees= body into the river.

In his alleged confession, Barry Beach claimed that he pushed Kim Nees= body over the riverbank ledge. He says nothing about going down onto the riverbank, below the ledge to pick up the body and walk it several feet from the bottom of the bank over to the river and place it in the water. Both the photographic and descriptive evidence clearly indicate that Kim Nees= body could not have been deposited into the river from the top of the ledge B the distance is too great. It was necessary for someone to first drop the body down from the ledge to the riverbank, then climb down and pick up the body, walk it over to the river and throw or place it in the water. Indeed, barefoot prints were found on the riverbank very close to the body. Those footprints are too large to have been left by Barry Beach.

3. Kim Nees= wounds.

Barry Beach=s alleged confession indicates his uncertainty of whether Kim Nees received any wounds that began to bleed while she still remained in the pickup truck. The examination of the interior of the pickup truck by law enforcement authorities revealed heavy blood spatters throughout the interior of the vehicle, particularly on the passenger side which was soaked with blood. It is unlikely that Kim Nees= assailant would not have noticed the extensive blood flowing from her injuries while she still remained in the pickup truck.

4. Kim Nees= exit from the pickup truck.

Barry Beach=s alleged confession indicates that Kim Nees escaped out the driver=s side of the pickup truck. Barry=s confession claims that he exited the passenger side of the vehicle, ran around the truck, caught Kim Nees at the driver=s door and pinned her against the driver=s side of the vehicle where he then beat her with a tire iron. Given the extensive bleeding evident inside the pickup truck cab, it is clear that Kim Nees was already severely injured and bleeding profusely while she was still in the pickup truck. Yet there was absolutely no blood found anywhere on the exterior driver=s side of the pickup truck, including the exterior driver=s door. All of the blood on the exterior of the truck was found on the passenger side. Both the FBI=s investigation and the recently retained defense expert=s investigation of the interior of the pickup truck have concluded that Kim Nees was dragged out the passenger side of the vehicle, not the driver=s side as Barry Beach claimed in his confession. The bloody palm print found on the outside of the passenger door suggests one of Kim Nees= attackers shoved the passenger door closed after Kim was pulled out the passenger door.

5. Kim Nees= injuries.

In his alleged confession, Barry Beach claimed that while he had Kim Nees pinned up against the driver=s side of the vehicle, he hit her with his fists and began choking her. The medical examiner, Dr. Pfaff, testified that Kim Nees had never been choked. There were no injuries to her larynx or hyoid bone nor were there any hand marks, bruising or imprints suggesting that she had been choked or hit with fists at all. Trial transcript, p. 442.

6. The murder weapon.

Barry Beach=s confession indicates that he initially attacked Kim Nees with a 12 inch chrome crescent wrench that he found under the truck seat. Shortly after Kim Nees= death, it became widely known throughout Poplar that the authorities believed that Kim Nees had been attacked with a 12 inch chrome crescent wrench. The authorities believe this to be the case because Ted Nees, Kim Nees= father, had indicated that he had recently purchased such a crescent wrench and that it was now missing. The local hardware store in Poplar, Montana had placed a display in its store front window showing a photograph of Kim Nees and a 12 inch crescent wrench as part of the display.

Kim Nees= father, Ted Nees, however, indicates that his crescent wrench was always kept in the tool box which was positioned in the bed of the pickup, not in the cab. Barry Beach had indicated in his confession that he retrieved the murder weapon from under the seat in the cab of the pickup truck.

In addition to the above, recent expert analysis based on the examination of the photographs of Kim Nees= injuries and the autopsy report contradict the Montana medical examiner=s opinion regarding the crescent wrench being the murder weapon. Forensic pathologist, Dr. Donald Reay, formerly King County, Washington medical examiner, and a nationally renown forensic pathologist with particular expertise in traumatic death has opined that: AThere is nothing distinctive to the injuries to indicate specifically that a crescent wrench was responsible for these injuries. To the

contrary, none of the injuries show irregular tool mark features commonly associated with a crescent wrench. Dr. Reay indicates that the crescent wrench could not have caused all of the lunar shaped injuries that were present on Kim Nees.

7. Kim Nees= clothing.

In Barry Beach=s alleged confession, he indicates that at the time of Kim Nees= murder, she was wearing a brown sports jacket and plaid polyester blouse. Kim Nees was not wearing either of these items, but instead wore a navy blue and red blazer and a white sweater. In addition, Barry Beach claimed that the jacket worn by Kim Nees was thrown over the riverbank. No such jacket was ever found. Interestingly, recorded conversations between the Louisiana detectives and Sheriff Mahlum demonstrate that, during the course of the interrogation with Barry Beach, the detectives recognized there was a problem with Barry Beach=s description of the clothing as it didn=t match the actual clothing that Kim Nees was wearing.

8. Barry Beach=s explanation regarding the lack of blood on the drag trail.

In Barry Beach=s alleged confession, the police questioned him regarding the lack of blood found on the 257 foot long drag trail between the pickup truck and Kim Nees= body. Barry indicated that he put Kim Nees= body in a garbage bag that he found in the truck and then dragged her body in the garbage bag from the truck to the river. The area of the drag trail covering 257 feet consisted of grass, dirt and rocks. Kim Nees weighed approximately 115 pounds. If Kim Nees had been placed in a garbage bag and then was dragged the 257 feet, the garbage bag would have been shredded and the remnants of the bag should have been found along the drag trail. No garbage bag or remnants of any garbage bag were found anywhere on the drag trail, on the riverbank, or in the river.

9. How Kim Nees= body was moved.

In his alleged confession, Barry Beach claimed that he held Kim Nees= body by the shoulders and dragged her face up from the area near the truck to the river. Dr. Pfaff, the Montana forensic pathologist opined that Kim Nees was probably dragged feet first based on bruising to her shoulders and other physical evidence.

10. Barry Beach=s clothing.

No blood stained clothing of Barry Beach=s was ever located. In his alleged confession, Barry Beach was asked what he did with his clothing which would presumably have been extensively blood stained. Barry claimed that after having disposed of Kim Nees= body, he stripped off his clothing, went to an empty railroad car parked on the railroad tracks and burned his clothing within the railroad car. The railroad company has never indicated any evidence of any fire found in any of the railroad cars in the area.

11. Barry Beach=s fingerprints.

One of the concerns of the investigators was the fact that Barry Beach's fingerprints were not found anywhere on the interior or exterior of the pickup truck despite the fact that dozens of other prints were found. In the alleged confession, Barry Beach was asked about his fingerprints. Barry claimed that he wiped his fingerprints away. Despite this claim, the police did find numerous unidentified palm prints and fingerprints both inside and outside the truck. Some of those palm prints and fingerprints were identified as being from Kim Nees or Pam Nees. The police also took elimination prints from numerous police officers and other individuals. At this time, there still remain 28 fingerprints and 4 palm prints that are unidentified. In addition, there is an obvious bloody palm print that was found on the passenger side door with no evidence of any attempt to wipe this palm print. There is no explanation of how Barry Beach was able to wipe away only his own fingerprints and leave all of the others.

False Confession

Dr. Richard Leo, a renowned expert in the field of false confessions carefully examined Barry Beach's alleged statements to the Louisiana detectives and determined that there were numerous reasons for concern about the validity of Barry Beach's statements. The interviews conducted by the Louisiana police officers were, of course, not videotaped and a tape recording was only made after several hours of interrogation had already taken place. Because of the large number of wrongfully convicted based upon false confessions, a number of courts, states and police departments are now requiring videotaping of custodial interrogations as a way to protect the innocent and ensure the conviction of the guilty. For example, the Supreme Courts of Alaska and Minnesota have declared that under their state constitutions, defendants are entitled as a matter of due process to have their custodial interrogations recorded. In the spring of 2003, the Illinois general assembly overwhelmingly passed landmark legislation requiring the electronic recording of police interrogations of suspects in homicide cases. As a matter of internal departmental policy, police departments in places like Brower County, Florida and Santa Clara County, California require officers to video tape custodial interrogations in certain circumstances. Dr. Richard Leo after reviewing all the materials in the Barry Beach case, stated that:

In my professional opinion, then, Mr. Beach's post-admission narrative or what is more commonly described as his confession is, based on my analysis of the materials reviewed and discussed in this report, almost certainly (if not certainly) false and should not have been relied on or given any weight by the triers of fact who convicted him. What makes this case potentially tragic is that there was no evidence other than Mr. Beach's disputed, forensically meaningless and lightly coerced "I did it" statement to support the state's otherwise unsupported assertion of his guilt. If Mr. Beach's confession is false, as I believe it almost certainly to be, then he is an innocent man unjustly convicted of a heinous murder for which he has been wrongfully incarcerated for almost two decades.

Summary regarding Barry Beach's confession

Although Barry Beach's confession contains numerous details, there is not one detail that Barry Beach revealed in his confession that was not public knowledge or is not inconsistent with the

physical evidence. It was widely known throughout Roosevelt County that police suspected that Kim Nees was attacked with a crescent wrench. Apart from that detail, Barry Beach's details regarding the location the truck, how Kim exited the pickup truck, how her body was moved from the truck to the river, what clothing she wore, whether or not she was choked as a part of the attack, what happened to the truck keys, the murder weapon and Kim Nees' jacket and the disposition of Barry Beach's own fingerprints all appear to be false. Despite this, in closing argument at the trial, the prosecuting attorney claimed that Barry Beach revealed 25 separate points in his confession that were unknown to the public. The prosecutor did not specify what any of these points were. An examination of the confession demonstrates the prosecutor's characterization of the confession was not accurate.

The American criminal justice system fails sometimes. The second most common factor leading to wrongful convictions that were found in the first 130 DNA exonerations were that of false confessions.⁴ The third most common factor leading to wrongful convictions was incorrect microscopic hair comparison matches⁴. In Barry Beach's case, both false confession and microscopic hair comparison matches were at work leading to his wrongful conviction.

Prosecutorial Misconduct During Trial

Barry Beach's trial was infected with serious misconduct by the prosecuting attorney.

The sole evidence admitted at trial against Barry Beach was his alleged confession to the Louisiana police officers. There were no witnesses placing Barry Beach at the scene of Kim Nees murder. Apart from the police officers' claim that Barry Beach confessed, there were no other witnesses claiming that Barry Beach had made incriminating statements to them or in their presence. No expert witnesses testified on behalf of the state regarding examination of any physical evidence that connected Barry Beach to Kim Nees' murder. The only reference at trial to physical evidence connecting Barry Beach to Kim Nees' murder came from the prosecuting attorney who, without objection, improperly told the jury in his opening statement that a pubic hair had been found on Kim Nees' sweater and that that pubic hair was in fact the defendant's. Apart from this reference, there was no other physical evidence introduced at trial connecting Barry Beach to this crime.

During the investigation of this case, Kim Nees' sweater which was found neatly folded on the ground near the passenger door of the pickup truck was collected and retained as evidence. In the fall of 1983, it was sent to the Montana state crime lab. At the crime lab, forensic scientist Arnold

⁴ Of the first 130 DNA exonerations, 101 involved mistaken identification. Thirty-five involved false confessions and 21 involved microscopic hair comparison matches that proved to be incorrect.

Melnikoff examined the hair found on the sweater and issued a report dated December 13, 1983 indicating that on November 14, 1983, the crime lab received a sealed paper bag with the white sweater of Kim Nees. Melnikoff reported: A35 microscopic slides were prepared of hair present on item 1110-7 and were examined microscopically with the following conclusions: 23 slides . . . contained head hair characteristic of Kimberly Nees= head hair, 11 slides. . . contained cat and/or dog hair. One slide, lab number CU100A27, contained one pubic hair characteristic of the suspect, Barry Allan Beach=s pubic hair.@

Forensic scientist Arnold Melnikoff did not testify before the jury at Barry Beach=s trial. His report was not introduced in evidence. The pubic hair which was the subject of Melnikoff=s report was not introduced as evidence at the trial. Despite the failure to present this actual evidence or testimony, the prosecutor improperly told the jury that the hair found on Kimberly Nees= sweater was the defendant=s⁵.

The prosecutor=s blatant assertion that one of Barry Beach=s pubic hairs was found on Kim Nees= sweater was extremely prejudicial and caused the entire trial to be unfair. The prosecutor had argued in opening statement that one of Barry Beach=s hairs was found on Kim Nees= sweater. Trial transcript, p. 314-315. When it was time to introduce the evidence, the prosecutor conceded that it was inadmissible and he could not establish chain of custody. Trial transcript, p.334-335. Nonetheless, during cross examination of Sheriff Mahlum, the prosecutor referred again to the hair evidence attempting to back door its admission. Trial transcript, p.801-802. Finally, even more egregiously, the prosecutor argued the existence of this hair evidence in his closing argument. Trial transcript, p. 932-933. The prejudicial impact of the prosecutor=s actions was monumental. First, the courts have now determined that microscopic hair comparison evidence is not sufficiently reliable. In Williamson v. Reynolds, 904 F.Supp. 1529 (D. Oklahoma 1995), the court in finding microscopic hair comparison evidence to be unreliable noted that:

AThe few available studies reviewed by this court tend to point to the method=s unreliability. . . in response to studies indicating a high percentage of error in forensic analysis, the law enforcement assistance administration sponsored its own laboratory proficiency testing program. Between 235 and 240 crime laboratories throughout the United States participated in the program which compared police laboratories reports with analytical laboratories findings on different types of evidence, including hair. Overall, the police laboratories performance was weakest in the area of hair analysis. The error rate on hair analysis were as high as 67% on individual samples, and the majority of the police laboratories were incorrect on 4 out of 5 samples analyzed. Such an accuracy level was below chance.@ Williamson, 904 F.Supp. at 1556.

Here, the prosecutor=s error was far more flagrant and grossly prejudicial. Without even subjecting the so-called hair evidence to cross examination because Arnold Melnikoff never testified and the hair evidence was not actually introduced in direct violation of the rules of evidence and the

⁵ It is reversible error for a prosecutor to make reference to Afacts@ not introduced in evidence before the jury as the prosecutor in Barry Beach=s trial did.

rules of professional conduct, the prosecutor told the jury in absolute terms that there was a hair on Kim Nees= sweater that tied Barry Beach to the homicide.

Referring to inadmissible evidence violates the rules of professional conduct. See Rule 3.4(e): AA lawyer shall not . . . in trial, allude to any matter . . . that will not be supported by admissible evidence. . .@. Likewise, the prosecution function, A.B.A. Standards Relating to the Administration of Criminal Justice (1979), Standard 3-5.5 provides: A. . . it is unprofessional conduct to allude to any evidence unless there is a good faith and reasonable basis for believing that such evidence will be tendered and admitted in evidence.@ In United States v. Dinitz, 96 S.Ct. 1075, 1082 (1976), the court stated:

ATo make statements [in opening] which will not or cannot be supported by proof is, if it relates to significant elements of the case, professional misconduct. Moreover, it is fundamentally unfair to an opposing party to allow an attorney, with standing and prestige inherent in being an officer of the court, to present to the jury statements not susceptible to proof but intended to influence the jury in reaching a verdict.@

In Berger v. United States, 55 S.Ct. at 633 (1935), a case very similar to Barry Beach=s, the Supreme Court found prosecutorial misconduct mandating reversal. The court held that under the circumstances, the prejudice to the cause of the accused is so highly probable that we are not justified in assuming its non-existence. Numerous other courts have found that where the prosecutor in closing insinuates there is evidence other than that presented which connects the defendant with the offense, reversal is required. United States v. Brantil, 756 F.2d 759, 767 (9th Cir. 1985); Gradsky v. United States, 373 F.2d 706 (5th Cir. 1967); United States v. Diloreto, 888 F.2d 996 (3rd Cir. 1989).

Arnold Melnikoff=s Role in Barry Beach=s Conviction

Former crime lab scientist Arnold Melnikoff=s proficiency in the field of hair comparison analysis has now been completely discredited by a number of investigations revealing serious mistakes in his testing procedures and serious flaws in his opinions regarding hair identification and comparisons. Melnikoff had left the Montana State crime lab and was working for the Washington state crime lab at the time that his complete lack of proficiency in the field of hair comparison was finally exposed. Melnikoff has since been fired by the Washington state crime lab for additional incompetence⁶. Melnikoff=s proficiency as a hair examiner was called into question following investigation of his testimony with regard to hair analysis in a number of Montana cases. Two re-examinations of hair samples through DNA testing in two Montana cases including State v. Bromgard and State v. Kordonowy have shown that Melnikoff=s hair analysis was completely in error resulting in two men being wrongfully convicted. Both of those convictions have been vacated because the hair to which Melnikoff testified was still available and was DNA tested where such testing confirmed Melnikoff=s errors.

⁶ Melnikoff was not allowed to perform microscopic hair analysis in Washington state because he could not pass the proficiency tests.

Following the exoneration of Jimmy Ray Bromgard who was freed after DNA testing proved Melnikoff=s testimony to be false, the Attorney General of the State of Montana undertook an audit of all cases in which Melnikoff had conducted hair analysis. It appears that Barry Beach=s case was excluded from the pool of cases the Attorney General audited because Melnikoff did not actually testify at Barry Beach=s trial despite the fact that the prosecutor improperly repeatedly referred to Melnikoff=s results during the course of Barry Beach=s trial. Melnikoff is now a defendant along with the State of Montana in a lawsuit brought by Bromgard.

Barry Beach=s current defense attorney has interviewed Arnold Melnikoff and former crime laboratory scientist Kenneth Konzak in an attempt to locate the missing pubic hair. The State of Montana Attorney General has repeatedly objected to any attempts to interview Melnikoff regarding his testing or analysis of the pubic hair at issue in Barry Beach=s case and has also refused to turn over Melnikoff=s notes and diagrams regarding his analysis of that hair.

To date, the pubic hair referenced in Arnold Melnikoff=s report of December 13, 1983 wherein he opined that one pubic hair had characteristics of the suspect Barry Allan Beach cannot be located. Roosevelt County District Court Judge David Cybulski issued orders allowing the defense to have this hair DNA tested. Neither the Montana state crime lab, the Roosevelt County District Attorney, or the Montana Attorney General=s office have been able to account for the loss of this hair. As a result, no DNA testing has been available to confirm or refute Melnikoff=s conclusions.

Prosecutorial Misconduct Regarding the Physical Evidence

Despite the fact that Arnold Melnikoff did not testify before the jury at Barry Beach=s trial and despite the fact that no hair evidence was actually introduced, the prosecuting attorney Assistant Attorney General Mark Racicot told the jury in his opening statement at trial transcript pages 314-315 the following: AAnd the forensic scientist from the lab in Missoula will tell that on the jacket of Kim Nees= laying B found laying outside that vehicle, that there was a pubic hair belonging to the defendant. They will tell you how easy it is for hair to transfer from one place to another and that this hair located on the sweater of Kim Nees was, in fact, the defendant=s.@

The prosecutor made two separate misstatements of fact about the pubic hair in his opening statement to the jury. First, Athat there was a pubic hair belonging to the defendant@ and second, Athis hair located on the sweater of Kim Nees was, in fact, the defendant=s.@ Even had forensic scientist Arnold Melnikoff testified, he could not properly have stated as such. All Melnikoff could have stated was that Barry Beach=s hair may have shared the characteristics with the hair found on the sweater. The prosecutor misstated the strength of any opinion that could have been offered by Melnikoff in stating as a fact that the hair was Barry Beach=s. The prosecutor=s reference to the pubic hair at all was misconduct because Melnikoff did not testify and there was no pubic hair introduced into evidence and no hair comparison testimony offered at trial. The prosecutor exacerbated this misconduct where in closing argument, he told the jury that the hair evidence could not be introduced as a result of a technicality. Trial transcript, page 932.

The Bloody Palm Print

The palm print left in Kimberly Nees= blood on the outside of the passenger side door of the pickup truck remains one of the most significant pieces of evidence available to find Kim Nees= real killer. However, during the trial of Barry Beach, the prosecutor misstated the evidence with regard to this palm print. The prosecutor ridiculed the significance of the palm print on the exterior of the pickup door, saying that it could have been from Kim Nees because the Examiner could not exclude her as having left that print. Trial transcript, page 886. This statement to the jury was completely false. An FBI report was sent to the Roosevelt County attorney dated November 7, 1983 that stated that the palm print found on the exterior passenger side of the truck was of value meaning that there was sufficient detail so that this palm print could be used for comparison purposes. More importantly, an FBI report also indicated that both Kim Nees and Barry Beach were eliminated as donors of the bloody palm print. That report stated: It is noted that the crime scene investigation developed a bloody palm print on the passenger side door of the victim=s vehicle which is not identified as belonging to either Kim Nees or Barry Beach.

Another FBI crime scene report described the significance of the bloody palm print: The bloody palm print that is located on the passenger door would have to have been left by the unsub [unidentified subject]. This palm print was most likely left when one of Kim Nees= killers closed the passenger door of the truck after Kim was dragged out.

The Blood Stained Towel

On the morning that Kimberly Nees= murder was discovered, a blood stained towel was found not far from the murder scene. That towel was found to have human blood, but did not match the blood type of either Kimberly Nees or Barry Beach. At trial, the prosecuting attorney misstated the evidence with regard to the significance of this blood stained towel. He told the jury, No one knew where the bloody towel was found or when it was found. Trial transcript, page 886. Later, in the prosecutor=s closing argument, he said, I don=t know where that bloody towel was found or even if it was found in Poplar. Trial transcript, page 934. An FBI report clearly indicates the towel was found the morning after the murder on a fence one block from the victim=s house. It should be noted that an extremely bloody towel was found on a fence one block away from the victim=s home.

The significance of this blood stained towel is that it is possible that, during the attack upon Kim Nees, one of the attackers was inadvertently struck and was bleeding and that person used the towel to wipe their own blood.

Other Instances of Prosecutorial Misconduct

In addition to the prosecutorial misconduct regarding the pubic hair and the palm print and towel, there were several other instances where the prosecutor misstated the evidence and misrepresented the facts to the jury.

Footprints

Three sets of footprints were found around the Kim Nees= pickup truck and along the drag trail toward the riverbank. In closing argument, the prosecutor said the footprints at the crime scene had Aactually no value whatsoever.@ The prosecutor went so far as to suggest the footprints could have been made by a police officer. In fact, the three sets of footprints included one set of bare footprints made by a person having an 11 and 3/4 inch foot size. Barry Beach wears a size 8 shoe and his foot is much smaller than 11 and 3/4 inches. The other two sets of footprints were made by people wearing clogs or thongs. None of the police officers would have been wearing that type of foot wear. In addition, one set of the footprints was down on the riverbank very close to where the body had been deposited.

Fingerprints

The prosecutor argued that Barry Beach=s fingerprints were not found anywhere on the truck because he had wiped them off. Trial transcript, page 887. This is a misleading statement because, in fact, over 40 sets of fingerprints were found within and outside the pickup truck and 28 prints and 4 palm prints have remained unidentified. None of the prints that were found belonged to Barry Beach. It would have been impossible for Barry to wipe off only his own fingerprints leaving all of the others.

The prosecutor also argued that Kim Nees= fingerprints and palm prints were not correctly taken during her autopsy. There is no evidence to support this claim. In fact, Kim Nees= fingerprints were identified all over the interior of the pickup truck based on her fingerprints taken at the autopsy and her palm print was used to eliminate her as the donor of the bloody palm print found on the passenger door.

Barry Beach=s Confession

The prosecutor told the jury that Barry Beach confessed in front of his own lawyer. Trial transcript, page 893. In fact, after the trial when he learned of this misstatement, Barry Beach=s Louisiana attorney Paul Kidd absolutely denied this assertion in a sworn statement. The prosecutor argued that Barry Beach=s confession was corroborated over and over again by independent evidence in this case. Again, there was no corroboration of Barry Beach=s confession whatsoever.

Evidence the State Failed to Disclose to the Defense Prior to Barry Beach=s Trial

In September of 1979, three months after Kim Nees= murder, Roosevelt County Sheriff Don Carpenter took a taped statement from Orrie Burshia. Orrie Burshia approached Sheriff Carpenter to disclose information she learned about the Nees= murder. In that taped statement that was never disclosed to the defense, Orrie Burshia told Sheriff Carpenter of a conversation she had with Mike Longtree approximately three weeks after Kim Nees= body was discovered. Longtree told Burshia that he had been present at the scene of the crime on the night that Kim Nees was murdered. Longtree described to Burshia how he had watched a group of Native American girls, including Sissie Atkinson and one of the Reddog sisters, among others, beat Kim Nees to death. Longtree told Orrie Burshia how Kim Nees was trying to get away and begged people to help her. Longtree never said that he saw Barry Beach at the murder scene. The statement from Burshia was never turned over to Barry Beach=s lawyer.

Over the years, Mike Longtree has reaffirmed to a number of people his statement that he was present at the time that Kim Nees was murdered. On July 1, 2004, Longtree had a conversation with Lisa Perry of Poplar, Montana. During that conversation, Longtree told her that he knew the names of the people who killed Kim Nees and further indicated the killers were Maude Kirn (maiden name Greyhawk), Sissy Atkinson, Joanne Jackson, and Jordis Ferguson. Lisa Perry has given a sworn statement relating to this conversation.

Although Orrie Burshia is now dead, the fact that Mike Longtree told her that he had witnessed the murder is confirmed in the statement by Susie Cowans Bissel. Bissel has given a sworn statement of what she was told by Orrie Burshia.

Around 1990, Mike Longtree told Sherrie DeMarias, Mike Longtree's common law wife and mother of his three children, that he saw the murder and told her some of the details. He told her that Sissie Atkinson, Maude Greyhawk, Jordis Ferguson and two Jackson sisters were involved. Longtree told her that he was with Les Bighorn and saw the girls drag Kim Nees to the river. Longtree has denied that he was a witness to the murder when contacted by police officers. Nevertheless, his statements should have been revealed to Barry Beach's lawyer prior to the trial so the defense could investigate the statement.

Richard Holen

Richard Holen of Poplar, Montana provided a statement days after Kim Nees' murder to Poplar police officer Steve Greyhawk⁷. At trial, there was testimony from Steve Shagunn that he saw Kim Nees sitting alone in her truck parked at Exxon station in Poplar at 12:45 a.m. Richard Holen told Officer Greyhawk that at approximately 2:00 a.m. on the night of the murder, he saw Kim Nees' pickup truck heading toward the river bottom. In fact, he was following the Nees truck in his own vehicle and saw Nees' truck turn off to go to the riverbank park. He noted that inside the cab of the truck were four or five people sitting shoulder to shoulder in the cab and one of the passengers was sitting on someone else's lap by the passenger side door. He noted that as the pickup truck slowed to turn off the highway, his car came even closer to it and at this point, he could clearly see the outline of the heads. He noticed that one of the passengers who was sitting on someone's lap was wearing a strap cap with a visor. Days later, when he was purchasing gasoline at a Conoco gas station in Poplar, Officer Greyhawk pulled up and started asking people at the gas station if they had seen anything or knew of anything about the Kim Nees murder. Holen told Officer Greyhawk that he had seen Kim Nees' truck on the night of her death and described his observations. Richard Holen's existence as a witness in this case was never disclosed to the defense. Significantly, Holen had seen Kim Nees' vehicle turn into the park only about 30 minutes before she was murdered.

Other New Evidence of Barry Beach's Innocence

Judy Greyhawk is the sister-in-law of Maude Greyhawk. Maude Greyhawk was the daughter of Officer Steve Greyhawk, a tribal police officer who was on duty the night of Kim Nees' murder.

⁷ Steve Greyhawk is the father of Maude Greyhawk. Steve Greyhawk was on duty the night of Kim Nees' murder. He is also the officer who broke down the door and entered the Judge's chambers where the murder evidence was being stored.

He is also the tribal police officer who was accused of breaking into the evidence room following the collection of evidence from the Kim Nees= murder scene. Maude Greyhawk has been implicated by a number of people as being a participant in Kim Nees= murder. In 2004, Roosevelt County District Attorney investigator Ron Kemp attempted to interview Maude Greyhawk regarding the murder of Kim Nees. Maude Greyhawk initially told Kemp to return at another time. When he returned, she related that she had called Sissie Atkinson immediately after Kemp=s visit with her and Atkinson told her not to talk to Kemp and that Athey don=t have anything.@ Maude Greyhawk then denied committing the murder, however, she then began to weep and asked Kemp whether she may have been involved in Kim Nees= murder and not now remember it. After Kemp left his attempted interview with Maude Greyhawk, Maude Greyhawk called her sister-in-law, Judy Greyhawk. Maude Greyhawk told Judy Greyhawk that she hadn=t been the one who actually killed Kim Nees. Maude Greyhawk confessed to Judy Greyhawk that she, Maude, had in fact lured Kim Nees to the park that night and AI might have kicked her in the head once or twice,@ but did not kill her. Judy Greyhawk has confided in Centurion Ministries investigators regarding this confession by Maude Greyhawk.

Murder of Dana Kirn

Maude Greyhawk had been married to Dana Kirn. In 2002, Dana Kirn and Maude Kirn separated and then engaged in a bitter custody battle over their children. A final hearing on their divorce and custody issues was scheduled for April 7, 2003. Two days before the scheduled court hearing, Dana Kirn was stabbed to death by Maude=s new boyfriend, Tracy McGowan. There is significant evidence that Dana Kirn planned to reveal at the upcoming divorce/custody hearing that Maude Greyhawk had confessed to him about participating in Kim Nees= murder.

Before his death, Dana Kirn told a number of people that Maude had confessed to him that she was a participant in Kim Nees= murder and that he was going to reveal this information. Prior to the death of Dana Kirn, he told his father, Albert Kirn, Sr., that with regard to the upcoming hearing that he didn=t need a lawyer because he had enough information on Maude to put her away for life. Desiree Kirn-Lambert was Dana Kirn=s younger sister. Dana Kirn revealed to his sister that while he and Maude were still living together, Maude revealed several things that led him to believe she was involved in the murder of Kim Nees. He said they were sitting on the couch at their home one day when she said to him, there=s something I haven=t told you in all these years. I know about the Kim Nees murder. Maude confessed to Dana, according to Desiree, that Maude was afraid she was going to be going to jail. Finally, Maria Decker, Dana Kirn=s half-sister, gave a sworn statement that after Dana separated from his wife, Maude, he lived with Maria and her husband for a while. She says Dana disclosed to her that Maude admitted to him more than once during their marriage that she was involved in the murder of Kim Nees. Specifically, Dana said Maude told him that she participated in the fatal beating of Kim Nees along with Sissy Atkinson, Joanne Jackson, Roberta Jackson, Jordis Ferguson and Rhea Reddog. Dana said that Maude revealed to him that Ed Vandover devised a plan to lure Kim to the location where she was murdered; that they planned to beat Kim, not kill her, then realized they had gone too far. Dana brought up Maude=s admissions to him regarding the murder of Kim Nees on multiple occasions according to Maria Decker. Michael Burshia has also given a statement that over period of several years, Dana told him a number of times that Maude confessed to him that she was involved with others in the murder of Kim Nees.

Calvin Lester

On June 16, 1979, as Kim Nees was being beaten near the Poplar River, a 10 year old boy named Calvin Lester who lived on a bluff above the park heard Kim Nees= screams. According to Calvin, he left his home, walked down the embankment and peered through the bushes as Kim Nees was being beaten to death. Lester saw several girls beating Kim Nees. Included among these girls were Sissie Atkinson and Maude Greyhawk, both of whom Lester knew. Lester also saw an unidentified man help drag Kim Nees= body to the river after she was killed. Calvin Lester knew Barry Beach but did not see Barry Beach present at the park at the time that Kim Nees was killed. Years later, Calvin Lester reluctantly came forward and has given a sworn statement regarding his observations. Calvin Lester has been interviewed by Roosevelt County District Attorney investigator Ron Kemp reaffirming his statement of his observations on the night that Kim Nees was murdered.

Other Suspect Evidence

Over the years, evidence has been accumulating that Kim Nees was killed by several female assailants who lured her to the Poplar riverbank park during the early morning hours of June 16, 1979. The accumulated evidence shows that several females including Sissie Atkinson, Maude Greyhawk, one of the Reddog sisters and others beat Kim Nees to death as a result of jealousy harbored by Sissy Atkinson over Kimberly Nees= romantic relationship with Alex Trottier who is the father of Sissy Atkinson=s daughter, Belle.

1. Judy Greyhawk

As indicated above, Maude Greyhawk confessed to Judy Greyhawk that she had been present at the time that Kim Nees was killed and that she had kicked her a number of times.

2. Mike Longtree

As indicated above, in September of 1979, Roosevelt Sheriff Don Carpenter was approached by Orrie Burshia who indicated a conversation that she had with Mike Longtree wherein he stated that he was at the murder scene at the time that Kim Nees was killed and saw a group of Native American girls, including Sissie Atkinson, a Reddog sister and others beat Kim Nees to death. Longtree recently repeated his statement to Lisa Perry.

3. Richard Holen

As indicated above, on June 16, 1979 at approximately 2:00 o=clock, Richard Holen was driving in his car with Gretchen Youpee westbound on Highway 2 heading out of town. He saw Ted Nees= pickup truck ahead of him on the highway also westbound heading towards the bridge over the Poplar River. He saw four or five people sitting shoulder to shoulder in the cab of the pickup and he observed Ted Nees= pickup slow down and turn off the highway onto the dirt road that leads to the train bridge. Days later, Richard Holen reported his observations to Poplar police officer Steve Greyhawk.

4. Sissy Atkinson confessions

Sissy Atkinson has been a suspect in Kim Nees= murder since 1979. In an FBI report dated July 19, 1979, it states: AThe name of Sissy Atkinson has also come up on numerous occasions as a possible suspect in this matter.@

Calvin First, a Tribal patrolman, reported that while he was at Exxon station getting gas at about 1:30 to 1:45 a.m. on June 16, 1979, he saw Sissy Atkinson driving Maude Greyhawk=s car away from the area of the murder. A passenger was in the car. Calvin First believed the passenger might have been Maude Greyhawk, but he wasn=t certain. Calvin First was never called as a witness at trial.

Sissy Atkinson has confessed to a number of people that she was responsible for Kim Nees= death. In the mid-1990's, Sissy Atkinson revealed to her long time boyfriend, William Stubby Balbinot, that she, Sissy Atkinson, bludgeoned Kim Nees to death with a tire iron and that Maude Greyhawk, Joanne Jackson, and Jordis Ferguson participated with her in the murder. Atkinson=s confession to her boyfriend, William Stubby Balbinot, was disclosed by Balbinot to his sister, Sheryl.

In 1984, Atkinson bragged to co-workers at the Tribal Industries plant in Poplar that she had committed the perfect crime. Witness Calvin Fourstars heard Atkinson gloating over the Beach conviction and the fact that she had committed the perfect crime.

In 2002, Atkinson told another witness, John Buffalo, with regard to the Kim Nees murder, AI=m the one that killed that girl.@ Buffalo has come forward and given a sworn statement that Buffalo who knew Sissy Atkinson ran into her in Billings, Montana. The two began talking and Buffalo related that he had recently been in prison with someone from Poplar, Barry Beach. When Buffalo asked if she knew Barry Beach, Sissy Atkinson began crying. When Buffalo asked her why she was crying, she stated: AI=m the one that killed that girl.@ She didn=t give any further explanation. Buffalo later learned that Beach was still in prison for Kim Nees= murder. Buffalo has since come forward to prison authorities at the Crossroads Correctional Center in Shelby and has since given a sworn statement indicating the above.

Legal History of Barry Beach=s Case

On May 3, 1983, Barry Beach was charged with deliberate homicide in the District Court of the 15th Judicial District, Roosevelt County, Montana. He pled not guilty to the charges and the case was tried to the jury from April 9th to April 13th, 1984. Barry Beach was found guilty. Judgment was entered on May 11, 1984. He was sentenced to a term of 100 years without possibility of parole. He appealed to the Montana Supreme Court which affirmed the conviction on July 25, 1985. State v. Beach, 705 P.2d 94 (Montana 1985).

In April of 1992, Barry Beach filed a petition for habeas corpus relief in Federal District Court. On August 5, 1993, the Magistrate Judge issued a recommendation that the petition be dismissed because it contained both exhausted and unexhausted claims. On September 28, 1993, the Federal District Judge issued an order granting an indefinite stay pending the exhaustion of state

remedies. On October 30, 1995, Barry Beach filed a petition for post-conviction relief in the Montana Supreme Court. On February 8, 1996, that court issued an order denying his petition.

On February 16, 1996, the stay issued by the Federal District Court was lifted and the case proceeded after referral to a magistrate. Counsel for Barry Beach filed a motion for discovery on April 1, 1996 which was denied on July 3, 1996. Briefing on the substantive issues continued for approximately the next year and on August 6, 1997, the United States Magistrate Judge issued his findings and recommendation denying the petition for writ of habeas corpus. Barry Beach's attorney filed his objections to those findings. On April 21, 1998, the District Court Judge issued his final order denying the petition for writ of habeas corpus.

Barry Beach then appealed to the Ninth Circuit Court of Appeals. His appeal was denied by the Ninth Circuit in a decision entered on August 30, 1999. Barry Beach then filed a petition for writ of certiorari in the United States Supreme Court. The petition was denied.

Barry Beach then filed a petition for DNA testing in the District Court of the 15th Judicial District in Roosevelt County. A hearing was held before the District Court Judge and an order was issued permitting DNA testing of evidence. The hair evidence at issue which was sought to be DNA tested could not be located and so no DNA testing has been conducted on that evidence. DNA testing was conducted on cuttings from the bloody towel referenced above. That testing resulted in findings that the blood stains did not come from either Barry Beach or Kimberly Nees.

In August of 2005, Barry Beach, pro se, filed an application for sentence commutation with the state of Montana Board of Pardons. That application was denied in a decision issued November 30, 2005 wherein the Board stated:

After duly considering your application for executive clemency in accordance with Sections 46-23-301 and 46-23-316, MCA, and in accordance with the Board of Pardons and Paroles Administrative Rules of Montana 20.25.901 and 20.25.902, the Board has by unanimous vote concluded that insufficient cause appears to necessitate a public hearing and orders that your clemency application be denied. In the Board's opinion, you have not satisfactorily proven your innocence of the crime or submitted newly discovered evidence showing complete justification or non-guilt. Additionally, you have not satisfactorily proven that further incarceration would be grossly unfair and that the Board was unable to identify sufficient extraordinary, mitigating or extenuating circumstances.

Montana Law Pertaining to Executive Clemency

Executive clemency is defined by Montana Statute 46-23-301. That statute provides the following definitions:

46-23-301(1)(a) Clemency means kindness, mercy, or leniency that may be exercised by the Governor toward a convicted person. The Governor may grant clemency in the form of: (i) the remission of fines or forfeitures; (ii) the commutation

of a sentence to one that is less severe; (iii) respite; or (iv) pardon. (B) A Pardon@ means a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction. (2) A person convicted of a crime need not exhaust judicial or administrative remedies before filing an application for clemency, except that an application may not be filed with respect to a sentence of death while an automatic review proceeding is pending before the Montana Supreme Court under 46-18-307 through 46-18-310. The board shall consider cases of executive clemency only upon application. All applications for executive clemency must be made to the board. An application for executive clemency in capitol cases may be filed with the board no later than ten days after the district court sets a date of execution. Applications may be filed only by the person convicted of the crime, by the person=s attorney acting on the person=s behalf and with the person=s consent, or by a court appointed next friend, guardian, or conservator acting on the person=s behalf. The board shall cause an investigation to be made of and base any recommendation it makes on: (a) all the circumstances surrounding the crime for which the applicant was convicted; and (b) the individual circumstances relating to the social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency. (3) The board shall advise the Governor and recommend action to be taken. The board may recommend that clemency be granted or denied. In non-capital cases, if the board recommends that clemency be denied, the application may not be forwarded to the Governor and the Governor may not take action on the case. In capital cases, the board shall transmit the application and either a recommendation that clemency be granted or a recommendation that clemency be denied to the Governor. The Governor is not bound by any recommendation of the board, but the Governor shall review the record of the hearing and the board=s recommendation before granting or denying clemency. The Governor has the final authority to grant or deny clemency in those cases forwarded to the Governor. An appeal may not be taken from the Governor=s decision to grant or deny clemency.@

On November 30, 2005, the State of Montana Board of Pardons and Paroles denied the application for executive clemency filed pro se by Barry Beach who sought to have his sentence restructured to make him eligible for parole. The board made its decision without a hearing and without investigation.

**Executive Clemency is Necessary Where There is an Inadequate
Remedy in the Courts to Rectify a Substantial Injustice**

Barry Beach did not receive a fair trial. As a result of procedural time bars which prevent the courts of Montana from considering the merits of Barry Beach=s claims of prosecutorial misconduct, ineffective assistance of counsel and newly discovered evidence, the courts have never had the opportunity to consider the merits of Barry Beach=s claims that his alleged confession was false, that the prosecuting attorney during his trial committed egregious misconduct in statements made to the jury, that his trial attorney failed to conduct an adequate investigation, allowed false evidence to be presented to the jury, failed to call witnesses to undercut the alleged confession, failed to present

evidence demonstrating that other suspects were responsible for the crime. Critical pieces of physical evidence that could have been subject to DNA testing have been lost, including the alleged pubic hair commented upon by the prosecuting attorney and examined by now discredited forensic scientist Arnold Melnikoff. As a result of the foregoing, Barry Beach's fate lies with the exercise of executive authority given to the Governor of the state of Montana to consider executive clemency in one form or another. Montana Constitution, Article VI, Section 12 addresses the authority of the Governor:

APardons. The Governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.@

The power of a governor to grant clemency has been written into our constitutional system. Defending executive clemency, Alexander Hamilton said: AHumanity and good policy conspire to dictate, that the benign prerogative of pardoning should be as little fettered as possible.@ Hamilton thought that the power would and should be used mercifully, otherwise Ajustice would wear a countenance too sanguinary and cruel@ and, in its merciful use, would ennoble those who wielded it. Hamilton's understanding of clemency has been reiterated throughout American history by judges and politicians alike.

Writing in 1833, in the first clemency case to reach the United States Supreme Court, Chief Justice John Marshall called a pardon Aan act of grace, proceeding from the power entrusted with the execution of the laws . . .@. Twenty years later, the Supreme Court again embraced a very broad view of the clemency power, saying AWithout such a power of clemency, to be exercised by some department or functionary of a government, it would be most imperfect and deficient in its political morality, and in that attribute of deity whose judgments are always tempered with mercy.@ In 1866, Justice Field wrote approvingly of what he called the Abenign prerogative of mercy.@

Lest anyone think that this is an outmoded, old fashioned conception of clemency, from time to time a similar standard has been embraced by governors and judges in our own era. Terry Sanford, Governor of North Carolina from 1961 to 1965, provides one example of such a view. AThe executive@ Sanford wrote: AIf charged with the exercise in the name of the people of an . . . important attitude of a healthy society - that of mercy beyond the strict framework of the law . . . executive clemency does not involve the changing of any judicial determination. It does not eliminate punishment; it does consider rehabilitation. To decide when and where such mercy should be extended is a decision which must be made by the executive . . . it falls to the governor to blend mercy with justice, as best he can, involving human as well as legal considerations, in the light of all circumstances after the passage of time, but before justice is allowed to overrun mercy in the name of power of the state.@

Chief Justice William Howard Taft explained why clemency is essential to just government:

AExecutive clemency exists to afford relief from undue harshness or evident mistake in the operation or enforcement of the criminal law. The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford remedy, it has always thought essential

in popular governments ... to vest in some authority other than the court=s power to ameliorate or avoid particular criminal judgments.@

Chief Justice William Rehnquist, in a 1993 Supreme Court decision, called clemency the sovereign=s Apower to extend mercy whenever he thinks it is deserved . . .@, and five years later said it was Aa matter of grace.@ Rehnquist suggested that this power was designed to allow the executive Ato consider a wide range of factors not comprehensible by earlier judicial proceedings and sentencing determinations.@ Chief Justice Rehnquist: AHistory shows that the traditional remedy for claims of innocence, based on new evidence, discovered too late in the day to file a new trial motion, has been executive clemency.@

Recently, Virginia Governor Mark Warner commuted the death sentence of Robin Lovitt to life in prison without parole, a decision he made to Aensure that every time the ultimate sanction is carried out, it is done fairly.@ Warner noted his decision was based on concerns that Lovitt could not pursue new DNA testing on crucial evidence that could prove his innocence. The evidence, a pair of scissors the prosecutors say Lovitt used as murder weapon, had been thrown out by a Virginia court clerk. Lovitt=s attorneys had argued to Governor Warner that losing the weapon had resulted in a profound unfairness because Lovitt could not request modern DNA tests of the evidence. While Barry Beach is not facing execution, he too is also denied the ability to have DNA testing conducted on the hair evidence that was presented to the jury to prove his own innocence.

In 1993, the Supreme Court of the United States stated: AExecutive clemency has proved to be the failsafe in our criminal justice system . . . it is an unalterable fact that our judicial system, like the human beings who administer it, is fallible.@ Herrera v. Collins, 506 U.S. 390, 415 (1993). The role of clemency in addressing miscarriages of justice has increased as a result of legislation restricting an inmate=s ability to appeal. Many of the issues that Barry Beach presents in this petition are issues that are time barred and for which there is no remedy that Barry Beach can pursue through the courts.

Barry Beach=s Sentence

Barry Beach was sentenced for the crime of deliberate homicide to a term of imprisonment of 100 years. Barry Beach was a juvenile at the time that Kimberly Nees was murdered. According to the 2002 United States Department of Justice Bureau of Justice Statistics for felony sentences in state courts for year 2002, 24.1% of individuals convicted of murder received life sentences in state courts for that year. The average prison term in 2002 for a murder conviction was 142 months.

According to the Montana Department of Correction=s 2005 report to the legislature, the average length of incarceration for males convicted of violent crimes in Montana in 2004 was 76.1 months (the average length of sentence in 1994 in Montana was 55.4).

Sentences for Homicides in the State of Montana

A review has been conducted of sentences imposed for homicides in the state of Montana dating back to the 1970's. The pool of cases included 388 cases. Of those 388 cases, only 25,

including Barry Beach's case, involved an offender who was less than 18 years old at the time of the offense. Of those 25 offenders who were less than 18, between the years 1980 and 1985 there were 8 juveniles offenders who were less than 18 at the time of their offenses. Only 3 received sentences of life with no parole, including Barry Beach. Out of the 25 juveniles sentenced for deliberate homicide between the 1970's and 2005, it appears that only 3 received no parole sentences of 100 years. Those 3 are Beach and two offenders convicted of multiple homicides (Steve Keefe and K. Hans). The conclusion to be reached from a review of the sentences imposed for deliberate homicide in the last 30 years is that the sentence imposed upon Barry Beach was extraordinarily severe in relation to other sentences for similar crimes with offenders having similar age at the time of the offense.

Barry Beach was a Juvenile at the Time Kim Nees was Killed

At the time of Kim Nees' death, Barry Beach was 17 years old. Barry Beach turned 21 at the commencement of his trial. Having been a juvenile at the time of the offense, Barry Beach received one of the longest timed sentences ever meted out in the state of Montana. Moreover, Barry Beach's sentence was a "without parole" sentence. In essence, Barry Beach received the equivalent of a life without parole sentence.

The Jury Which Convicted Barry Beach Never Heard Significant and Compelling Evidence Demonstrating that Barry Beach was not the Perpetrator of Kim Nees' Murder

1. Barry Beach's jury never heard of the statements made by Mike Longtree that he had witnessed Kim Nees' murder by several Native American girls, not by Barry Beach.
2. Barry Beach's jury never heard the testimony of Richard Holen, that he had observed Kim Nees in her father's pickup truck heading down toward the park near the time of her murder accompanied by a cab full of people.
3. Barry Beach's jury never heard that the bloody palm print found on the passenger side door of the pickup truck belonged to neither Kim Nees nor to Barry Beach.
4. Barry Beach's jury never heard that Maude Greyhawk confessed to having been present when Kim Nees was murdered and to having kicked her during the course of the assault that led to her death.
5. Barry Beach's jury never heard from Calvin Lester, the young boy who scrambled down the bank from his home into the park and witnessed Kim Nees' murder by several female attackers.
6. Barry Beach's jury never heard from Barry Beach's Louisiana attorney, Paul Kidd, who has stated under oath that Barry Beach did not confess to the Kim Nees murder in his presence.
7. Barry Beach's jury never heard that large parts of Barry Beach's alleged confession, including his description of Kim Nees' clothes, his description of having punched and choked Kim Nees, his description of having confronted Kim Nees outside the driver's door of the truck, and numerous other details were in fact not true.

8. Barry Beach=s jury never heard from Dr. Donald Reay that many of the blows to Kim Nees were probably not made with a crescent wrench.

Unreliable Hair Evidence, now Missing, Led to Barry Beach=s Wrongful Conviction

Again and again throughout the United States, microscopic hair comparison evidence has proven to be significantly unreliable yet has led to the wrongful convictions of dozens of individuals. In Montana, one such proven wrongful conviction was that of Jimmy Ray Bromgard who in 1987 was convicted and sentenced to 40 years for rape. Based upon the testimony of Montana Department of Justice Forensic Science Division analyst Arnold Melnikoff. Bromgard spent 15 years in prison based upon the testimony of Melnikoff that a hair found in the victim=s bed matched Bromgard. Fifteen years later, when a DNA analysis was conducted on that hair, Bromgard was proven innocent and Arnold Melnikoff=s proficiency at hair comparison demonstrated to be faulty, at best.

It was Arnold Melnikoff=s report of microscopic hair comparison on a hair found on Kimberly Nees= sweater that made its way into Assistant Attorney General Mark Racicot=s opening statement and closing argument to the jury in Barry Beach=s case. Unlike the Bromgard case, however, where the hair at issue was located and could be DNA tested, the hair in Barry Beach=s case is mysteriously missing.

Barry Beach=s Institutional Record

Barry Beach has always maintained that he is innocent of the murder of Kimberly Nees. Nevertheless, Barry has attempted to make the most of his 23 years of incarceration. In that time, Barry has tried to take advantage of as many programs as possible that were offered to him by the institutions that he was serving time in. Barry Beach=s accomplishments include the following:

1. Disciplineship seminar, October 29, 1986.
2. United States National Corrections power lifting championships, June 25, 1987.
3. Marathon run, 1987.
4. 15 kilometer run, 1987.
5. Montana State Prison job training program journalism, September 6, 1988.
6. Disciplineship seminar, May 18, 1989.
7. Montana State Prison job training journalism program, March 1, 1992.
8. Certificate of appreciation by Vets group, December 21, 1992.
9. Stress management, June 14, 1993.
10. Anger management, December 1994.
11. Basic residential electrical wiring, August 7, 1998.
12. Advanced residential electrical wiring, October 30, 1998.
13. Montana State Prison job training typing program, December 28, 1998.
14. Computer operations specialist, February 12, 1999.
15. Life skills education program, August 1999.
16. Orientation phase life line therapeutic community addictions treatment program, December 19, 1999.
17. Addictions treatment program, February 24, 2000.
18. Medicine wheel and the 12 steps, November 26, 2003.

19. Anger management, November 26, 2003.
20. Certificate of Completion C.P. and R.I., November 26, 2003.
21. Montana State Prison=s Veteran=s group certificate of appreciate 15 year award, November 11, 2005.

A review of Barry Beach=s work assignments while incarcerated shows that from May 11, 1994 until the present date, he has been continuously employed with positions, including working in the kitchen, the labor pool, as a school aide, the garden crew, paint crew, the furniture shop, an industry clerk and the carpentry shop. Throughout his entire incarceration, Barry Beach has received satisfactory and good work evaluations from his work supervisors. He is a highly skilled carpenter and furniture maker. He has also received positive reports from unit staff in the housing unit evaluations.

The February 2006 Montana Department of Corrections Classification Summary for Barry Beach includes the following comments from staff.

Sgt. Marin LaTray, classification clerk comments:

AINmate Beach has maintained clear conduct since 4/26/2000 and is not considered a management problem at this review. Beach is in full compliance with all recommended treatment at Montana State Prison. He is currently assigned to maintenance as a job assignment, no current job evaluations are available at this report. Beach does not have parole eligibility date.@

Barry Beach=s unit manager, Greg Budd, commented:

ABeach has not been a management problem.@

In Barry Beach=s review he was found to have no alcohol or substance abuse problems, no behavioral or emotional problems, and no abnormal sexual problems. He was assessed as having sufficient job skills to gain satisfactory employment, positive work habits, stable family relationships and Barry Beach=s attitude was assessed as Amotivated to change.@

Institutional Discipline History

Since his arrest in January of 1984, Barry Beach has been incarcerated at the Roosevelt County jail, the Montana State Prison at Deer Lodge, and four years at CCA Shelby Montana. For three years between 1996 and 1999, Barry Beach was incarcerated in Texas and Tennessee. Since 2000, Barry Beach has had no write-ups or disciplinary actions. Prior to that, between 1984 and 2000, he had several minor and a couple of mid-level violations.

The Montana Parole Board Failed to Comply with its Statutory Requirements of Conducting an Investigation and Holding a Hearing

On November 30, 2005, the Montana Board of Pardons denied Barry Beach's application for executive clemency. No hearing was held and as far as we know, no investigation was conducted.

MSA 46-23-301 provided in pertinent part that:

The Board shall cause an investigation to be made and base any recommendation it makes on: (a) all the circumstances surrounding the crime for which the appellant was convicted; and (b) the individual circumstances relating to the social conditions of the appellant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

The Parole Board's November 30, 2005 decision fails to address the numerous issues that are raised in this petition, including the substantial evidence that others were responsible for this crime, fails to address the extreme prosecutorial misconduct that occurred during Barry Beach's trial, fails to address the significant evidence showing that someone other than Barry Beach was responsible for this crime, including the bloody palm print and the unidentified fingerprints found on Kim Nees' truck, fails to address the role that Arnold Melnikoff played in Barry Beach's conviction, and fails to address the structure of Barry Beach's sentence of 100 years with no parole.

At a minimum, it is hoped that the Governor of Montana will remand this case back to the Parole Board with instructions to carry out its statutory duties by conducting an investigation as required by MSA 46-23-301.

Community Support for Barry Beach's Application for Executive Clemency

Poplar, Montana is a small community sitting on the Fort Peck Reservation in Roosevelt County. Support for Barry Beach's application for executive clemency in Poplar and in Roosevelt County is strong and widespread.

A sampling of the letters from Poplar residents and others, include the following.

Vicki Hopkins, who now works for the United States Department of Interior, Bureau of Indian Affairs, and is a long time Poplar resident and former classmate of both Barry Beach's and Kimberly Nees writes:

I firmly believed that Kim's real killers is still walking free which is frustrating to the family and the friends of Kims. Kim's death was tragic to all of us who were indeed her >friends= and needs closure . . . I appeal to you to do all in your power to bring about the release of Barry Beach.

Marianne Marottek, another long time Poplar resident writes:

I have lived in Poplar for most of my life. I was friends with the Nees family. My children and their children were school mates. When Kim was killed in 1979, it was not only devastating to the Nees family, but a shock and outrage felt by the whole

community. Since then, I have come to believe that an innocent young man was convicted of this crime. This is a belief shared by many of my friends and neighbors. There is and always has been a strong belief that Kim=s murder was the result of an attack by several young ladies...if it is within your power, I ask that you secure the release of Barry Beach in the hope that justice will finally prevail.@

Bonita LeVay is a 66 year old retired school teacher from Poplar, Montana. She took it on her own to research Barry Beach=s conviction and concluded:

AI think it is time to correct this injustice. Please do all that you can to secure the release of this innocent man after 23 years of serving time for a crime that he did not commit.@

Dallas O=Connor is a life long resident of Poplar, Montana, owner of Dallas Aero & Sales and was past mayor of Poplar and is now chairman of the Poplar Chamber of Commerce. He writes:

AAAs a result of my business and civic activities, I know a broad range of people in the Poplar area and I think I have a genuine feel for the community. From what I have heard, many residents of this area believe that the murder of Kim Nees was wrongly decided and that the imprisonment of Barry Beach for that murder is an injustice. Like most people, I believe others are responsible for this crime and remain unpunished....please do all in your power to remedy this injustice.@

Dr. Margaret Campbell, Representative House District 31, hails from Poplar, Montana. She writes that after having reviewed Barry Beach=s case:

AI got involved because I do not believe that justice has been served ... I respectfully request that you consider this case and perhaps some day, there will be justice.@

Margaret Abbott, a professor of English at the Fort Peck Community College, has been a teacher in Poplar for the past 33 years. She worked at the Poplar High School during Barry Beach=s senior year. She writes:

AKim Nees= brutal murder was certainly a terrible crime, but many people here in Poplar believe that the wrong person is paying for it. Barry deserves the benefit of an investigation into his case, after serving over 20 years in prison without any evidence of his guilt. I believe that it is in the interest of justice to review his case and attempt to right a wrong that has been done to a citizen of our state.

Robert Atkinson, another long time Poplar resident and the Acting Chief of Police for the Poplar Police Department in June of 1979 when Kim Nees was murdered writes:

AThis letter is not to prove or disprove the guilt of the inmate discussed. In June of 1979, I was Acting Chief of Police for the Poplar Police Department. We had a homicide involving an 18 year old girl. She was found Saturday morning in the

Poplar River. The Roosevelt County Sheriff Department took charge of the investigation. I was called down to identify the body, which I did; Kimberly Nees. I was asked to help with obtaining some of the evidence. This went on for most of the daylight hours and they were not finished. Roosevelt County Sheriff=s Office asked that I store evidence collected in our station house. Since we didn=t have an evidence room, I stored the evidence in the Judge=s chamber. I locked both doors and posted signs to my officers stating that if they needed to use the restroom, which was next to the Judge=s, not to use it. They were instructed to go around the corner to Barackers Bar or to go home. Do not enter, evidence stored here. The next day I went with a sheriff=s deputy, ARed@ Wilson or Undersheriff Dean Mahlum to get the evidence, but we encountered that the door had been kicked in. I confronted the officer, Steven Greyhawk, who was on duty that night as to what had happened. He said he had to use the restroom, I then verbally reprimanded him. Between the Sheriff=s Department and myself, things did not seem to be disturbed, but that is unknown. In 1984, during the trial of Mr. Beach in Glasgow, Montana, I was called to witness for the prosecution. Before I was called to the stand, the prosecutor, Mr. Mark Racicot, wanted to drill me on the questions he would ask. I told him before we get to that, you should know what happened with the evidence. After telling him, he was very surprised. His comment was that he wouldn=t dare put me on the stand and that this case had been screwed up from the beginning. Other than this incident, I was not involved with much of the case. I helped the Sheriff=s Office as they needed me. I never had opinion whether he was guilty or not. If it was your decision to grant him time served, I would be in support of that.@

Glenna Lockman, the manager of the American Legion Supper Club in Poplar, writes:

AAAs I have been in close contact with Centurion Ministries over the last five years, I am totally convinced of Barry Beach=s innocence. I truly believe he has been wrongfully convicted of a murder he did not commit. Kim Nees was a cousin of mine and a niece of the late State Senator Stanley Nees who was my grandfather. It is truly sad knowing her murderers are still on the loose, several of whom are still living in our small community of Poplar. I am the manager of the American Legion Supper Club here in town and it saddens me to still hear rumors and stories of this horrible crime, even after 25 years. As the years go on, I am losing more and more faith in our judicial system. I am pleading with you to not only grant clemency to Barry Beach, but to also bring Kim=s murderers to justice.@

Another long time resident of Poplar, Montana, Darlene Peterson, attended Poplar High School and had run-ins with a number of the girls who were suspected of having murdered Kimberly Nees. Darlene Peterson spoke to Kim Nees days before her murder when Kim Nees complained to Darlene of being harassed by the same group of girls who had earlier harassed Darlene. She writes:

AWhen I was informed that Kim had been beaten to death at the park, I knew then what had happened. I knew, as does everyone else who has lived in Poplar or who

still does, what happened to Kim that night . . . I have no doubts about the fact Barry Beach did not kill Kim Nees.@

Laurie Shaffer was one of Kim Nees= best friends in high school. She and her family were very, very close with Kim Nees. She writes in part:

AI did not ever believe Barry was alone in this action and after reading some of the most recent paperwork, I have my doubts that he was even involved . . . Please do not let this end here, please make the real people involved pay for the terrible crime that they have committed, please make the right person pay for what they did, and let an innocent man live the rest of his life free.@

Laurie Shaffer works for the Fort Peck=s tribes Office of Environmental Protection.

Dennis Simons has spent his entire life in Poplar. He was a friend and classmate of Barry Beach. He writes in part:

AI have grown up in Poplar and still live there. I was a friend and classmate of Barry Beach. In fact, I was branding with Barry at his grandparent=s ranch south of Brockton on the day that Kim Nees= body was discovered. I was with him when his mother came to the ranch at lunch time and told us about the crime. I was Barry all that day and he did not act like someone who had been up all night beating someone to death . . . Like most people in the community, I believe Kim was beaten by several females, most of whom still live in this area. I have been at parties where they have bragged with statements like, >We killed before and we=re not afraid to kill again.= It is frustrating for me that my friend is in jail and the real killers are walking the streets with arrogance and without remorse. Please, if it is within your power, put an end to this injustice.@

Robert Kolar of Helena, Montana has spent a great deal of time reviewing Barry Beach=s case. He met Barry Beach while Barry has been imprisoned at the Montana State Prison at Deer Lodge. He writes in part:

AI have seen a number of documents and read a number of stories that lead me to believe this man deserves to be pardoned. The evidence that he committed this crime just simply doesn=t exist. There is also the underlying current that our former Governor, Mark Racicot, may have a hand in the prosecution of this man and some of his doings may have been political. I urge you to look into this as I think we may have an innocent man in our prison.@

Barry Beach=s family has stood behind him for all these 20 plus years. His mother, Roberta Clencher, has never given up hope that one day her son would be released. She writes in part:

AI=m asking you as the first honest and moral Governor that the state of Montana has had in years to hear not only the plea of a mother=s aching heart, but to listen to what

the community, investigators and others have come to know about this case, they know the truth, the truth which you have before you. I ask you to grant my son freedom, to expunge his record and allow him the opportunity to prove himself as a productive citizen of this great state of Montana.@

Barry=s half-sisters, Bonnie Redelk and Mary Ann Montclair also write in support of their brother.

James McCloskey, the founder and director of Centurion Ministries also writes in support of Barry=s release. Mr. McCloskey recounts the history of the re-investigation of Barry Beach=s case beginning in 1991 when Barry first contacted Centurion Ministries seeking help. Mr. McCloskey relates how the painstakingly careful process of re-investigation takes place before Centurion Ministries agrees to commit to taking on a new case. He relates how the 5-1/2 year investigation has not only turned up significant evidence that Barry Beach was not responsible for Kim Nees= murder but has also failed to turn up any evidence whatsoever pointing toward Barry Beach=s guilt.

In addition to those Poplar residents who strongly support Barry Beach=s application for clemency, people who have come into contact with Barry over the years while he has been in prison also support him. James Ziegler, who now lives in Billings, Montana, is a participant in a in-prison ministry called Discovery Cursillo. Over 20 years ago, he met and became acquainted with Barry Beach. He writes:

AOver 20 years ago, I met and became acquainted with one Barry Beach then serving his 100 year sentence in Montana State Prison, Deer Lodge, Montana. He came to the weekend retreat. Over these years, Barry has become a very active participant in our treatment program. He has become a positive leader in our movement and continues to be a role model for other inmates at MSP. He works diligently to recruit new candidates for the weekends and encourages their involvement in the follow-up gatherings to insure their continued support for each other. I am sure he is active in other self help programs in the institution.@

He also writes:

AIn conclusion, may I state that I personally do not possess any degrees in personal behaviors, psychology or psychiatry, but my intuition and personal belief is that Barry Beach since his incarceration over 20 years ago, his drive to make the best of his situation by maintaining a positive attitude and by being involved in functions that help him relieve his confinement. Knowing him for 20 plus years, I have seen him grow in stature. I believe him to be truthful in his endeavors while incarcerated, a positive influence to others, and, most importantly to date, has accepted his unfortunate circumstance, but certainly hopefully and prayerfully requests due process for review of his case be given the fullest of considerations by those in authority charged with this responsibility.

The Honorable Governor Brian Schweitzer

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B. F. AChris@ Christiaens has also written in support of Barry Beach=s application. He has spent time investigating the case and strongly supports a review of the case. He writes:

Until this issue is fully investigated and the guilty parties are brought to court for the crime, justice will not have been served and an innocent man has been irreparably harmed.

Submitted along with this application, in addition to numerous individual letters, some of which have been quoted above, over 150 Poplar residents have signed a petition addressed to Governor Schweitzer the preamble of which reads:

We the undersigned, respectfully ask that Barry Beach be released from prison for a crime he did not commit and has been wrongfully incarcerated for over 23 years. My signature attests to the fact that there are other known suspects in this case.

Conclusion

For over 23 years, Barry Beach has sat in prison for a murder that he did not commit as a result of a coerced and inaccurate confession, a trial riddled with prosecutorial misconduct, and an investigation that involved the mishandling of evidence, the ignoring of significant evidence pointing to Kim Nees= actual killers, and forensic reports issued by an incompetent crime lab employee. Barry Beach had no significant criminal history prior to his conviction in this case. Over his 23 years in prison, Barry Beach has maintained a strong work history and incurred only a limited number of infractions. Barry Beach received a sentence far longer than most offenders convicted in the state of Montana for similar or even worse crimes. Due to the loss of physical evidence and the passage of time, the courts were unable to adequately address the issues in Barry Beach=s case. The Board of Pardons failed to comply with its statutory mandate requiring investigation into Barry Beach=s case. For each of these reasons, it is requested that the Governor of the state of Montana review this petition and take the action that the Governor is empowered with to remedy the injustice that has occurred herein.

Sincerely,

Peter A. Camiel

PAC/kdb

Encl.