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September 12, 2007

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Honorable Governor Brian Schweitzer
Office of the Governor
Montana State Capitol Building
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Dear Governor Schweitzer:

My name is Jim McCloskey. I am the founder and executive director of Centurion Ministries, Inc. (CM), the organization that has spearheaded the effort to free and vindicate Barry Beach. I greet you from my home-base in Princeton, NJ, and wish you well both professionally and personally.

As you know, the Board of Pardons and Parole issued its decision on August 20, 2007 unanimously declining a recommendation to you for an order of Clemency for either Commutation or Pardon for Barry Beach.

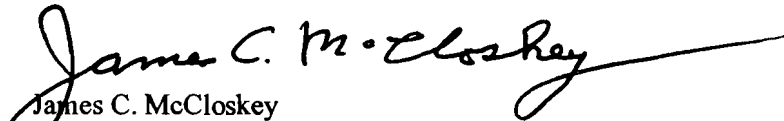
Unfortunately, the Board's decision is rife with and based on numerous misstatements of facts. I must add that the derisive tone of this 20 page document was uncalled for and quite disappointing. Thus, the matter cannot be put to rest.

After a careful review of the Board's recommendation, I felt compelled to submit a rebuttal to your office. I trust that you will review it with due diligence.

Because of this case's extraordinary and unique place in the history of Montana's executive review of such matters, I request that your staff and, to the extent that you personally can do so, study the record of the hearing. In this manner you can determine if my rebuttal is fair and just.

A profound miscarriage of justice has occurred. I ask you to use the full authority of your office to rectify this grave mistake. Thank you for whatever time and attention you give this petition.

Yours truly,


James C. McCloskey
Executive Director

CC: Mike McGrath
Vance Curtiss



Centurion Ministries' Response to the
Montana State Board of Pardons and
Parole's August 20, 2007 Denial of Barry
Beach's Petition for Executive Clemency
and/or Commutation

James C. McCloskey
Founder & Executive Director
Centurion Ministries, Inc.
September 11, 2007

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Introduction

As the Founder and Executive Director of Centurion Ministries (CM), I must respond to the tone and substance of the recent decision of the Montana State Board of Pardons and Parole denying clemency and commutation relief to Barry Beach. This 20 page decision is replete with numerous misstatements of critically important facts. Bereft of even a pretense of balance and evenhandedness, it ignores or mischaracterizes strong evidence of Mr. Beach's innocence and the guilt of others. One can only wonder how sincere and well intentioned the Board's disposition and motivation was when it initiated and conducted these hearings.

For the convenience of the reader, I have itemized the misstatements of fact by the Board in its August 20, 2007 Decision denying Mr. Beach relief. Please see Appendix A for this list.

Centurion Ministries' response to these misstatements is addressed in the following narrative.

The Crime and Conviction of Barry Beach

The following facts with regard to the murder of Kimberly Ann Nees are not in dispute. During the early morning hours of June 16, 1979, Kimberly Ann Nees was attacked while sitting in the driver's side of her pickup truck down in the park along the Poplar River. Her truck was parked over 250 feet from the train bridge. The attack began inside the cab of the pickup and continued on the passenger side and then continued outside the pickup. Kimberly Nees' body was moved from an area outside the pickup where the attack upon her was completed and carried 256 feet where she was found several hours later by police laying face up in about two feet of water in the Poplar River. Kimberly Nees' red purse and white sweater were found sitting directly outside the passenger door of the pickup truck. Fingerprints and palm prints were located on the exterior and interior of the pickup truck. At least two different types of footprints as well as some bare foot prints were located in or near the drag trail that ran from the truck to the river edge. The keys to the pickup truck were missing and no murder weapon or murder weapons were located.

The murder remained unsolved for 3-1/2 years until Barry Beach gave a statement to Louisiana detectives Jay Via and Alfred Calhoun on January 7, 1983.

At Barry Beach's trial the only evidence properly presented before the jury was a recitation of Barry Beach's statement to the detectives. No tape was played as the original had been erased by the Louisiana police. No eyewitnesses placed Barry Beach at the scene of the crime or with Kim Nees on the evening of the crime or out and about in Poplar on the Friday evening of the crime. No forensic evidence connected Barry Beach to the crime scene. No witnesses other than the detectives offered any testimony that incriminated Barry.

Let me first of all address the more important misstatement of facts found throughout the decision.

- **The Bloody Palm Print**

The victim was viciously assaulted inside her pick-up truck. Blood spattering and smears were observed throughout the cabin of the pick-up. Crime scene police reports describe “*heavy blood splatters on driver’s side*”; “*heavy blood stains on passenger seat*”; “*extensive blood spatters behind driver’s seat*”; “*three gauge marks on ceiling with hair [victim’s] coming out of marks*”. She was then pulled out the passenger side door and dropped 10 feet away where the murder concluded.

A clear bloody left handed palm print was found above the handle of the passenger door. The FBI in its investigation concluded that “*the bloody palm print located on the passenger door would have to have been left by the unsub*” (unidentified suspect). During the 3-1/2 years investigation prior to Mr. Beach’s arrest, the lead Roosevelt County investigator, Sheriff Dean Mahlum, recognized the evidentiary value of this forensic evidence. In his written request to the FBI asking them to compare the palm prints of the various suspects to this bloody palm print and other prints lifted at the crime scene, he wrote to the FBI that “*we would be particularly interested in the bloody palm print recovered from the passenger door.*”

The Board stated in its opinion that this bloody palm print “*has little probative value.... Neither Kimberly Nees (the victim) nor Barry Beach could be included or excluded as possibilities of those who may have left the print.... Kimberly Nees could have staggered against the pick-up while she was in the death throes.... Barry Beach could have left the print as he was attacking Kimberly.*” These statements are palpably false. The FBI is on the record stating that this bloody palm print is not that of either Barry Beach or Kimberly Nees. An FBI report that CM presented to the Board states the following, “*It is noted that the crime scene investigation developed a bloody palm print on the passenger side of the victim’s vehicle which was not identified as belonging to either Kim Nees or Barry Beach.*” Twice Sheriff Mahlum had the FBI compare this print to Barry, and both times the FBI informed Mahlum that it was not Mr. Beach’s print.

In January 1983 Sheriff Mahlum told the Louisiana authorities that this bloody palm print does not belong to Barry Beach. He informed them that “*we’ve got one partial bloody print on the exterior of the pick-up... it’s along the passenger door... we have a set of prints and they have been compared by the bureau (FBI) and they don’t match Barry’s print.*”

Not even the Montana Attorney General’s office has ever hypothesized that Ms. Nees left her own palm print on the door while ‘*in the throes of death.*’ Such a false stretch of the forensic facts in this case flies in the face of the obvious; and that is that one of those involved in the murder who had contact with the extremely bloody body of Kim Nees closed the passenger door after pulling the badly beaten Kim Nees from the cabin and depositing her on the ground where a four foot pool of blood was found 10 feet from the vehicle.

Also, the Board completely ignored the stipulation of the Attorney General that the bloody palm print remains unidentified. This stipulation was entered into prior to the Board’s hearing.

When the Roosevelt County Sheriff and the District Attorney decided to charge Barry Beach with the murder based solely on his confession secured by Louisiana deputies, that bloody palm print for the first time became irrelevant. A blind eye was cast on it. Trial prosecutor Racicot ridiculed the defendant's assertion that the bloody palm print belonged to one of Ms. Nees' killers mockingly referring to the owner of the bloody palm print as a "**phantom killer**" or "**mystery man**". The Prosecutor inaccurately also told the jury that the bloody palm print could have been left by Kim Nees because "the examiner could not exclude her as having left that print". That statement is simply not true because the FBI *had* excluded both Barry Beach *and* Kim Nees as the donors of the print.

The Board also stated in its decision that "*every print in the truck has been compared against every person accused of involvement in this matter by Mr. Beach – not one match was obtained.*" Quite the contrary is true. There are six people who CM can name who we have reason to believe were possibly involved in Kim's killing or removed her body to the river, and whose finger and/or palm prints could be among those lifted from the crimes scene which have not yet been identified.

- **Barry Beach's Confession**

Barry Beach was convicted solely on the basis of a confession that was extracted from him by two Louisiana detectives 3-1/2 years after Ms. Nees' death. Barry was subjected to a grueling seven hour interrogation session in a small and cramped 10 foot by 20 foot windowless room without benefit of food.

The Board stressed repeatedly in its decision that Barry's confession conformed exactly to the crime scene and therefore is compelling evidence of guilt. The Board stated that "*nothing from the confession conflicted with the actual crime scene*"; that Barry "*was connected [to the crime scene] in a host of ways through his confession*" which was "*consistently in keeping with the actual physical evidence*"; that his confession correlated to the crime scene "*in supreme detail*"; that "*the confession statement is compellingly self-authenticating...when compared with the crime scene*"; and that there is "*nothing within the statement [Beach's confession] that suggests innocence and much that demonstrates guilt.*" The Board concluded that Barry's confession statement is evidence "*at least as compelling as fingerprints could possibly have been.*"

Although the Board concluded with great certainty that "*nothing from the confession conflicted with the actual crime scene*", CM can demonstrate from the record that Mr. Beach's confession narrative shows an ignorance of both the crime scene and how and where the assault on Ms. Nees unfolded and progressed. His confession statement is riddled with errors and is in direct conflict with the forensic facts of the crime scene. In its decision, the Board shockingly chose to largely ignore these factors and brazenly mischaracterize them as conforming to the crime scene.

Because of its length, I have attached to this narrative as Appendix B a post hearing confession analysis summary written by CM attorney Peter Camiel and submitted to the Board on June 20, 2007. This analysis details why CM and police interrogation expert Dr. Richard Leo concluded that the Beach admission is a classic false confession because it does not 'fit' the crime scene.

Confession to the Nees Murder by Maude Grayhawk

The Board stated in this decision that “*as to the likelihood that there were other perpetrators, amorphous statements* [emphasis added] *were offered that various people said they knew more of the story or that they knew the wrong man was in prison... however no evidence whatsoever corroborating those statements or correlating them to the actual murder was brought or even claimed to have existed.*” In light of the witnesses CM presented at the “actual innocence” phase, this is a shocking misstatement that totally ignores credible testimony presented to the Board by witnesses who received confessions of guilt by others.

- **Judy Grayhawk**

The Board in its decision made no reference whatsoever to Judy Grayhawk. Ms. Grayhawk’s statement is far from “amorphous”.

The Board heard from Judy Grayhawk, the sister-in-law of Maude Grayhawk. Her testimony can not be dismissed or diminished. Judy Grayhawk explained that she has been married for the past 30 years to Steve Grayhawk, Jr., the son of Steve Grayhawk, Sr., a former Poplar police officer who was on duty on the night that Kim Nees was murdered. Judy’s husband, Steve Grayhawk, Jr., is the brother of Maude Grayhawk, whose father is also Steve Grayhawk, Sr. This is the same Steve Grayhawk, Sr. who kicked in the door of the evidence room at the Poplar police department. It is also the same Steve Grayhawk, Sr. who received the oral statement from Richard Holen days after the murder regarding Holen’s observations of Kim Nees and her pickup truck full of passengers turning down into the train bridge park sometime around 2:30 a.m. on June 16, 1979.

Judy Grayhawk was an impressive witness. She came forward to give testimony regarding admissions made by her sister-in-law, Maude Grayhawk Kirn, risking her 30 year marriage to Steve Grayhawk, Jr. and perhaps her safety in the Poplar and Fort Peck reservation community. Judy Grayhawk described how she, in early 2004, received a telephone call from Maude Grayhawk who was calling to speak with Judy’s son. Judy described Maude Grayhawk as despondent. She described how Maude Grayhawk started to talk and she just listened. Maude explained that she was trying to avoid an investigator who wanted to speak with her about the Kim Nees murder¹. Maude Grayhawk told Judy that she was fearful of going to prison and when asked what for, indicated that she would go to prison “for that Kim Nees murder.” Judy Grayhawk asked, “What did you do?” and Maude replied, “I didn’t kill that girl, all I did was kick her in the head a few times.” Maude Grayhawk also described how she was the one who lured Kim Nees down to the park immediately prior to her murder.

Judy Grayhawk was stunned upon hearing Maude’s words. This was information she never wanted to hear. She was immediately overcome with anguish over what she heard. Judy was

¹ The investigator was Ron Kemp who was working for the County prosecutor. Kemp came to see Maude to set up an appointment for an interview.

placed in the awkward position of having to possibly implicate her husband's sister, Maude. Judy described how she felt she had to unburden herself by telling someone about the information she received from Maude. Later that day she went down to the Legion Club where she sought out Kim Nees' cousin, Glenna Lochman. Judy Grayhawk then described for Glenna the phone call that she had with Maude Grayhawk.

Over the next period of months, Judy Grayhawk struggled with the information she had received. She knew that the murder of Kim Nees was being reinvestigated by Centurion Ministries' investigators. She knew that Maude Grayhawk had made a direct admission to her about her direct participation in that murder. She also knew that she was a part of the Grayhawk family. Her husband, Steve Grayhawk, Jr., attempted to dissuade her from coming forward. Judy Grayhawk described a full day of arguments and anguish between her and her husband as they argued about whether or not she should come forward. She described how her husband threatened to divorce her after 30 years of marriage and how she told him that if that is what he wanted to do, then he should do it. She described how she told her husband that she would not perjure herself for his sister. In February 2007, Judy signed a sworn statement attesting to the phone call from Maude. When Centurion Ministries first contacted her in 2004, she refused to sign a declaration out of fear that doing so would upset her husband and family. Judy Grayhawk then made the 950 mile round trip drive to Deer Lodge from Poplar, took an oath to tell the truth and sat before this Board and described the statements made by Maude Grayhawk.

Judy Grayhawk's testimony was unimpeached. She had no axe to grind with Maude Grayhawk and, in fact, remains a member of the Grayhawk family. She risked her 30 year marriage to come before the Board. She holds a responsible job as a rehabilitation counselor and has lived a responsible life. Her words simply ring true and are corroborated in part by the testimony of Undersheriff Ron Kemp who interviewed Maude Grayhawk and by Kim Nees' own cousin, Glenna Lochman, who testified to her conversation with Judy Grayhawk in the spring of 2004.

Again, I repeat, in its discussion the Board made no mention whatsoever of Judy's startling testimony.

- **Glenna Lochman**

Glenna is a cousin to the Nees family. She confirmed Judy Grayhawk's testimony to the Board concerning the fact that Judy informed Glenna about Maude's confession to her (Judy) the same day that Judy spoke with Maude. Glenna then told the Board that she immediately conveyed the information to the District Attorney investigator Ron Kemp and Centurion Ministries. Glenna's testimony was never mentioned in the Board's decision.

- **Ron Kemp**

Ron Kemp is now a Roosevelt County Undersheriff. He testified about his interview with Maude Grayhawk at the request of Roosevelt County District Attorney Fred Hofman. He explained that he went to Maude Grayhawk's home to tell her that he wanted to interview her about the Nees murder. He set up a time for the interview to take place the next day. When

Maude appeared the next day, he learned that Maude had, after his initial contact with her, had a phone call with Sissy Atkinson. He learned that Sissy Atkinson tried to dissuade Maude from talking with him.

Ron Kemp told Maude Grayhawk that he had spoken with an eyewitness who indicated that she was present when Kim Nees was murdered. Kemp described Maude's demeanor during the interview as upset and crying. Maude told Kemp girls were jealous of Kim and that Maude believed someone else was involved in Kim's murder. He questioned Maude Kirn who denied participating in the murder. However, Maude Grayhawk made a number of incriminating statements to Ron Kemp. Maude Grayhawk told Kemp that at the time she was drinking and using drugs heavily. She wondered aloud whether she could have been present when Kim Nees was murdered and simply blacked it out. Maude Grayhawk also said that Sissy Atkinson had disappeared the evening of Kim Nees' murder. Maude Grayhawk also described a phone call with Sissy Atkinson where Sissy Atkinson described being in possession of Kim Nees' diamond necklace. Ron Kemp asked Maude to take a polygraph and she agreed but then left for Colorado before the test was performed.

Ron Kemp testified at the hearing with full knowledge that his testimony would upset his fellow Roosevelt County law enforcement colleagues.

The Board made no mention of Deputy Sheriff Kemp's testimony in its decision.

- **Maude Grayhawk**

In its decision the Board, in a slight of hand, admonished CM for not "producing" Maude Grayhawk at the hearing. We are not in the kidnapping business. We did everything in our power to "produce" her. We subpoenaed her even though the subpoenas had no authority since she is an out of state Denver, Colorado resident. CM Federal Expressed to her a \$720 cashiers check for advanced travel and subsistence costs. Neither the Board nor the Attorney General's office lifted a finger in trying to persuade her to testify. It was left for CM to do so even though Maude knew that it was CM, through our witnesses, who were accusing her of murder. CM had absolutely no authority to compel her testimony. Maude knew this and was therefore a no-show at the hearing.

Maude Grayhawk voluntarily chose not to appear before this Board despite having been given a subpoena and advance travel and subsistence costs. She chose not to appear after assuring Mr. Beach's attorney that she would appear. She chose not to appear after a phone call she had with the Attorney General's Office. Maude Grayhawk had the opportunity to come before this Board and give testimony under oath explaining whether or not she was involved in the murder of Kim Nees. She chose not to explain her phone call with Judy Grayhawk. She chose not to appear rather than explain whether her now deceased former husband, Dana Kirn, was about to come forward and give information that she had confessed being involved in the Kim Nees murder. Because Maude Grayhawk was under subpoena and ignored the subpoena, this Board should have interpreted her failure to appear as an inference against her.

Confession to the Nees Murder by Sissy Atkinson

It is important to keep in mind that the Board made no mention of the below described testimony of Sissy's brother J.D. Atkinson or the testimony of Sissy's former confidant Vonnie Brown.

- **J.D. Atkinson**

The Board heard from J.D. Atkinson, the older brother of Sissy Atkinson. J.D. Atkinson testified that he visited his sister, Sissy Atkinson, in Great Falls in 2003 and 2004 at a time when Sissy Atkinson was heavily addicted to narcotics. J.D. Atkinson described how Sissy Atkinson on a number of occasions began to talk about the Kim Nees murder and on at least one occasion began to "unload" and described that on the night of Kim Nees' murder she, Sissy Atkinson, along with Maude Grayhawk, Joanne Johnson and Jordis Ferguson were partying down off Highway 2 near the river. Sissy Atkinson described a fight breaking out and one of the girls with a wrench chasing Kim around the pickup truck. Sissy Atkinson described herself to her brother as a witness rather than a participant. Nevertheless, she has never publicly described herself as a witness, but always claimed that she was home by 11:00 p.m. on the night of Kim Nees' murder.

J.D. Atkinson first came forward in January 2007 by signing a sworn statement. He has stated under oath that his sister, Sissy, told him that Barry is innocent. J.D. has described Sissy's life since Kim Nees' murder as a downward spiral of drug addiction. He has expressed concern that his sister will end up killing herself if she does not admit what she knows.

Although the state attempted to impeach J.D. Atkinson by suggesting that prior conflicts between him and his sister would be a motive to fabricate these statements, the state failed in its attempt to discredit J.D. Atkinson. J.D. Atkinson sat before this Board, under oath, with his sister, Sissy Atkinson, and his brother, Bobby Atkinson, sitting behind him in the Board's hearing room. J.D. Atkinson testified before this Board despite only days before having received a phone call from the Attorney General's investigator, Ward McKay, who threatened him with being charged with perjury. J.D. Atkinson's testimony regarding being threatened with perjury was never rebutted. Ward McKay was never called as a witness despite the fact that he was on the Attorney General's witness list leading to the reasonable inference that J.D. Atkinson's testimony about the attempt to intimidate him to prevent him from testifying was in fact true. J.D. Atkinson has risked his return to the Fort Peck reservation by coming forward and giving public testimony implicating his sister in the murder of Kim Nees. He was unwavering despite an aggressive attempt to discredit him. J.D. Atkinson received nothing for his testimony except threats of perjury and family ostracism. He came forward despite the intimidating environment he faced.

- **Vonnie Brown**

Forty-two year old North Dakota resident, Vonnie Brown, testified about her contact with Sissy Atkinson in June of 2004 in Great Falls. Vonnie Brown was born and raised in Poplar and lived there most of her life. When she visited Sissy Atkinson in 2004, Sissy was in the midst of heavy drug use. During one visit, Sissy began to talk about the Kim Nees' murder. Sissy told Vonnie Brown, "I know who really did it." When Vonnie asked who, Sissy began describing girls kicking Kim and pulling her by the hair². Sissy said that Maude was one of them. She then began describing Maude, herself and others being present, but then stopped and changed the subject.

Vonnie Brown described how during her visits with Sissy in Great Falls, she saw Sissy's brother, J.D., visit on occasion. This corroborates J.D. Atkinson's testimony that he visited his sister at her apartment in Great Falls.

The state attempted to impeach Vonnie Brown by claiming that she and Sissy had had conflicts in the past. However, Vonnie Brown was also an impressive witness. She traveled a total of nearly 2,000 miles from eastern North Dakota with her daughter and two infant grandchildren to Deer Lodge and back and gave testimony under oath regarding what Sissy Atkinson had told her. Vonnie Brown's testimony is corroborated by J.D. Atkinson's own testimony which demonstrates that when Sissy Atkinson would be under the influence of narcotics, she would at times describe what had occurred when Kim Nees was murdered and her presence and possible participation in that murder.

- **Carl Four Star**

Carl Four Star is a college educated computer consultant who grew up and lived in Wolf Point and came before this Board despite attempts to intimidate him from giving testimony regarding his overhearing of a conversation between Sissy Atkinson and her boyfriend, William Stubby Balbinot, as they worked at A & S Industries in approximately 1985. Carl Four Star is not friendly with the Beach family nor does he know Barry Beach. He testified that in 1985, he worked at A & S Industries less than 20 feet from Sissy Atkinson's work station. One day, as he was working, he overheard a conversation between Sissy Atkinson and William Balbinot where Balbinot said that it was a shame about what happened. Carl Four Star interpreted this to be a reference to either Barry Beach's conviction or Kim Nees' murder. He then heard Sissy clearly respond, "They got the wrong man" and he heard Sissy explain that she was there with Maude, Rose and another girl whose name he did not recall. He heard Sissy explain that it was a perfect crime and that they got away with murder. In addition, he observed Sissy make a motion with her arm as if she was demonstrating how Kim Nees was struck. Immediately after this statement, Sissy Atkinson walked toward Carl and looked at him and told him that she had got away with a capital crime.

² Clumps of hair were found in various areas of the crime scene. Barry Beach never described pulling Kim Nees' hair in his confession.

Carl Four Star was shocked at what he heard. Like Judy Grayhawk, Carl Four Star didn't want to hear these words. He was in turmoil about whether he should come forward or keep quiet. He was fearful of repercussions on the reservation if he were to come forward and did not trust the Poplar police. Some time later, after carrying this inside of him for a time, Carl Four Star confessed to his priest, Father Jim, about what he had overheard. As Barry Beach had already been convicted, Father Jim advised Carl to simply pray. Years later, when Centurion Ministries investigators were searching for William Balbinot and showed up at Carl Four Star's mother's home, Carl Four Star heard that the Nees murder was being reinvestigated. It was at that time that Carl came forward and described what he heard Sissy Atkinson say.

In an attempt to impeach Carl Four Star, the state introduced the testimony of Deputy Richie McDonald who testified that he had worked at A & S Industries a year or two before Carl Four Star. McDonald tried to impeach Carl Four Star by claiming that it would have been too noisy to overhear such a conversation. However, Carl Four Star clearly described his work area and told the Board he had no difficulty hearing Sissy Atkinson's statements. Carl was so troubled by Sissy's admission that he went to his priest for advice. Carl had no reason to subject himself to the attacks on his honesty, but chose to do the right thing and testify.

Carl Four Star has no reason to lie to this Board. He is not a friend of Barry Beach or the Beach family and had no axe to grind with Sissy Atkinson. He knows what he heard and knows of its significance. He was willing to travel hundreds of miles to testify before this Board despite his continuing fear of repercussions to him and his family.

As were many of the witnesses whose testimony implicated Sissy Atkinson or Maude Grayhawk, Carl was fearful for his own personal safety once he returned to the Fort Peck Indian Reservation. Sure enough, shortly after his return he was physically assaulted by a man related to Sissy Atkinson.

- **Sissy Atkinson**

Now living in Poplar and subpoenaed by CM, Sissy Atkinson testified before this Board and denied having participated in the murder of Kim Nees. Sissy Atkinson claimed that she was in Poplar on the evening of June 15, 1979 after earlier in the evening having been near the train bridge with Maude Grayhawk, Jordis Ferguson and Joanne Jackson. She claimed they came back into Poplar to buy beer and then she went home. Sissy Atkinson gave inconsistent testimony before this Board regarding whether or not she simply walked home by herself or was given a ride by Maude Grayhawk. She was confronted with the fact that in statements that she gave to law enforcement in 1979, she never explained her whereabouts during the early morning hours of June 16, 1979.

She also claimed to be a friend of Kim Nees at one point and at another point claimed that she didn't know her. She claimed that each of the witnesses who testified that she made admissions to them, including her brother, J.D. Atkinson, her friend, Vonnie Brown, and Carl Four Star were

all simply lying. Yet she could give no reason why her own brother, J.D. Atkinson, or Carl Four Star would give such testimony against her.

- **Roberta “Bobby” Ryan**

Bobby Ryan appeared before this Board two weeks after having quintuple heart surgery. She traveled 800 miles round trip (having to stop every 100 miles to rest) from Glasgow to Deer Lodge to give testimony regarding her recollections of the evening and early morning hours of June 15th and June 16th, 1979. Bobby Ryan and her now deceased husband had owned the Bum Steer bar in Poplar in 1979. Bobby Ryan described how the week-end of June 15th/16th, 1979 was her first rodeo week-end owning the bar and how she had made plans to build a float with the assistance of the Jackson girls on Saturday, June 16, 1979. Bobby Ryan described how a dance was being held at the Bum Steer on Friday night, June 15, 1979.

She described her clear recollection that the bar didn't get busy until midnight and the bar stayed open until 2:00 a.m. Bobby Ryan explained that she was well acquainted with the Jackson sisters, Maude Grayhawk and Sissy Atkinson. She saw the girls in and out of her bar on the night of June 15, 1979 and the early morning hours of June 16th. In fact, she spent a good deal of the night chasing the underage girls out of her bar. She described how they were all hyped up and kept gathering around Sissy Atkinson. She described her clear recollection that she saw these girls in her bar between the hours of midnight and 2:00 a.m.

The significance of Bobby Ryan's testimony is that she directly contradicts Sissy Atkinson's testimony before this Board that she, Sissy Atkinson, was home and in bed by 11:00 p.m. Bobby Ryan also testified regarding how the next day the Jackson sisters never showed up to assist in building the float and she went over to the Jackson residence but could not get the girls out of bed to assist.

Bobby Ryan also recalled the display in Beck's Sporting Goods store that included pictures of the crime scene, including a photograph of Kim Nees' body in the river and another photograph of the pickup truck along with the display of a crescent wrench.

Bobby Ryan's testimony was not only unimpeached, but she put her own health at risk to come before this Board. Although initially reluctant to come forward, Bobby Ryan was convinced by Dallas O'Conner, the then Mayor of Poplar, to come forward. Ms. Ryan had no reason to travel 800 miles to lie to the Board.

- **Dun O'Connor**

Dun O'Connor is a rancher from Poplar. He knows Barry Beach and his family only slightly as Barry had worked for him on one occasion when Barry was in high school. Dun had also been friends with Sissy Atkinson. Dun O'Connor described how during the early morning hours of June 16, 1979 at 5:00 a.m., he was awakened by a phone call at his trailer home. As he went to the kitchen to answer the phone, he looked at the clock on the wall and saw the time, 5:00 a.m. On the phone was Sissy Atkinson who told him that Kim Nees' body was in the river. Upon

hearing this, Dun went back to bed but later that morning, after waking up, learned that Kim Nees had been murdered and her body had been found in the river. It was not until later that Dun realized the significance of Sissy Atkinson's phone call. He learned the police had not found Kim Nees' body until 7:00 a.m. Dun O'Connor learned this in talking with another witness, Richard Holen.

Dun O'Connor's testimony was unimpeached. He has no axe to grind or bad blood with Sissy Atkinson. He came forward out of concern regarding the significance of Sissy Atkinson's call. How did Sissy Atkinson know by 5:00 a.m. that Kim Nees' body was in the Poplar River if she was home sound asleep?

- **Richard Holen**

Richard Holen testified before this Board regarding his observation sometime around 2:30 a.m. on June 16, 1979. Richard Holen had spent the evening at the Legion Hall in Poplar, Montana leaving sometime after closing with his girlfriend, Gretchen Youpee. Gretchen had worked as a waitress at the Legion Hall and Richard had to wait until she finished cleaning up after the closing of the bar. Richard recalled this evening in particular because he had been in a fight that night. He recalled that he and Gretchen left the Legion Hall and traveled on Highway 2 westbound out of town, driving the loop that many of the Poplar kids drove during that time. As he was headed out of town, he saw the distinctive Nees pickup truck ahead of him. Inside the cab of the pickup truck, he saw who he believed to be Kim Nees as the driver and the seat full of occupants, including someone sitting on another person's lap. He described approximately five occupants of the vehicle. His car pulled closer to the pickup truck as it stopped to make a left turn down into the park near the Poplar River. Richard Holen continued in his car westbound on Highway 2, made the loop and came back eastbound on Highway 2 into town. As he crossed over the river bridge, he saw the Nees pickup truck on the road headed down toward the train bridge stopped. He saw another car adjacent to the driver's door of the Nees pickup truck stopped, as if the occupants of both vehicles were talking. Richard Holen continued on into Poplar.

A few days later, while at the Poplar Conoco station, Richard Holen spoke with Steve Grayhawk, Sr., then a Poplar police officer, and told him that he had seen Kim Nees and her vehicle full of passengers during the early morning hours of June 16th heading down toward the train bridge. Grayhawk said he would get back to Richard Holen, but never did.

Richard Holen's observations coincide with the statements Sheriff Mahlum took from Joel and Maybelle Sparvier on June 16, 1979 regarding screams they heard coming from the park by the train bridge at 2:30 a.m. on June 16, 1979.

Richard Holen was cross examined regarding notes of an investigator who spoke with Richard Holen sometime after the Kim Nees murder. Richard Holen did not recall being questioned by any such officer. The notes appear to be questions regarding Richard's observations of Greg Norgard, the state's initial suspect who was at the Legion Hall on June 15th. Richard Holen was a strong witness with no reason to fabricate his testimony. He observed Kim Nees perhaps

moments before her death. Kim was not alone or with just one person, but rather accompanied by a group.

Richard Holen's testimony is extremely important because it establishes that when Kim met her fatal destiny she was with a number of girls; and that it was 2:30 a.m., the time the Sparvier's heard the screams. Barry's false confession was that he and he alone committed the murder while no one else was within sight or sound.

The Board was primarily dismissive of Richard because, "*he had been drinking a great deal on the night in question*" and because he had not come forward with this information for 28 years even though he was questioned by law enforcement several days after Kim's death. Again, the Board conveniently failed to mention that he did convey this information to the Acting Chief of the Poplar Police force, Steve Grayhawk (father of Maude Grayhawk and the person who broke into the evidence room). Richard vehemently denies that his drinking that night impaired his clear memory of what he saw.

Conclusion Concerning All of the Above Testimony

If Sissy Atkinson was home and in bed from 11:00 p.m. until the next morning, how did she know that Kim's body was in the river when she called Dun O'Connor at 5:00 a.m. with that information? Roberta "Bobby" Ryan's testimony that Sissy and her girlfriends, including Maude Grayhawk, were in her bar until 2:00 a.m. is unrebutted and not mentioned by the Board in its decision.

The Board reduced Mr. O'Connor's testimony about the 5:00 a.m. Sissy phone call to him by stating that "*even if an early morning call was made from someone who admitted to drinking a great deal the night before [Sissy did not testify that she was drinking a great deal the night before.] to someone else who admitted drinking a great deal the night before [Dun O'Connor did testify that he was drinking, but not excessively.] ... it would suggest that the body may have been discovered by some other party first (before law enforcement discovered it at 7:00 a.m.).*"

It is CM's contention that Sissy Atkinson was not home from 11:00 p.m. on the night of the crime. Instead, she was drinking at the Bum Steer bar until the 2:00 a.m. closing time; and then was very much involved in the assault of Kim Nees at 2:30 a.m. or so. That's how she knew Kim's body was in the river when she called Mr. O'Connor at 5:00 a.m.

Finally, how can the Board in good conscience either totally ignore or dismiss as "amorphous" the above described riveting testimony of Judy Grayhawk and Glenna Lochman, Ron Kemp, J.D. Atkinson, Vonnie Brown, Carl Four Star, Bobby Ryan, Richard Holen, and Dun O'Connor while at the same time declare in its concluding paragraph that "*no proof of innocence or newly discovered evidence of non-guilt has been presented*"?

The Physical Evidence

The Bloody Towel

An extremely bloody towel was found several blocks from the crime scene early in the morning of the crime. The blood was not that of Kim Nees or Barry Beach. An as yet unidentified male's blood was determined through recent CM-sponsored DNA testing to be on this towel. The Board states that *"there is no reason to think that the towel is connected with the murder in any way; and none was provided by Centurion Ministries."*

This is another misstatement of facts by the Board. At the hearing, CM presented to the Board investigative notes of the lead investigator, Sheriff Dean Mahlum, wherein he wrote that hairs found on the towel were those of Kim Nees. Sheriff Mahlum conceded during his testimony before the Board that this was his belief.

The Footprints

Three sets of footprints were discovered (and photographed) along the 256 foot drag trail that led from the victim's vehicle to the riverbank. Two of these were different sandal treads indicating two different people. The third was a set of bare footprints measuring 11-3/4 inches long. Barry's bare foot print is 10-1/4 inches long. A bare foot print was also discovered at the river's edge near the body of Kim Nees as it rested in the water several feet from the shore. The FBI, in its description of the crime scene, notes that *"unsub drug victim 256 feet, pushed her over ten foot cliff, and jumped down, lifted victim, and threw her into the river"*. The bare foot prints in the drag trail and by the river's edge where the body was deposited and found indicates that someone (most likely a man other than Barry) with 11-3/4 inch long bare feet was involved in the murder.

In closing arguments, the prosecutor said that the footprints at the crime scene had *"actually no value whatsoever"*. The prosecutor went so far as to suggest that the footprints could have been made by a police officer. Besides the bare footprints, 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 footwear; nor would they be in bare feet.

Once again, the physical evidence in the case was disregarded because it didn't conform to Barry Beach's confession and their "one man" theory.

The Prosecutor also said in closing, *"So, the fact is that the footprints, the finger prints, and the blood evidence didn't provide a clue as to who killed Kimberly Nees. ... All of the attempts to eliminate the defendant from this crime by stating that the physical evidence doesn't tie him to the crime scene means nothing."* A bloody palm print means nothing? A bare foot print along the drag, plus two other kinds of foot prints along the drag and a bare footprint at the rivers' edge means nothing? They all mean nothing if they don't conform to your theory of the case; a theory that's based on your only evidence: a false confession that conflicts with the crime scene and states that only one person acting alone killed Ms. Nees and placed her in the Poplar River.

What does the FBI say about this crime scene evidence? *“At this point it is felt by the investigating officer that the evidence contained on and within the pickup truck is of the utmost importance to the solution of this case.”*

So, because a bloody palm print did not match their solo actor in the crime, Barry Beach, the prosecutor’s strategy was to ridicule and mock it as belonging to some mystery man and categorically stated that it didn’t *“provide a clue”* and that it meant *“nothing”*. He said these things despite the fact that the FBI stated that the bloody palm print was *“of the utmost importance”* in solving the crime and that it *“would have to have been left by the UNSUB”*.

Again, the Board casts a blind eye towards this forensic fact by stating that *“there is no reason to believe that the footprints are in any way connected with this murder”*. If the Board conceded that this evidence was related to the murder, it would then have to admit that the man who deposited the body in the river is not Barry Beach. Thus, the Board conveniently disregarded these footprints as well as the entire array of crime scene forensic evidence and dismissed them as irrelevant to the crime.

The Pubic Hair

Law enforcement found a neatly folded bloody white sweater belonging to Kim Nees at the crime scene on the ground near the vehicles’ passenger door. Four and one half years after the crime, this sweater was finally submitted for examination to Arnold Melnikoff, the infamous criminalist who was later disgraced because of his inept hair analysis and false trial testimony concerning the results of the hair comparison he had made in other cases.

Mr. Melnikoff was the Montana State Crime Lab Director since its inception in 1970 until he resigned in 1989 to take a position with the State of Washington’s Crime Lab. Subsequent to his Montana departure, it was established that at least three innocent Montana men were falsely convicted (and later exonerated and freed) due in no small measure to Mr. Melnikoff’s faulty testimony and inept hair analysis. These men are Chester Bauer, Jimmy Ray Bromgard, and Paul Kordonowy.

The Washington Crime Laboratory officials limited him to handling only drug testing once they discovered that he was incompetent to conduct hair comparisons. In 2004 he was finally fired by Washington State Patrol following an audit of his drug cases.

In the Beach case, Mr. Melnikoff issued a December 13, 1983 report on his findings which claimed that he found 35 separate hairs on Ms. Nees’ white sweater, 23 of which were Ms. Nees’ head hairs, 11 were animal hairs, and 1 he determined was **“characteristic of the suspect Barry Allen Beach’s pubic hair.”**

Mr. Melnikoff was subpoenaed to testify at the Beach trial and, in fact, arrived at the Glasgow trial with the microscopic slides in hand. He was told by the Prosecutor Mark Racicot that he

would not be testifying due to a “chain of custody” problem with the evidence. Mr. Melnikoff has told CM that he is positive that he left the hair slides with someone in the Roosevelt County Prosecutor’s Office.

Mr. Racicot discovered that shortly after the crime, the Acting Poplar Police Chief, Steve Grayhawk, (father of CM suspect Maude Grayhawk) had broken into the evidence storage room. Although there was no indication that any of the evidence was tampered with, Mr. Racicot announced that the chain of custody had been broken, and thus he did not call Mr. Melnikoff to testify.

As a footnote to this element of the case, the Board erroneously postulated that CM theorized that “*the hair taken from Mr. Beach’s pubic region was planted (by Steve Grayhawk) to throw law enforcement inquiries on a false trail*”. Once again, nothing could be further from the truth. We never at any time, in any way, thought or said that we believed Mr. Grayhawk somehow planted a pubic hair of Barry’s when he entered the room where the evidence was stored. The Board mocked CM for holding such a theory. Such a theory is indeed ludicrous. To my knowledge, no one has ever suggested this outlandish theory, certainly not CM. After all, Mr. Grayhawk broke into the evidence room a day or two after the crime, long before Barry was even a suspect.

CM has looked long and hard for this “pubic hair” microscopic slide prepared and analyzed by Mr. Melnikoff. At CM’s urging so has every relevant law enforcement agency in Montana. We wanted to locate it and then have it DNA’d. It can not be found anywhere. Nor is there any trace of its destruction or disposition. No documentation exists that relates to its chain of custody. No one has any record of it once Mr. Melnikoff returned it to Roosevelt County. In fact, all of the physical evidence in this case has vanished without any record of its destruction.

If CM believed this “pubic hair” was planted by Steve Grayhawk, we certainly would not have initiated a statewide search for it with the intention of having it DNA’d. We wanted it to undergo DNA analysis to determine if, in fact, it was Mr. Beach’s hair. We hoped to prove that it was not what Mr. Melnikoff said it was.

At the Beach trial Prosecutor Racicot referred to this “pubic hair” twice in his opening statement to the jury. He stated that, “*the hair located on the sweater of Kim Nees was **in fact** the defendants*” and “*there was a pubic hair belonging to the defendant [on the sweater]*”.

Comparative hair analysis in 1983 and especially such work done by the incompetent and discredited Melnikoff was primitive and far from conclusive at that time. It is dissembling and therefore extremely unfair to describe Mr. Melnikoff’s “*characteristic*” conclusion as “*in fact the defendant’s*”.

However, the Board in its decision stated that Mr. Racicot’s comment was merely a “*shorthand remark*” and the difference between the two was simply “*a fine distinction*”. The Board expressed its confidence that the Judge’s instruction to the jury to ignore any statement by counsel that was not supported by trial testimony would certainly have eliminated from the jury’s mind any such “evidence.”

The Board also made it clear that in its view it did appear that the pubic hair found on the sweater “*shared every characteristic identifiable at the time with [that of] Mr. Beach*” and that this hair did “*point the finger of responsibility for this murder... at Mr. Beach himself.*” Wow! The Board has not only placed full confidence in Mr. Melnikoff’s analysis, but has even embellished his finding from “*characteristic*” to “*it shared every identifiable characteristic*” (to Mr. Beach’s pubic hair).

If the Board believes that the hair found on the victim’s white sweater is Barry Beach’s, why wouldn’t the convicting jury believe such to be the case as well?! Even with the judge’s curative instruction, it is naïve to believe that the well wasn’t permanently poisoned and that the jury did in fact disregard such devastatingly incriminating information.

On one hand the Board is confident that the jury did heed the judge’s instruction and did not consider the “pubic hair on the sweater” information in its thinking; and yet the Board itself turns around and says it believes that this Melnikoff finding to be true and correct.

The Board also reduced and minimized Mr. Melnikoff’s professional disgraces to “*problems with testimony offered by Mr. Melnikoff in other cases have been called into question*”. Mr. Melnikoff’s work was far more than “*called into question*”. His professional downfall was not a matter of “question”. It was a matter of “fact”. His ineptness in Montana centered entirely on his hair analysis. His work and testimony caused three innocent men to be convicted. The State of Washington Crime Lab declared his hair analysis to be incompetent. He was relieved of all such duties. The State of Washington fired him. His work was scientifically wrong and unreliable. Yet this Board is supremely confident that in the Beach case his word is unquestionably scientifically sound.

Prosecutorial Misconduct by Mr. Racicot

The Board went to great lengths in assuring the Governor that Mr. Beach’s trial was not tainted by any form of prosecutorial misconduct. It stated that “*we have read the trial transcript completely and find none.*” The esteemed veteran Assistant Attorney General for the State of Montana, John Connor, disagrees. When Peter Camiel and I met with him in his office in early November 2003, he very clearly stated to us that Mr. Racicot’s comments about the public hair matching Barry Beach would now be deemed reversible error by the Montana State Supreme Court.

As most people familiar with Montana politics know, Mr. Racicot, subsequent to his prosecution of Mr. Beach and others as statewide prosecutor of the State of Montana Attorney General’s Office, went on to become the Attorney General of Montana, and then the Governor of Montana, and then the Chairman of the National Republican Committee. The Board admits to being “*somewhat gratuitous*” towards Mr. Racicot in its decision, and absolved him of any misconduct during the Beach trial.

Mr. Connor disagrees. So do we. CM subpoenaed Mr. Racicot to the Board's hearing in June 2007 and he gave testimony.

Mr. Racicot testified with regard to his personal opinion that Barry Beach was guilty and that the confession was valid. Racicot refused to admit that misconduct occurred when he told the jury in his opening statement that the pubic hair located on the sweater "was in fact the defendant's" even though no competent forensic hair examiner could have testified to any more than that Barry Beach's hair shared common characteristics with the hair found on the sweater. Racicot then amazingly denied any knowledge of former forensic scientist Arnold Melnikoff's having been discredited. Racicot said he didn't rely on rumor and gossip. The exoneration of Jimmy Bromgard is neither rumor nor gossip and is clear evidence of Melnikoff's incompetence. Racicot then dismissed any concern with regard to his telling the jury that he didn't know where the towel was found or whether it was even found in Poplar. Mr. Racicot denied any knowledge of a June 19, 1979 FBI report stating that the towel was found on the morning of the murder approximately one block from the victim's house. This is the same towel that Sheriff Mahlum at one point described as having Kim's hair on it. Mr. Racicot also denied any misstatement with regard to the bloody palm print found on the vehicle when he told the jury that the palm print was probably Kim Nees'.

Mark Racicot's misstatements to the jury were numerous. Not only did he exaggerate the hair analysis done by Arnold Melnikoff and then failed to introduce this hair evidence, and not only did he tell the jury he didn't know where the towel was found or when it was found despite the FBI report to the contrary, but he also told the jury that Barry Beach placed Kim Nees head first into the garbage bag, when of course Barry Beach's confession clearly claimed that he placed her feet first. Racicot also told the jury that "Ted Nees testified that the tire iron was missing" when in fact Ted Nees testified at trial that "I didn't remember it being missing."

The combination of prosecuting attorney Racicot's misstatements to the jury prejudiced Barry Beach's right to a fair trial. It misled the jury into believing there was forensic evidence (pubic hair) when that was highly problematic; and misled the jury into believing that other evidence was completely insignificant. Indeed, Mr. Racicot told the jury that the forensic evidence including the bloody fingerprint on the interior of the pickup, the footprints, the fingerprints and blood evidence "didn't provide a clue as to who killed Kimberly Nees.". He told the jury that this forensic evidence "means nothing."

Mr. Racicot's misstatements to the jury exacerbated the prejudice to Barry Beach at his trial. No jury could have ignored the reference to the pubic hair and no jury could have disregarded all of Mr. Racicot's other misstatements. The fact that Mr. Racicot refuses to acknowledge the misconduct does not make that misconduct less egregious.

'The Battle of the Titans'

The Board characterized Mr. Beach's trial as "no less a battle of the titans" between prosecuting attorney Racicot and Beach attorney Timer Moses, a renowned Montana trial defense lawyer.

As it did with Mr. Racicot, the Board absolved Mr. Moses of any failing by stating that “*we have read the trial transcript completely and find no evidence of inadequacy by Mr. Moses.*” Suffice it to say that this trial was not Mr. Moses’ finest hour. He never presented to the jury in any manner, shape, or form how Barry’s confession continually conflicted with the crime scene and how the confession demonstrated a complete ignorance of how the crime really took place.

The many key elements of the Beach confession that did not fit the crime were never brought to the jury’s attention. Thus, the Jury had no other choice than to accept the confession at face value.

Barry was convicted based on the testimony of four Louisiana lawmen who played a role in securing Barry’s confession and/or interrogating him at one time or another over the course of several days in January 1983 in Monroe, Louisiana. Three of these Ouachita Parish, Louisiana Deputy Sheriffs also testified under oath that not only did Barry confess to them, he also confessed to his Monroe, Louisiana retained attorney, Paul Kidd, in the presence of Mr. Kidd and the three Louisiana deputy sheriffs. This highly incriminating testimony went rebutted.

Inexplicably, Mr. Moses never called Mr. Kidd up to Montana for critically important rebuttal testimony. When Mr. Kidd learned of this false testimony a few years after the trial when he read the Montana State Supreme Court’s decision denying relief to Barry, he submitted a sworn declaration unequivocally stating that at no time did Barry ever confess to the Kim Nees Montana murder or to any other murder anywhere at any time in his presence. As a matter of fact, Barry had always proclaimed his innocence to the Nees killing to Mr. Kidd.

At the hearing before the Board, the 74 year old Mr. Kidd, who traveled from Monroe, Louisiana, appeared despite recently suffering two strokes. He testified in clear unequivocal terms that Barry never confessed to any murder in his presence; and that Barry steadfastly always maintained his innocence.

Acknowledging Mr. Kidd’s arduous travels and recent strokes, the Board “*did not find his testimony, in conflict with all the law enforcement testimony and records, to be credible.*” Why would Mr. Kidd, almost a quarter of a century later, and at great inconvenience to his person, come before the Board to give false testimony?!

He could very easily have begged off, citing loss of memory due to recent strokes as an excuse not to give testimony. That would have been the safe and secure way to extricate himself from having to give false testimony. He didn’t do this because he felt compelled to tell the truth knowing full well that it was his word against that of three deputy sheriffs from his hometown, all of whom he is personally acquainted with.

The Centurion Ministries Investigation

The Board's View of CM and its Work

The Board's decision is replete with an undisguised animus towards CM and the CM seven year investigation of this case. The Board, as the Attorney General had done in past filings, followed the AG's cue by putting into quotes the word 'investigation' when referring to the work done by Centurion Ministries in this matter.

Several times the Board accused CM of "*rising to a fever pitch*" the decades old rumors surrounding this case. The Board mocked CM for "*returning more than 30 times to the rural reservation area repeatedly interviewing the same people*" and lampooned CM's efforts by describing it as a "*widely announced search for what they [CM] described as the 'real killers'.*"

The Board also chastised CM for the "*protestations by Centurion Ministries of the unreliability of law enforcement reports of the unrecorded interviews of Mr. Beach*" while, CM at the same time did not record its "*multiple contacts*" with witnesses nor produce "*memorializations of statements*" until specifically requested by the Board in 2007.

The Board insists that both they and the witnesses who appeared on behalf of Mr. Beach at the commutation phase of the hearing were duped by CM into the belief that Barry Beach is an innocent man. The Board claimed that it initiated the unprecedented hearing held this past summer because it was alarmed that an innocent man was in prison after taking CM's petition at face value. However, much to the Board's surprise, "*the facts simply did not unfurl as they were alleged and characterized in the Centurion Ministries claims.*"

The Board then twice lamented how it had "*great sympathy*" for those Beach witnesses who had read the Centurion Ministries' material; and, like the Board itself, had been led astray by CM's erroneous allegations.

Centurion Ministries' Response

The CM investigation spanned the seven years from August 2000 through the conclusion of the recent Board hearings which ended in August 2007. I led the field investigation that was primarily conducted by Centurion investigators Paul Henderson and Richard Hepburn. Attorney Peter Camiel and I joined the investigation and personally met with scores of witnesses in Montana numerous times throughout the seven years.

Centurion interviewed well over 200 people throughout Montana as well as Louisiana, Arizona, Colorado, Nevada, North & South Dakota, California, and Washington. One or more of us met often during the seven year period with each element of Roosevelt County law enforcement, the BIA, Poplar Police, Roosevelt County Sheriffs and Deputy Sheriffs (past and present), the District Attorney and his investigators, and key members of the Attorney General's staff (John Connor, Mike Wellenstein). We also interviewed Montana Crime Lab people including past

members Kenneth Konzak and Arnold Melnikoff. We visited with Glasgow based FBI agent Jackie DeCou.

CM kept in particularly close contact with District Attorney Fred Hofman, his investigator Ron Kemp, and Sheriff John Granger. Contrary to the Board's claims, CM did memorialize the more important interviews with witnesses, including affidavits; and moreover we shared these documents with Roosevelt County law enforcement each step of the way. We hid nothing from the above officials and shared everything with them. We also shared the results of our investigation with John Connor of the AG's office. If the above men are true to their word, they will attest to CM's forthrightness and honesty in our interactions with them.

The Board makes it seem as if we returned to the Fort Peck Reservation time after time and continuously pounded on the same small band of witnesses. This is not so. Nothing is farther from the truth. First of all, it took innumerable trips to the Reservation and interviews with countless people before we began to develop a rapport and establish a trust with the community. This is common to all CM investigations since we enter a different community and cultures of people in a variety of geographical parts of the nation in every case we take on. In doing so, we met with a wide array of people from all walks of life in the northeastern part of Montana. Initially skeptical and distrustful of outsiders like ourselves, people finally started to appreciate our earnestness and seriousness of purpose. Since the Nees murder is so controversial to begin with, we needed to be sensitive to people's feelings; and at the same time be quietly persistent in our effort. Respect for us and our work grew as did our respect for the innumerable citizens we encountered.

Gradually as time went on, people would confide in us as well as reach out to us. For the most part, we gained the trust and respect of the Reservation community. This is what enabled our investigation to secure a footing and bring those with knowledge forward with their information. This was the nature and character of CM's investigation and challenge in the Beach case as it always is in all our cases.

The Board's critique of CM and our investigation is wrong and is based on ignorance. I personally made a presentation to the Board members at Barry's commutation hearing on August 1, 2007. Not one member of the Board or the Attorney General's table asked me one question or offered any comments at that or any other time. They were free to do so, but chose not to. No subject was really out of bounds. Even though the AG asked the Board to instruct the commutation hearing witnesses not to speak of innocence, the Board allowed witnesses to say what they wanted to without any real restrictions. If the Board had these feelings towards CM as expressed in its decision, why didn't the members ask me any questions or offer their concerns about our investigation at that time?

At the Commutation Hearing, a number of the witnesses conveyed their belief in Barry's innocence as well as to his good character. The Board made it clear in its decision that those who spoke in such a manner and who read Centurion Ministries' materials were to be pitied for believing "*the file compiled by Centurion.*" The Board also slighted these witnesses for believing Barry to be, in the Board's sardonic words, "*a capital fellow*". These commutation

witnesses found these comments by the Board to be highly offensive and insulting to their intelligence.

Ziggy Zigler is a prime example. This 74 year old former Yellowstone County Commissioner whose own father was murdered has known Barry for 23 years through Prison Ministry monthly visits. Ziggy also attended the Innocence hearing and listened intently to the witnesses from both sides. If Barry were a charlatan, Ziggy would have discovered that many, many years ago. Ziggy is not a man who can be fooled easily. It was his attendance at the Innocence hearing plus his personal knowledge of Barry that convinced him of Barry's innocence, not CM's filings.

Other Prison Ministry men who have known Barry for six to 20 years and who spoke at the Commutation hearing on behalf of Barry are outraged at the Board's opinion that their belief in Barry's innocence is based on a face value review of CM's materials. These independent minded supporters of Barry take great umbrage at the Board's insolence and wrong-headedness. The list of supporters happens to include **Robert Kolar** and **Dan Gengler**, both successful business men, as well as **Chris Christeanens**, former State Senator and director of a prison release program, who has known Barry for over 20 years.

Another person who attended both the Innocence and Commutation hearings who has come to believe in Barry's innocence is **State Senator Dan Weinberg**. He has never spoken to Barry in his life. He didn't depend on CM's briefs to form his opinion. Senator Weinberg wanted to make his own determination and see for himself the evidence and the views of both sides. Thus, he heard all of the witnesses at both hearings. Senator Weinberg emerged a believer in Barry's innocence.

Thus, it is the Board who is deluded in believing that Montanans of such standing would accept as scripture the allegations of an outside agency such as Centurion Ministries without putting them to the test. Shame on the Board for such simplemindedness.

Conclusion

It is quite obvious from reading the Board's decision that it had no intention of granting Mr. Beach any relief from the outset. At the public hearing on Commutation not one dissenting voice was heard. Eighteen witnesses spoke on behalf of Barry. Most of them traveled long distances to do so. One came from Arkansas to tell how Barry saved her life from other inmates when she was a corrections officer at a Tennessee prison where Barry was housed. Another was the former two term mayor of Poplar and 30 year President of Poplar's Chamber of Commerce who, even though he doesn't know Barry, urged his release due to the general belief by the Poplar community that Barry was falsely convicted.

The Board universally adopted as its findings of facts those proposed by the Attorney General's office and adopted none offered by Mr. Beach's defense team. No credit was given to any of the 16 Beach fact witnesses at the Innocence hearing nor was any credit allowed for the 18 Beach Commutation witnesses. Both Beach presentations were "schneidered"³ by the Board. The deck

³ "Schneidered": to prevent an opponent from scoring a point in a match or game such as gin rummy.

was truly stacked against us. The Board clearly overplayed its hand by not granting Mr. Beach one iota of validity. Every point raised in the Board's decision favored the State and did so in a derisive tone towards the Beach defense. Thus the mask of balance and fairness and open-mindedness was removed; in its stead a heart and mind filled with prejudice and resentment towards those who advocated and testified for Mr. Beach was revealed. No fairly judged contest has a score of 100 to 0 and that is what happened in this instance.

The Board ignored a total of 34 Beach witnesses, most of whom traveled long distances and at great personal sacrifice and inconvenience to tell the Board what they knew to be the truth. Not one was given honorable mention by the Board.

Instead of identifying or giving credence to any of the 18 commutation public witnesses who universally spoke in favor of Mr. Beach's release, the Board cited George Budd, a unit manager at the Montana State Prison and the only dissenter to Mr. Beach's commutation who was not related to the victim. Mr. Budd submitted an unsworn memo dated August 3, 2007 (two days after the conclusion of the August 1, 2007 commutation hearing).

Unlike those 18 people who did attend and speak at the hearing, Mr. Budd did not appear before the Board. Therefore, Mr. Beach's defense was not afforded an opportunity to cross examine Mr. Budd on the contents of his memo, all of which are very much points of contention. The Board's reliance on Mr. Budd's memo is quite surprising, especially since the Board was insistent on its policy that both sides produce live witnesses for purposes of fairness so that a full development of the contended issues could be considered by the Board.

The Board, for reasons only it knows, chose to accept Mr. Budd's presentation of facts as true and valid without providing Mr. Beach the opportunity for rebuttal.

Let's not forget that in November 2005 the Board summarily dismissed Barry's Executive Clemency petition. That decision was signed by two Board members, both of whom sat on the three member panel that just decided Barry's fate. The third member of the panel who wrote the recent decision is the niece of the past District Attorney of Roosevelt County who helped Mr. Racicot prosecute Barry at his trial. She refused our request for recusal prior to the hearing.

It is quite apparent that the Board resented the fact that an outside agency like Centurion Ministries stirred up a hornets nest by presenting this injustice to the Governor who then remanded it back to the Board for yet another review. And then, to add fuel to the fire, CM brought the Barry Beach case to the attention of the Montana and national media. Every important news paper in Montana heralded the possibility of Barry's innocence. NBC *DateLine* conducted its own investigation of the Nees murder and Beach conviction. Their one hour feature on the Beach case will be aired later this year. The unwanted media spotlight was on the Board and the Governor for some type of remedial action.

It was the pressure of the unrelenting and pervasive media interest that forced the Board to revisit the Beach denial, not the allegations by Centurion Ministries as purported by the Board in its decision. Unfortunately, the Board used Centurion Ministries and our investigation as its whipping boy, and in doing so, not only denied Barry clemency and commutation, but also

instructed him not to return to their good graces again since “*a day ultimately comes when matters are deemed settled...if never before, at last today is that day.*”

The Board sounds greatly relieved that they have finally washed their hands of this matter. Well, we shall see. Time will tell. Centurion Ministries will continue the struggle to free Barry Beach from under this terrible weight of a false conviction and 100 year sentence with no parole. He has already served almost 25 years. How many more must he endure before some Jurist recognizes the injustice heaped upon Mr. Beach, and issues the order for his long sought and deserved release?

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Post Script:

Although not a matter of great importance, but characteristic of the Board’s misapprehension of facts, the Board referred to me incorrectly in its decision as “**Robert McClosky**”.

The state in its closing arguments to the Board described a case in which CM, through post-execution DNA testing, discovered that Roger Coleman was, in fact, guilty of a Virginia murder. This DNA result occurred after CM had spent many years attempting to clear his name, wrongly believing Mr. Coleman to be innocent. This is true.

It was me who convinced the then Governor of Virginia, Mark Warner, to authorize the DNA testing to go forward. When the results were not what I expected, I immediately and publicly announced that my belief in Roger’s innocence was wrong. Everyone makes mistakes, no matter how well informed about the facts of the case. This was one of my mistakes.

CM is not afraid of the truth; we use every available and legitimate means to discover it. If CM, during the course of its investigation, finds credible evidence that our belief in someone’s innocence is misplaced, we cease our efforts on behalf of that person immediately. Through CM’s 27 year existence, we have done so in five cases including Mr. Coleman’s.

We have conducted an exhaustive seven year investigation of Mr. Beach’s case. We have discovered nothing that disturbs our belief in his innocence. If we had, we would have dropped our efforts to free him long ago. CM has no interest in freeing anyone in whose innocence we are not completely confident based on a rigorous examination and investigation of his claim of innocence.

In pointing out the Roger Coleman case to the Board, the AG’s office failed to mention the 40 people CM has freed during our 27 year history. I have enclosed CM’s brochure which provides a profile of each of the 40 CM exonerees (you may also review our past cases at our website, www.centurionministries.org).

Appendix A

The Board's Misstatements of Facts

1. The Bloody Palm Print

- The bloody balm print *“has little probative value.... Neither Kimberly Nees nor Barry Beach could be included or excluded as possibilities of those who may have left the print... Barry Beach could have left the print as he was attacking Kimberly... Kimberly Nees could have staggered against the pick up truck while she was in the death throes.”*

2. The Beach Confession

- *“Nothing from the confession conflicted with the actual crime scene...”*
- Barry *“was connected [to the crime scene] in a host of ways through his confession.”*
- The Beach confession was *“consistently in keeping with the actual physical evidence”* and correlated to the crime scene *“in supreme detail”*.
- *“The confession statement is compelling self-authenticating when compared with the crime scene”* and there is *“nothing within the statement [Beach’s confession] that suggests innocence and much that demonstrates guilt.”*
- Barry’s confession is evidence *“at least as compelling as fingerprints could possibly have been.”*

3. Confession to the Nees Murder by other People

“...As to the likelihood that there were other perpetrators, amorphous statements were offered that various people said they knew more of the story or that they knew the wrong man was in prison... however no evidence whatsoever corroborating those statements or correlating them to the actual murder was brought or even claimed to have existed”

4. Centurion Ministries was admonished by the Board because Maude Grayhawk was *“not produced at the hearing.”*

5. Witness Richard Holen did not come forward with his information in the 28 years since Kimberly Nees’ murder.

6. Inference made by the Board that the testimony of Richard Holen and Dun O’Connor is not reliable because they *“had been drinking a great deal the night before”*.

7. *“No proof of innocence or newly discovered evidence of non-guilt has been presented.”*

8. Centurion Ministries did not provide any reason to think that the bloody towel is connected with the murder in any way.
9. *“There is no reason to believe that the footprints are in any way connected to this murder.”*
10. Centurion Ministries’ theory is that *“the hair taken from Mr. Beach’s pubic region was planted [by Steve Grayhawk, Sr.] to throw law enforcement inquiries on a fake trail.”*
11. Prosecutor Racicot’s comment to the jury that the pubic hair found on Kim Nees’ white sweater was *“in fact”* Mr. Beach’s was merely *“a fine distinction”* and a *“shorthand remark”*.
12. The pubic hair found on the sweater *“shared every characteristic identifiable at the time with [that of] Mr. Beach”* and that this hair did *“point the finger of responsibility for this murder ...at Mr. Beach himself.”*
13. The Board minimized Arnold Melnikoff’s professional fall from grace to *“problems with testimony in other cases that have been called into question.”*
14. With regard to prosecutorial misconduct by Prosecutor Racicot, the Board stated that, *“we have read the trial transcript completely and find none.”*
15. Mr. Beach’s trial was *“no less a battle of the titans”* between Prosecutor Racicot and defense attorney Timer Moses.
16. *“We have read the trial transcript completely and find no evidence whatsoever of the inadequacy by Mr. Moses.”*
17. *“Every print in the truck has been compared against every person accused of involvement in this matter by Mr. Beach...”*
18. The Board described Centurion Ministries as *“returning more than 30 times to the rural reservation area repeatedly interviewing the same people.”*
19. Centurion Ministries did not produce *“memorialization of statements”* during the course of its seven year investigation until specifically requested by the Board in 2007.
20. Centurion Ministries duped the Beach commutation witnesses and the Board itself into thinking that Barry was innocent when it said that *“the facts simply did not unfurl as they were alleged and characterized in the Centurion Ministries claims.”*

Appendix B

The CM Confession Analysis

Evidence of a False Confession

The only evidence presented against Barry Beach at his trial was the confession given to Louisiana police officers Jay Via and Alfred Calhoun. At the hearing before this Board, Mr. Beach presented evidence demonstrating that the confession that he gave was false.

Dr. Richard Leo

Dr. Richard Leo, a nationally renowned expert in the field of police interrogation and false confessions explained to this Board the phenomenon of false confessions and the frequency of false confessions. There is no doubt whatsoever that innocent people falsely confess for a number of reasons. Dr. Leo explained that in the over 200 DNA exonerations demonstrating innocence with certainty, 25 % of those individuals gave false confessions. Dr. Leo explained how through a series of studies a methodology has been developed to assist in attempting to discern whether or not a confession is reliable or whether it is false. Dr. Leo described this methodology as a “fit test.” He described this methodology in common sense terms as carefully reviewing the content of the confession against the known facts of the crime. In particular where a confession is uncorroborated by other witness testimony or any forensic evidence, there should be serious concerns about the reliability of the confession where the statement doesn’t reveal non-public information which could only be known to the killer and where there is not a danger of contamination by police officers. Dr. Leo also expressed concern about the failure of police to record the earlier parts of an interrogation, thus leaving no objective record of the interrogation techniques used.

Dr. Leo went on to describe his analysis of Barry Beach’s confession statement. Dr. Leo based his analysis on the understanding that there was no forensic evidence to corroborate Barry Beach’s confession and further that there were no other witnesses implicating Barry Beach in the murder of Kimberly Nees. Dr. Leo indicated that an analysis of Barry Beach’s confession against the known crime facts demonstrated the lack of any specific knowledge on the part of Barry Beach that would have only been known to the killer and could not have been the product of contamination. Dr. Leo also stressed the importance of all the factual errors made by Barry Beach in the confession as indicating the unreliability of the confession. In cross examining Dr. Leo, the state never questioned Dr. Leo about the reliability of Barry’s confession, but instead suggested that Dr. Leo was biased. The failure to inquire about the reliability of the confession demonstrates the state’s inability to explain all the factual mistakes in the confession. The essence of Dr. Leo’s testimony was not his own conclusion about Barry Beach’s confession, but was his provision and explanation to the Board of an accepted methodology for this Board to evaluate the reliability of Barry’s confession.

Even Sergeant Jay Via, the main witness against Mr. Beach, agrees that if a confession’s building blocks are wrong as far as the facts of the crime scene and the evidence, then the confession has very little, if any, value. Listen to what Sergeant Via says about that subject when examined by Prosecutor Racicot at Beach’s trial: Sergeant Via states at trial that he had

placed no stock in Beach's alleged confession to the three Louisiana murders⁴ that he was investigating in Monroe, LA because "*checking out the facts, it all appeared to be inaccurate as to the crime itself; how the crime had been committed and the evidence at the crime scene....it was completely erroneous*".

This same principle can be applied to Mr. Beach's confession to the murder of Kim Nees. Let's examine the confession's content and see if it is an accurate version of the crime scene and what happened to the victim.

The Confession

Barry Beach's confession statement taken by Louisiana police officers Jay Via and Alfred Calhoun is fraught with error and provides ample evidence that Barry Beach was not at the crime scene. The facts contained in Barry Beach's confession, although at times detailed, provide no unique information that would have been known only to the killer. Within the confession there are numerous facts that Barry Beach clearly got wrong. There are other facts that Barry Beach generally got right but were so well known to the public that any number of Poplar residents could have provided the same facts. Finally, there were a number of facts that Barry Beach provided that could not be corroborated either way and thus provide no basis for determining the reliability of the confession.

Statements Regarding Activities Earlier on June 15th

The state relies heavily in its analysis of the confession upon statements Barry Beach gave regarding his activities earlier in the day on June 15th when he went to Sandy Beach with Caleb Gorneau and Shannon O'Brien. None of those facts are really in dispute and occurred many hours before the murder. The fact that Barry Beach described activities corroborated by Shannon O'Brien and Caleb Gorneau provide no insight into what occurred during the early morning hours of June 16, 1979. The state's theory that because Barry was angry earlier in the day at his truck breaking down he therefore must have acted violently toward Kim Nees is unsupported by any evidence. Barry said in his confession that by the time he walked into town, he was no longer upset.

The Location of the Pickup Truck

Perhaps one of the most important errors made by Barry Beach that did not match the crime scene is the location of the pickup truck. Barry Beach described in his confession the pickup truck being located near the train bridge when in fact it was over 250 feet from the train bridge. Although the state attempts to gloss over this error regarding the truck's location by claiming that the entire park was known as the "train bridge", Barry Beach's error is highlighted when one looks at Sgt. Jay Via's January 9, 1983 report at page 7 wherein Detective Via describes Barry Beach having a vision "of Kim lying on her side next to the right rear passenger tire of the vehicle by the river. In this vision, Barry could also see a railroad bridge next to the vehicle." It

⁴ Via originally suspected Barry of three unsolved Monroe, LA murders, however it soon became apparent to all concerned that Barry had nothing to do with the Monroe murders.

is thus clear that Barry Beach thought that Kim Nees' vehicle was parked next to the railroad bridge and not some 250 feet away.

This error is highlighted by Barry Beach's later description of four trips from the pickup truck to the river. In his confession, Barry Beach describes four trips made from the truck to the river. It is clear that Barry Beach has no idea that each of the trips would have required traveling approximately 500 feet. Barry Beach says, "The first thing I could think of was to get rid of the evidence so I threw the tire iron and crescent wrench in the river (**trip 1**) and I went, I started looking for a blanket or something in the pickup and there is a plastic bag in there - it's a garbage sack and I got it and I tried to put the body in it. I drug it over to the edge of the bank of the river and I just pushed her off the edge of the bank (**trip 2**) and I turned around and started looking to try to think of what to do. I didn't really know what to do. I was scared. And so I went and got the keys out of the pickup and I threw the keys in the river (**trip 3**). And I picked her jacket up off the ground and threw it in the river by the body (**trip 4**)." (Parentheticals added) It is clear that Barry Beach thought that the truck was so close to the river that he could quickly run back and forth rather than making a 500 foot round trip between the truck and the river.

Pushing Kim's Body into the River

Attached to this memorandum is a crime scene photograph taken on the morning of June 16, 1979 showing the location of the pickup truck, the steep embankment down to the river bank, and Kim Nees' body in the river. This photo graphically demonstrates the distance Barry would have had to travel back and forth for each of the four trips to the river he described.

In his confession, Barry Beach stated that he "**just pushed her off over the edge of the bank.**" A review of the photographs, diagrams and crime scene reports show that this was physically impossible. Mr. Beach's clemency petition included an FBI crime scene report dated June 19, 1979 wherein it states: "Of interest is the fact that the unsub drug victim 256 feet, pushed her over a 10 foot cliff, and jumped down, lifted victim, and threw her into river." It is also important to note the footprints clearly visible in the photograph admitted into evidence during the hearing in the mud on the riverbank near the body. Barry's confession makes clear he did not realize that it would have been necessary to jump down and place Kim's body to the river.

Exiting the Driver's Door

In his confession statement, Barry Beach clearly stated his belief that Kim Nees exited the driver's door. At page 8, he stated, "She started backing away from me and trying to get out of the pickup. She slid back over to the driver's side and started to get out the door and I jumped out and ran around the pickup, caught her as she was coming out the door. I threw her up against the pickup and grabbed her and tried to kiss her and she scratched me." Kim Nees did not exit the driver's door. All of the forensic evidence demonstrates that Kim Nees was dragged out the passenger door, pulled approximately 9 feet from the vehicle and thrown to the ground where a large pool of blood was located. The blood stains on the seat of the vehicle and the blood stains on the outside of the passenger side of the vehicle corroborate this. Absolutely no blood was found on the outside driver's side of the vehicle or on the ground outside the driver's side. Sheriff Dean Mahlum in his January 7, 1983 report listing the 9 points of information provided

to the Louisiana detectives clearly indicates his confirmation of this fact when he wrote at item #5: "Victim was dragged from the passenger door of the victim's pickup."

This glaring error by Barry completely undercuts Mr. Racicot's claim that Barry got the sequence of events correct. Indeed, this error demonstrates Barry Beach's ignorance of how the attack on Kim Nees unfolded.

Choking Kimberly Nees

In his confession, Barry Beach described choking Kimberly Nees as he held her up against the driver's side of the vehicle. First, Kimberly Nees was severely injured and bleeding heavily inside the vehicle when she was initially attacked. Not only is there no evidence she was outside the driver's side of the vehicle, but Dr. Pfaff, the medical examiner, related no evidence whatsoever that Kimberly Nees was choked. The state attempts to explain this away by indicating that the choking may not have left any marks, but the fact remains that there was no evidence that Kimberly Nees was choked or that she was held against the vehicle on the driver's side. Had she been choked, there would have been bruising or marks on her neck. There was neither. Had she been held up against the driver's side of the truck, there would have been blood on that side of the truck. There was none.

The Clothing

Barry Beach's description of Kim Nees' clothing provides unique evidence not only that Barry Beach was not at the crime scene but of contamination on the part of the Louisiana detectives. Barry Beach in this confession indicates that Kim Nees was wearing a brown sports jacket and a plaid polyester blouse. Barry Beach was wrong on both counts. As noted by Dr. Richard Leo, Barry Beach's mis-description of Kim Nees' clothing is particularly important because Detective Jay Via made the exact same mistake about Kim Nees' clothing. Evidence of this contamination appears in the January 7, 1983 phone call between Detective Jay Via and Sheriff Dean Mahlum. In that phone call, a transcript of which is before the Board at page 1 bottom, Sgt. Via indicates the following: "But, the details he ran down are almost identical to what you found at the scene. He's only got one thing wrong. The clothes the victim was wearing. You said she had on a brown, plaid shirt. And he said she had on a brown or tan colored sport coat. But he said he took the sport coat thing off her and ...".

The above indicates that Sgt. Via wrongly believed he had been told by Sheriff Mahlum that Kimberly Nees was wearing a brown, plaid shirt. This is what is known as a false fact. This false fact then appeared in Barry Beach's confession at page 10. Barry Beach was asked to describe the clothing Kim was wearing. He stated she was wearing a brown sports jacket and blue jeans and a plaid, polyester blouse. Kim was actually wearing a blue and red pullover sweater. Sgt. Via's clothing description error found its way into Barry's confession. This could not have occurred by chance. It is evidence of contamination by Sgt. Via prior to the tape recorder being turned on.

The Jacket

Not only did Barry describe Kim having worn a brown sports jacket but he said he tossed it over the river bank. No such jacket was ever located.

The Murder Weapon or Murder Weapons

Much has been made of the fact that Barry Beach described two murder weapons - a crescent wrench and a tire iron. The M.E., Dr. Pfaff, testified that while it was possible that a crescent wrench made some of the wounds, such could not have made all of the wounds. He also testified that a tire iron could have made some of the wounds, but not all of the wounds. **Most importantly, he testified that he could not say with certainty that either of these weapons made any of the wounds.** In addition, he never testified that there were in fact two weapons used. It was well known in Poplar that a crescent wrench was used. In addition, the June 19, 1979 FBI report indicates that initially Dr. Pfaff believed that a tire iron or small light hammer was responsible for the wounds. The same FBI report states: "Autopsy reveals victim died as a result of at least 20 blows to the head with either a tire iron or a small light hammer." Finally, although Ted Nees reported that his crescent wrench was missing, he never reported that the tire iron was missing. Moreover, as a number of witnesses have testified, Becks Sporting Goods in downtown Poplar had a large window display that included a full size crescent wrench along with crime scene photos.

Uncorroborated Statements

The confession obtained from Barry Beach contained a number of statements that could never be corroborated as being true. These included the following:

1. **Wiping away of his fingerprints** - no fingerprints of Barry Beach were found anywhere inside or outside the pickup truck despite the fact that numerous fingerprints and palm prints were found on both the interior and exterior. In addition, there were no references to finding wipe marks indicating that fingerprints had been wiped from the vehicle. To this day, there remain eleven unidentified fingerprints (five from beer cans, three from inside the truck and three from outside the truck) and four unidentified palm prints, one of which is the bloody palm print on the outside passenger door. Barry's claim that he wiped away his fingerprints seems highly implausible and can't be confirmed.

2. **Use of a garbage bag** - In the confession statement, Barry Beach mentions the use of a garbage bag whereby Kim Nees' body was placed feet first up to her shoulders in a garbage bag and then dragged the 256 feet from the area outside the pickup truck to the riverbank. At the time, Barry Beach weighed approximately 150 pounds. Kim Nees weighed approximately 115 pounds.

The claim that the garbage bag explains the lack of blood in the drag trail makes no sense since Barry said Kim was placed inside feet first. Barry would have had a very difficult time dragging Kim's body the 256 feet to the river. Kim was bleeding from the head. According to Barry, her head was not in the bag. Where, then, is the blood? **No garbage bag was found nor were any remnants of a garbage bag found anywhere in the crime scene area.** The state speculates that the garbage bag may have blown away or floated away in the river. There is no support for this speculation. Of interest is the fact that Louisiana Detective Sgt. Via appears to have discussed a garbage bag with Sheriff Mahlum at some point prior to the January 7th post-confession telephone call for which there is a transcript. On page 1 of the January 7th telephone

call transcript, the very first time Sgt. Via mentions the garbage bag, he states: “And here’s what he says about the garbage bag.” Given that there is absolutely no mention of a garbage bag earlier in this transcript, it appears that prior to the recording of this phone conversation, a garbage bag was discussed between Via and Mahlum.

The Location of the Murder Weapons

The state suggests that the confession is reliable because Barry Beach stated that he disposed of the murder weapons in the Poplar River. The Poplar River was dragged and searched approximately one month after the murder at which time a claw hammer was found about 30 feet from the body. Then, after Barry Beach’s confession, the Poplar River was searched again two more times. No murder weapons were ever located. While it may be plausible that one or two of the three items - the keys, tire iron and wrench would not be found, it is not plausible that all three would not be found if they had been thrown in the river as Barry stated.

The Keys

As with the location of the murder weapons, Barry Beach indicated that the keys were thrown into the Poplar River. It was well known that the keys had never been located. No keys were found in the river. Thus, this is another aspect of the confession that could not be confirmed.

Public Knowledge About the Details of Kim Nees’ Murder

Within hours of the discovery of Kim Nees’ body, talk of Kim Nees’ murder was widespread throughout the town of Poplar. That talk continued for months and years. Details of the murder were well known to many of the residents of Poplar. A number of the residents gathered to watch police officers as they processed the crime scene. The previously described display at Beck’s Sporting Goods included not only a display of a crescent wrench but display of actual crime photos, including a photograph of the truck in its location where Kim Nees was killed and a photograph showing Kim Nees’ body in the river. In addition, newspaper articles gave descriptions of the crime, including the fact that Kim Nees had initially been attacked inside the pickup truck and the attack continued outside the pickup truck where she died prior to being placed in the river. One such article which was introduced into evidence at this hearing provided the following factual information as an example of the widespread public knowledge of the case:

“Investigation into the case has shown that the attack on Ms. Nees began in the pickup and continued on the ground outside the pickup. After death, Ms. Nees’ body was dragged approximately 100 yards and thrown into the Poplar River. Autopsy has shown that the cause of death was a minimum of 20 blows to the head area with a blunt weapon.”

Failure to Record the Pre-confession Interrogation

A part of the problem with determining the reliability of Barry Beach’s confession is not only that numerous facts contained within the confession don’t fit the known crime scene facts, but that most of the interrogation of Barry Beach was not recorded and preserved. By the Louisiana detective’s own account, the interrogation of Barry Beach began somewhere around 12:30 p.m. on January 7, 1983. The recording of the confession began at approximately 7:08 p.m. The seven hours of interrogation prior to that recording are not preserved and thus there is no way to

determine the way in which Barry Beach was questioned to determine whether or not he was “fed” factual information.

Louisiana Sgt. Jay Via’s and Alfred Calhoun’s Reliability and Credibility

Former Louisiana Sgt. Jay Via’s credibility is seriously in question as is Alfred Calhoun. Although Sgt. Via claims that he did nothing to either coerce the statement from Barry Beach or “feed” him facts during the interrogation, Via’s credibility is suspect. During the hearing, for example, Via claimed that except for a description of the victims’ clothing and the suspected murder weapon, he did not receive any factual information about the crime from the Montana authorities other than that revealed to him during the January 5, 1983 conversation with Sheriff Mahlum. Via even claimed that the nine points listed in Sheriff Mahlum’s January 7, 1983 memorandum were not given to him until after the confession. Via claimed that the 10:30 time listed in Sheriff’s Mahlum’s memorandum referred to 10:30 p.m. in direct contradiction of Sheriff Mahlum’s own testimony that he provided the nine points prior to the interrogation of Barry Beach. Another example of Via’s credibility problems concern what he claimed he was told from Sheriff Mahlum regarding Barry Beach’s polygraph exam results. Via testified that he was told that Barry Beach flunked the polygraph given in Montana and was on the verge of confessing. Via was then confronted with a transcript of the January 5, 1983 phone conversation that he had with Sheriff Mahlum wherein Mahlum indicated:

“Did submit to a polygraph but it’s inconclusive, the operator felt that he possibly had knowledge of, you know, first hand knowledge about the crime.”

Question: Right.

Answer: But he didn’t hit on actually doing it.”

In response to being confronted with this transcript, Via then claimed that the conversation he testified about must have taken place in another unrecorded call with Sheriff Mahlum.

During his hearing testimony, Via was evasive, refused to answer direct questions, and even denied that he had misunderstood the description of Kim Nees’ clothing despite the clear transcript reference to the contrary. During the January 7, 1983 post-confession phone call, the transcript shows that Via said to Mahlum: “You said she had on a brown, plaid shirt.” When confronted with this statement in the transcript, Via claimed that the “you” he was referring to Barry Beach which is an absurd statement since he was in the process of speaking with Sheriff Mahlum.

The manner in which Sgt. Via and Alfred Calhoun interrogated Barry Beach is not corroborated because it was not recorded. Nevertheless, Sgt. Via’s own report indicates that they were able to get Barry Beach to “break down,” and that Sgt. Via told Sheriff Mahlum that he, Sgt. Via, lost his voice, that and Calhoun were “tired men,” and that Barry Beach was unaware of where he was.

The testimony of Via and Calhoun that Barry confessed two to three times in front of his own lawyer, Paul Kidd, was directly contradicted by Paul Kidd. All of the above creates serious

concerns regarding the credibility of Jay Via and Alfred Calhoun both in their testimony before this Board and at the time of Barry Beach's trial.

Maria Jansen

Maria Jansen was a dispatcher for the Roosevelt County Sheriff's Office in 1983. She was on duty during the shift during which Jay Via was constantly calling and speaking with Sheriff Mahlum during the interrogation of Barry Beach. Maria Jansen is the daughter of a sheriff who died in office and was replaced by Sheriff Don Carpenter. Maria Jansen testified that during her shift, there were over ten phone calls from Jay Via to Sheriff Mahlum during the interrogation of Barry Beach. This testimony directly contradicts both the testimony of Sheriff Mahlum and the testimony of Jay Via regarding the amount of communication going back and forth during the interrogation of Barry Beach. This is significant because Jay Via maintained that he didn't have many of the details regarding the Kim Nees murder. The number of phone calls with Sheriff Mahlum belies this claim.

The Henry Lucas - Otis Toole Confessions

As a further indication of Sgt. Via's lack of credibility, one only needs to look at the Otis Toole and Henry Lucas confessions obtained from Via with regard to the murder of Monroe, LA resident Kathy Wharton. Six months after Barry Beach was questioned about the Kathy Wharton murder and six months after Via claimed that Barry Beach had flunked a psychological stress evaluation test with regard to the murder of Kathy Wharton, Via extracted detailed confessions from Toole and Lucas. Toole and Lucas were separated by over 1,000 miles with Lucas in Texas and Toole in Florida at the time of the confessions. Via described these confessions as so detailed, that only the killer could have known the facts that Lucas and Toole revealed. At the hearing before this Board, Via claimed he was "92% to 95% certain" that the confessions from Lucas and Toole were valid. Via now admits that those confessions were in fact false. Via had no choice but to admit the falsity of these confessions given the new DNA evidence linking another suspect to this crime. One has to wonder how both Lucas and Toole could have so many details about a crime with which they were not involved.

