



Feast 2007 Inside

MISSOULA

Indepeper

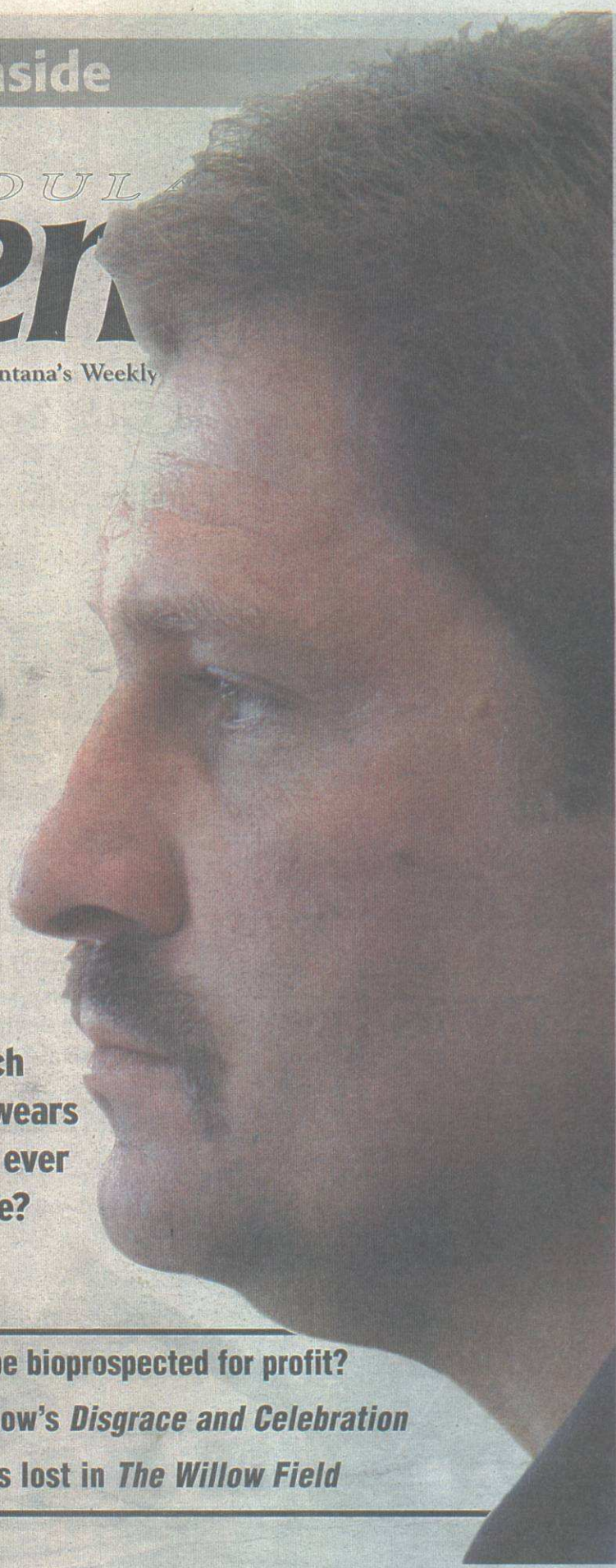
Vol. 17, No. 41 • Oct. 12–Oct. 19, 2006

Western Montana's Weekly

The Wrong Man?

Twenty-three years ago, Barry Beach confessed to a brutal murder he now swears he didn't commit. He's been locked up ever since. Can new evidence set him free?

by Jesse McQuillan



Up Front: Should national parks be bioprospected for profit?

- **Scope: Broken Valley Roadshow's *Disgrace and Celebration***
- **Books: William Kittredge gets lost in *The Willow Field***

SEAN KELLY'S

THURSDAY 10/12 LIVE ROOTS ROCK WITH
JD Smith Duo

FRIDAY 10/13

THE THREE LEGGED DOGS PLAY
A HOMECOMING TRADITION!!

SATURDAY 10/14

JD Smith and the Three Legged Dog

THURSDAY 10/19

JACK DANIELS STORYTELLERS SERIES WITH

TOM CATMULL SOLO & ACOUSTIC

TELLING THE STORIES BEHIND THE SONGS

130 WEST PINE STREET
DOWNTOWN MISSOULA
542-1471
WWW.SEANKELLYS.COM
KITCHEN OPEN TILL 10

FREE
Wi-Fi!



The Other Side
543-3405

October Special:
\$2 Jagermeister

On The Corner Of Strand & Regent · Smoke-Free Performance Areal www.theothersidemusic.net

Fri. 10/13



featuring Vince Herman from Leftover Salmon
cover \$12, 21 and up doors @ 9pm Show @ 10pm



UPCOMING
EVENTS:

Tue. 10/24

LOTUS with DJ HARDY
Doors @ 9, Show @ TBA
Cover \$6

Tue. 10/31

The 10th Annual
HALLOWEEN BARNBURNER
featuring:
The Swollen Members
The Pnuema Trio
KJ Sawka
Doors @ 9, Show @ TBA
Cover TBA

Fri. 10/20

Broken Valley Roadshow



CD Release Party · Doors @ 9, Show @ 10. Cover TBA

Sat. 10/21 Dtribe 9 presents

ZION-I
with **THE GROUCH**

Hanger 18 and Deuce Eclipse cover
\$12 Advance @ Earcandy & Rockin' Rudys
\$15 Door 21 and up, doors @ 9pm Show @ 10pm



Eat The Legend Burger & Beer For A Buck
Power Hour 8-11, 4-6

BUCKS CLUB
543-7436
1805 Regent
52 Pabst Pounders

Check Out
The New
Pool Lounge

Buy 1 Drink · Get 1 FREE
1 Coupon Per Day Per Person
Expires 10/31/06

inside



Cover Story

Convicted in 1984 based on a confession he has said all along was false and coerced—and despite a plethora of physical evidence, none of which implicates him—Barry Beach has spent the last 23 years paying for a murder he and many others say he didn't commit. Recently, with the help of Centurion Ministries, a New Jersey organization that works to investigate and free wrongly imprisoned inmates, Barry applied to Gov. Brian Schweitzer for executive clemency, which could come in the form of a pardon or commutation of his sentence. Prevented by legal deadlines from taking his case back to the courts, and frustrated with the Montana Parole Board's recent rejection of his sentence commutation application, Barry says he's appealing to the governor because he refuses to give up on the truth, and because he continues to keep faith that someone will listen. . . . 14

News

The Week in Review Stan Jones gets his say	6
Info Open season on initiatives	6
Etc. Does scientific illiteracy equal diversity of faith?	7
Up Front Should NPS commercialize the commons?	8
Up Front Initiative backers go on a fishing expedition	9
Ochenski What do greens have to do with it?	10
Writers on the Range Game farm follies	11
Agenda Have you seen your right to privacy lately?	12

Arts & Entertainment

Flash in the Pan Food during wartime	20
8 Days a Week At least one of those was a gas gas	23
Mountain High So cold	31
Flathead Calendar Great American Taxi at Flanagan's Central Station	38
Scope Broken Valley Roadshow, live and unplugged	40
Soundcheck Michael Franti on politics—and film	41
Theater David Mamet's incomplete ode to theater	42
Books William Kittredge delivers all but the drama in <i>The Willow Field</i>	43
Books James Grady cuts the lunatics loose in <i>Mad Dogs</i>	44
Film Martin Scorsese's undercover masterpiece unveiled in <i>The Departed</i>	45
Movie Shorts <i>Independent</i> takes on current films	46

Exclusives

In Other News	14
Independent Personals	47
The Advice Goddess	47
Free Will Astrology	48
Classifieds	49
Crossword Puzzle	54
This Modern World	56

PUBLISHED:
Matt Gibson
GENERAL MANAGER
Lynne Poland
EDITOR:
Brad Iyar
SALES MANAGER
Rod Harrell
BUSINESS MANAGER
Kelly Slater
PRODUCTION DIRECTOR
Joa Westcott
CIRCULATION MANAGER
Brian Stanek
FLATHEAD BUREAU CHIEF
Paul Peterson
ARIS EDITOR
Skylar Browning
PHOTO EDITOR
Sarah Daisy Lindmark
STAFF REPORTERS
Jessie McQuillan, John S. Adams
COPY EDITOR
Rachel Carlson
EDITORIAL INTERN
Chandra Johnson
PHOTO INTERN
David Erickson
SENIOR GRAPHIC ARTIST
Kou Mour
PRODUCTION ASSISTANT
Jared Stewart
ADVERTISING REPRESENTATIVES
Molly Halemaier, Mimi Roten,
Heidi Coughlin, Todd Kaye, Carolyn Bartlett
CLASSIFIED ADVERTISING REPRESENTATIVES
Lynn Hencley, Caron Skilling
FRONT DESK
Lorie Rusthoid
CONTRIBUTORS
Ari LeVaux, George Ochenski, Erika Fridrickson,
Azita Ouanloo, Carlotta Grandstaff, Nicole Panter,
Caroline Koyas, Nick Davis, Andy Smetakia



Mailing address:
P.O. Box 8275
Missoula, MT 59807

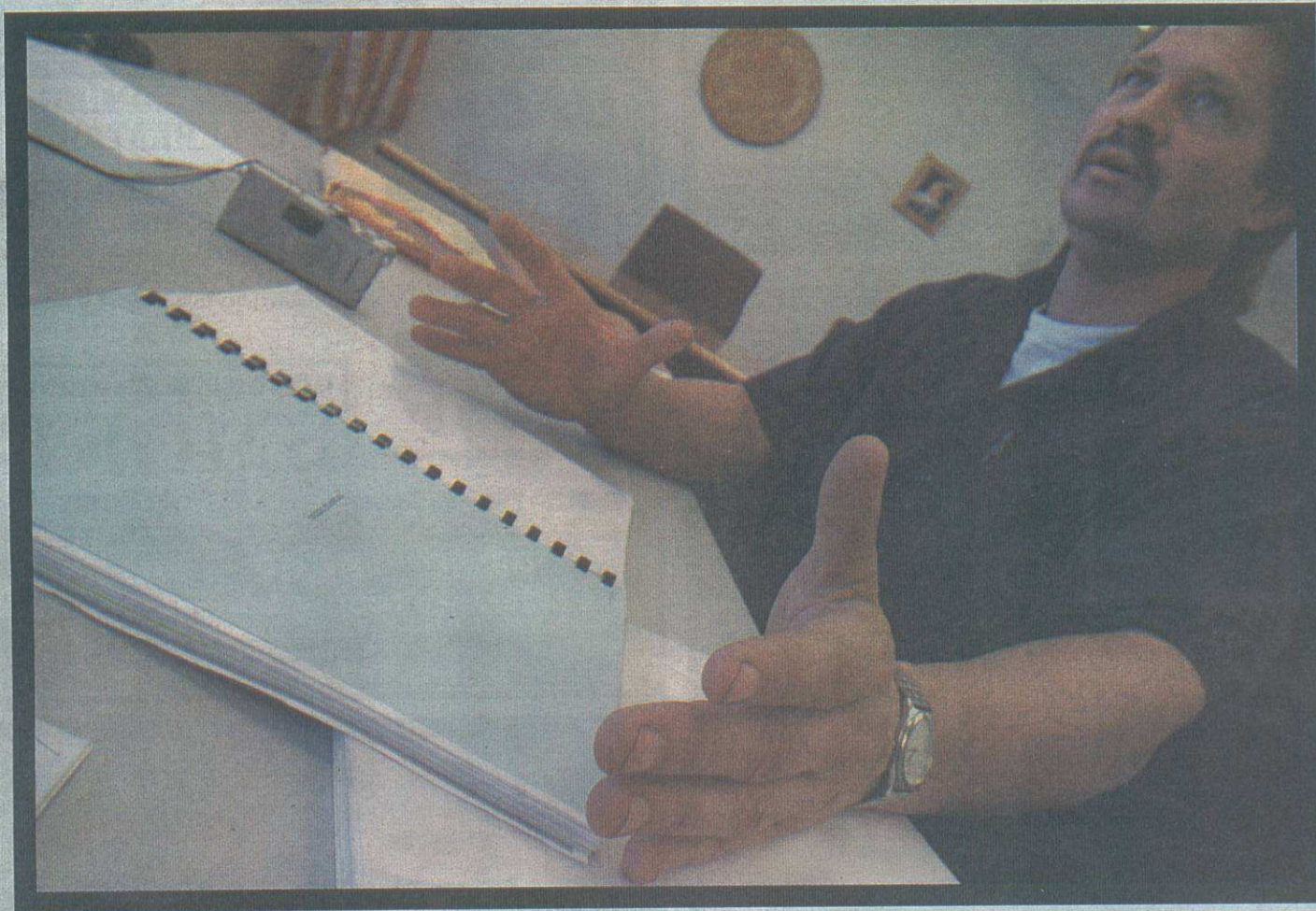
Street address:
115 S. Fourth Street W.
Missoula, MT 59801

Phone number:
406-543-6609
Fax number:
406-543-4367

E-mail address:
independent@missoulanews.com



The Wrong Man?



Twenty-three years ago, Barry Beach confessed to a brutal murder he now swears he didn't commit. He's been locked up ever since. Can new evidence set him free?

by Jessie McQuillan • photos by Sarah Daisy Lindmark

Barry Beach can't shake the memory of his first long walk up the steps of the Glasgow courthouse, where a jury would eventually convict him of the brutal murder of Kim Nees, his high-school classmate. As he passed through the courthouse doors that spring day in 1984, he came face to face with a class of waist-high children who stood, along with their teacher escort, and stared.

"That's something I'll never forget as long as I live," Barry says now, his voice shaking, in an interview at the Montana State Prison in Deer Lodge. "The teacher didn't even know me. I hadn't been convicted, hadn't even been in the courtroom yet, and this teacher points me out to these little, tiny kids and says, 'That's what a murderer looks like.'"

Barry is haunted by the characterization, which he says is utterly wrong, and his run-in with the children was neither the beginning nor the end of Barry's long and thus far fruitless battle to clear his name. Convicted in 1984 based on a confession he has said all along was false and coerced—and despite a plethora of physical evidence, none of which implicates him—Barry has spent the last 23 years paying for a crime he and many others say he didn't commit. Imprisoned at 21, Barry is now a middle-aged man serving a 100-year sentence with no parole. He has spent his adult life behind bars with one aim: proving his innocence and winning his freedom. Recently, with the help of Centurion Ministries, a New Jersey organization that works to investigate and free wrongly imprisoned

inmates, Barry applied to Gov. Brian Schweitzer for executive clemency, which could come in the form of a pardon or commutation of his sentence. Prevented by legal deadlines from taking his case back to the courts, and frustrated with the Montana Parole Board's recent rejection of his sentence commutation application, Barry says he's appealing to the governor because he refuses to give up on the truth, and because he continues to keep faith that someone will listen.

"The facts exist and they've existed for 27 years," Barry says. "All I'm asking anybody—Gov. Schweitzer, the Parole Board, the courts, I don't care who—is to give me the opportunity to present the facts for what they are. Because I don't even have to speak... the facts are there in black and white."

The story of how Kim Nees lost her life in 1979, and of how Barry Beach lost his freedom in 1984, has never been simple or satisfying. And a quarter-century later—when memories have faded, addresses have changed and officials have retired—it's even harder to root out. But ample evidence does remain, and has recently been bolstered by new details. In Barry's lengthy appeal to Schweitzer, Centurion Ministries attorney Peter Camiel presents both the history of Barry's case and the results of a six-year reinvestigation that has unearthed fresh material. The *Independent* relied upon this material, case documents and original interviews with many of the people involved to construct this account.



Photo by Jessa McMillan

The popular late-night hangout where Kim Nees was killed lies west of Poplar off Highway 200, near the Poplar River.



Photo courtesy Peter Daniel

Following the discovery of Kim Nees' murder on June 16, 1979, unidentified law enforcement officials investigate the scene where Kim's truck and body were found, near the banks of the Poplar River.

...

It was just before seven on a Saturday morning in June 1979 when two tribal police officers on patrol decided to check out a truck parked in a field west of Poplar where high-school kids frequently gathered for late-night drinking. According to police reports, when officers parked and approached the 1977 GMC pickup, they were confronted with a smear of blood on the passenger door, and then they saw a sweater, a purse and a package of Marlboro cigarettes sitting in a neat pile on the ground, covered in blood. Near the truck, a pool of blood and clumps of hair on the ground caught their attention. Then they noticed drag marks and a 257-foot trail of blood and beer cans leading to the Poplar River. At the end of the trail, they found Kim Nees floating face up, four feet from the riverbank in the shallow milky green water, clothed and dead.

Back at the truck, its light-green paint was spattered with blood, with a bloody palm print dried clearly on the outside of the passenger door. Inside the truck, the seat was soaked in blood and urine, and spatters of blood flecked the windows, ceiling and steering wheel. Three gouge marks in the ceiling had hair stuck in them. The keys were gone, the ashtray was open and the windows were closed.

Kim Nees, an athlete and cheerleader named "most sensuous" in her senior yearbook, and a favorite of her fun-loving, party-prone classmates, had delivered the valedictorian address at Poplar High School less than two weeks before at her graduation. The niece of a popular state senator born to a white, relatively affluent family in a relatively poor town on the Fort Peck Indian Reservation, she'd racked up college scholarships and everyone knew she was going places until,

suddenly, she wasn't. An autopsy found that her skull had been crushed by more than 30 gouging blows, likely with a metal tool. Her hands were bruised and bloodied from trying to fend off the attack. She had been drinking but wasn't drunk.

Both the viciousness of the attack and its target stunned the town of Poplar, and in the murder's wake the local newspaper reported that single female teachers were moving in together for safety.

Barry Beach, a year behind Kim in school, lived on the same block as Kim's family and had dated Kim's sister, Pam. They grew up like most of the kids in the neighborhood, playing sports and games together as youths and later cruising and drinking at outdoor parties. Barry wasn't a star athlete, but managed the sports teams with his sister. His mom owned a pizza parlor and ice cream shop, and he remembers the ribbing he received from other kids at school because of his mixed-ethnicity family; his biological father lived

height in the '70s—and the town's location on the Fort Peck Indian Reservation.

Today, just fewer than 1,000 people reside in Poplar, situated at the intersection of the Missouri and Poplar rivers in Montana's northeast corner. The town's makeup is about 65 percent American Indian and 35 percent white, and the good jobs in town are found at the Fort Peck Community College or the Bureau of Indian Affairs. More than 30 percent of locals live below the poverty line. One stoplight dangles mid-town, and many downtown windows are boarded up with plywood or protected with metal grating. Cars of youths cruise around town bumping gangster rap and loud Indian drumming and chanting. Beck's, the downtown store that once displayed a memorial to Kim including her senior picture, a crescent wrench (the suspected murder weapon at the time) and a description of the crime scene in its front window, is still open.

...

In the days following Kim's murder, agents from the FBI, Poplar City Police Department, Fort Peck tribal


police and Roosevelt County Sheriff's office logged evidence and canvassed the town searching for suspects. In addition to the bloody palm print on the passenger door of Kim's truck, 28 unidentified sets of fingerprints were lifted from the truck, initial reports show. A blood-soaked

towel was found hanging on a fence a block from the scene. Three separate sets of footprints—one barefooted and two wearing sandals—were photographed along the drag trail and riverbank.

Despite the abundance of clues at the scene, police found no witnesses to the crime. A June 19, 1979, FBI report said that though several suspects had been identified, "Due to some 'teenage code,' investigating officers are receiving very little cooperation from those witnesses who might provide some background information." Still, police were able to successfully re-create Kim's night up until about 2 a.m., shortly before they estimate she was killed. Between midnight and 1 a.m. she had been seen sitting alone in her pickup at the closed Exxon station on the edge of town following a fight with her boyfriend. One witness saw Kim talking to a man through the window of her truck at about 12:45 a.m. Another saw her driving at about 2 a.m. from the gas station toward the river bottom park just west of town, following several vehicles ahead of her. Yet another reported driving behind Kim's truck as she drove out of town; that witness recalled seeing several profiles, silhouetted by his headlights, before she turned off into the park.

Kim's boyfriend, with whom she'd argued earlier in the day, was questioned repeatedly, as was another local boy known for drinking and fighting, but when their fingerprints failed to match any found on the truck, investigators moved on, according to Centurion's investigation. Barry, like others of Kim's classmates, was questioned by officials and willingly provided fingerprints that were compared unsuccessfully to the evidence at the crime scene.

As months rolled by, concern grew in Poplar. Even today, residents recall the fear that smothered the town in the wake of Kim's death.



"Barry Allan Beach confessed to the crime, so I think that, frankly, with all that history, any notion that there was somehow a mistake in the process is wanting for credibility."

— Marc Racicot, who prosecuted Barry Beach's case in 1984.

in distant Louisiana and his mom, who looks white but is part Cherokee, had married a Sioux man and brought their children together into one large, blended family. Racial tensions were noticeable in Poplar at the time, Barry remembers, given the era—the American Indian Movement was at its

"There were all kinds of rumors circulating. It was terrible—it was like everyone in the world had their fingers pointing in different directions," says Margaret Abbot, a high-school teacher at the time who still lives in Poplar.

Some of the fingers pointed in the direction of a group of female friends including Sissy Atkinson, Joanne Jackson and Maude Greyhawk.

Following the crime, a local girl named Orrie Burshia had approached Roosevelt County Sheriff Don Carpenter and reported that her friend Mike Longtree had told her he had been present at Kim's attack and that he had watched a group of girls beat Kim to death, according to a transcript of Burshia's interview. He said Kim had fought

"I told Kim, 'Don't go anywhere by yourself, be very careful,'" Peterson remembers. "She said she would be and she bought a six-pack of pop and a pack of cigarettes, and that's the last time I saw her... as soon as I heard [she had been killed], I was like, oh God, they got her."

A July 19, 1979, FBI report identifies Sissy Atkinson as a possible suspect. Tribal policeman Calvin First had reported seeing Sissy Atkinson driving Maude Greyhawk's car out of the riverfront park early the morning of the murder while he was on duty and fueling his car at a nearby gas station, and First supplied Centurion with a written reiteration of that sighting.

dance of evidence and the involvement of four law enforcement agencies, three years later the crime remained unsolved.

It wasn't until January of 1983 that an interrogation on the other side of the country brought an unexpected break and an overdue answer to Poplar's mortifying mystery. Barry Beach, Poplar was surprised to learn, had unexpectedly confessed to bludgeoning Kim to death.

...

Barry spent the summer and fall following Kim's death in Monroe, La., where he had gone to live with his father for the first time. He returned to Poplar around Christmas 1980 to finish high school, then returned to Louisiana and worked for several months before joining up with the Navy. By 1982, he was back in Louisiana, working construction jobs. On Jan. 4, 1983, he was arrested on charges of contributing to the delinquency of a minor for picking up his teenage stepsister and her friend during the school day and taking them to his apartment.

After being held for two days at the local jail on the initial charges, and because Beach allegedly threatened his stepmother on the phone following his arrest, Louisiana investigators began questioning Barry about the unsolved murders of three young women in the area, and they grew increasingly interested when they learned of the unsolved murder in Barry's hometown of Poplar. The following day, Barry claims, four detectives interrogated him about the Louisiana murders for hours. Barry says they showed him pictures from the crime scenes and the four detectives took turns alternating between accusing him and acting understanding, asking him for hypothetical scenarios of how he thought the killer might have murdered his victims and praying with him. When one of the investigators told Barry God would only forgive him if he admitted to killing the three girls, Barry says he replied that God would just have to not forgive him, because he wasn't guilty. He remembers that reply setting the investigator off, and how he started yelling at Barry about death by electric chair and how his eyeballs would pop from his head and his skin would sizzle.

"For hour after hour after hour they kept telling me, 'if you just tell us you did this we'll let you go,'" Barry says now. "I would have said anything at that point to get out of there."

At the end of the day, the Louisiana investigators had not only a tape-recorded confession to Kim's murder—which has since been erased—but confessions to the three Louisiana murders as well, one of the detectives testified at Barry's trial. Within days of his self-incrimination regarding the Louisiana crimes, however, the confessions were found by Louisiana officials to be "unfounded"; Barry wasn't even in the state when the murders occurred.

But Barry's confession to Kim's death stuck, and on the basis of that confession alone, Barry was charged with deliberate homicide and later extradited back to Montana. Roberta Clencher, Barry's mom, remembers finding out that Barry had been charged when she saw a headline plastered on the front page of the *Billings Gazette*:

She says Barry had called her the night after giving his confession and "I could hardly understand him. It didn't sound like him at all... He told me he confessed and I said why did you confess to something that you didn't do?... At that point he was totally convinced that he had done it. Besides, he said, 'they said they would help me prove I didn't do it.'"

To this day, Barry doesn't seem to understand how or why he gave a confession he now says is false. He still feels guilty, he says, for allowing himself to be broken, but he also acknowledges the pressure of the situation: "I was a 20-year-old kid being interrogated by four different detectives on four different homicides which I knew nothing about," he says. "I didn't stand a chance. They were trained professionals."

The Louisiana detectives, at trial, denied applying the coercive tactics that Barry claims they used. They also cited numerous waivers that Barry signed and the many Miranda warnings that Beach was issued. Additionally, appeals courts would later find that Barry hadn't been improperly interrogated or coerced into confessing.

...

Even after Barry was charged with Kim's death, none of his family or friends—nor Barry himself—thought he would be convicted; some didn't even attend his trial because they were so convinced he would have no trouble proving his innocence. Barry says Charles "Timer" Moses, the prominent Billings lawyer Clencher had hired to defend Barry, was among the overly optimistic.

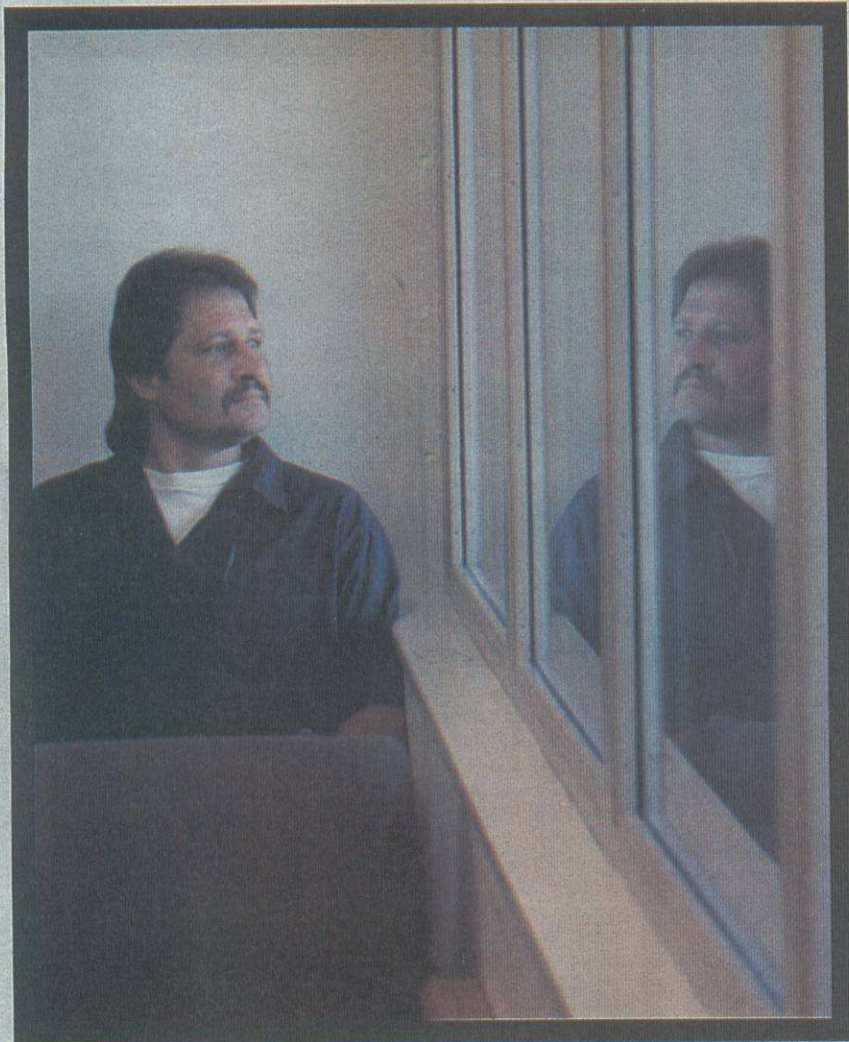
"[Moses] never dreamed I was going to be convicted for the simple fact that to this day, they have never matched me to a single piece of physical evidence from the crime scene," Barry says. "Not that there wasn't physical evidence from the crime scene, but none of it matched me."

But Barry says his hope that the truth would be self-evident to the jury quickly faded once the trial commenced.

In his opening statement, Marc Racicot, then a prosecutor for the Attorney General's Office who would go on to be governor, told the jury that Barry had not only confessed to the horrific crime, but that a pubic hair had been found on Kim's sweater that was, "in fact, the defendant's," according to trial transcripts. Racicot was exaggerating the findings of crime lab scientist Arnold Melnikoff, whose written report held that a hair collected at the scene was similar to Barry's. Incidentally, Kim's autopsy found no evidence of recent sexual activity.

Melnikoff, as it happened, would later be found incompetent and ultimately fired by the state of Washington for his lack of proficiency at hair analysis. His years of testifying for the state of Montana led to the convictions of at least two innocent men, who were later freed. An attorney general's audit of Melnikoff's cases undertaken following the exoneration of Jim Bromgard, wrongly imprisoned for rape for 15 years, didn't include Barry's case for the simple reason that Melnikoff never made it to the witness stand at Barry's trial.

When it came time to introduce the hair evidence mentioned in his opening argument, Racicot conceded that it was inadmissible. As it turned out, a Poplar police officer by the name of Stephen Greyhawk, father of one-time suspect Maude Greyhawk, had broken into the evidence room he was supposed to be guarding overnight, thus calling into question the integrity of the evidence. Acting Chief of Police Bobby Atkinson, who discovered the break-in, later wrote a statement in which he described the event and how Atkinson had informed Racicot of the break-in during the trial. Despite its inadmissibility, Racicot referenced that hair again during his closing remarks.



"I want to fully exonerate myself," Barry Beach says. "That is when I will finally stop fighting this case."

and tried to get away and begged for help, but to no avail. When police questioned Longtree, according to Centurion, he repeatedly denied any knowledge of the incident.

Darlene Peterson, who was friends with both Kim and Barry, tells the *Independent* that she knew Kim had been followed and harassed by the girls in the days leading up to her death because she had gone on a few dates with a young man who had recently fathered Sissy Atkinson's baby. Peterson says Kim came into the grocery store where Peterson worked three days before her death, and Peterson warned her to be careful. Peterson says she knew the girls deserved to be taken seriously because they had followed and tried to corner her many times.

On a recent trip to Poplar, the *Independent* could not locate Sissy Atkinson, and others named in the Centurion report had either moved away or could not be found. During initial police questioning, Sissy Atkinson, Maude Greyhawk and others of their friends who were asked about their activities the night of Kim's death denied any knowledge or involvement in the crime, according to Centurion. In Centurion's more recent inquiries, investigators say, attempts to interview Sissy Atkinson have been rebuffed.

Barry is named as a suspect in one FBI report from that period, too, and numerous others were named as suspects, fingerprinted and questioned over the next three years. But despite the abun-

With the exception of Barry's confession, no witnesses placed Barry around town or anywhere near Kim the night of the murder.

In his closing arguments, Racicot downplayed the existence of the multiple footprints found at the scene, saying the police could have left them, despite the fact that the prints indicated barefoot and sandals. He also scorned the importance of the bloody palm print, saying that police couldn't rule out the possibility that it was Kim's. However, multiple police reports specifically conclude that the print belonged to neither Kim nor Barry.

Barry's confession was the centerpiece of the trial, and Racicot and Louisiana Sgt. Jay Via acted out Barry's confession before the jury. Via testified that Barry had confessed in front of his lawyer, which was later vehemently protested by Louisiana attorney Paul Kidd, who 11 years after the fact signed an affidavit saying he had met Barry only after the confession was signed.

"Paul Kidd was outraged when he found out about [the prosecution's statement that Barry had confessed in his presence]," says Peter Camiel, Barry's Centurion attorney. "When you're telling a jury someone confessed in front of their own attorney, you're saying there couldn't have been any coercion or any other tactics because the lawyer was right there, and that just wasn't true."

At first blush, Barry's confession to Kim's murder is disturbing. It offers both a motive and a means for how Barry could have killed Kim.

Responding to Sgt. Jay Via's inquiries, Barry detailed how he went swimming the day before Kim's murder and walked back to town after getting his truck stuck in the sand, according to a transcript of the confession. He said he met up with Kim later that night at the gas station and drove around and eventually parked by the river to smoke a joint and talk. He said he tried to kiss Kim while they were sitting in the truck and when she repeatedly rejected him he grew angry and picked up a 12-inch crescent wrench and started hitting her. Then he said she tried to escape out the driver's door and he went around and tackled her, choked her, threw her to the ground, and started hitting her with a tire iron. When she stopped moving, he said, he put her body in a plastic bag, dragged her to the ledge above the river and pushed her over the bank; then he threw the car keys, murder weapon and jacket into the river. Then he wiped off his fingerprints in the truck, ran toward home, stopped to burn his bloody clothing in a railroad car and sneaked home and into his bed.

The other account of that fateful day, the one Barry maintained at trial and continues to maintain today, is that he went swimming with two friends outside of town all afternoon and got his truck stuck in the sandy beach when they tried to leave. After damaging his transmission trying to get it loose, Barry got mad and walked back to town to get some help towing out the truck. But when he

got home, he says, he was tired from swimming and fed up with his friends and the truck and went upstairs to bed, deciding to deal with it all later.

His mother, Roberta Clencher, said at trial that she looked in to find her son sleeping early the next morning, and then Barry spent the day after Kim's death branding cattle at his grandparents' ranch.

But the prosecution pointed out that the alibi Barry and his mom offered wasn't foolproof, especially in light of a confession that matches part of Barry's second account and diverges in the hours leading up to Kim's death.

According to Camiel, Moscs tried to discredit the confession by saying it had been coerced, but failed to address substantial inconsistencies between the confession and the facts of the crime scene.

By trial's end, Barry says, he knew in his gut he would be convicted. Still, he was shocked when the verdict was read.

"When they actually read the verdict, it was like, wait a minute, stop, let's back up, something's wrong here," Barry says. "But you can't say nothing. You're instructed by your lawyer not to react in any way, shape or form, and so that's what you do."

Today, Barry and Centurion Ministries says the 1984 trial was severely flawed on multiple counts. Besides Racicot's repeated references to a hair that was inadmissible and linked to Barry only by a discredited scientist, they say critical evidence wasn't disclosed to the defense prior to or during the trial.

The information Centurion says was withheld includes the taped statement from Burshia, who talked with an alleged witness who Burshia said claimed to have been present when a group of girls bear Kim to death. It also included a report from Poplar resident Richard Holen, who told the police

he had been driving behind Kim's truck heading west out of town at about 2 a.m., about half an hour before Kim was killed. He said he saw four or five people sitting in the cab before it turned off into the park. In a 2002 written statement to a Centurion investigator, Holen reiterated the account he reported to Poplar police.

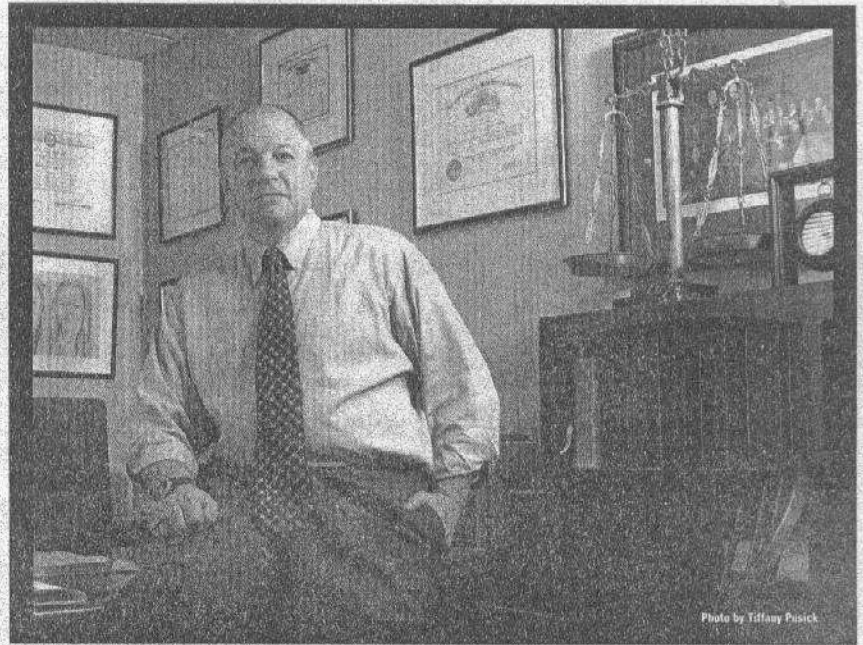


Photo by Tiffany Pusick

"People can be brought to confess to things they didn't do, and it's hard even for me to understand, but sometimes you're in a position where that's made to appear to be your only option," says Barry Beach's lawyer, Peter Camiel, in his Seattle office.

Both statements contradict the notion—essential to Barry's confession—that Kim had been with only one person when she was killed.

A close examination of Barry's confession itself reveals significant incongruities with the crime scene.

Richard Leo, an expert and consultant on police interrogations and confessions and a professor at the University of California, Irvine, was retained by Centurion Ministries to evaluate Barry's confession and case. He issued a report concluding that Barry's confession was "almost certainly (if not certainly) false and should not have been relied on or given any weight by the triers of fact who convicted him."

More specifically, Leo writes: "If one knows nothing about the facts of Ms. Nees' murder, the scenario presented in Mr. Beach's post-admission narrative appears plausible, perhaps even compelling. Once one studies the objective facts of Ms. Nees' murder, however, it becomes clear that Mr. Beach's post-admission narrative does not fit with the crime scene facts, fails to demonstrate guilty knowledge, and is replete with factual errors, physical impossibilities and statements that are completely at odds with the existing physical and medical evidence in this case."

For instance, according to Leo's findings and crime scene reports, Barry says in his confession that Kim's truck was parked next to the train bridge, right by the river, but it was actually 257 feet—almost the length of a football field—away from the river bank. Barry told his interrogators he wasn't sure if Kim was bleeding after he attacked her in the truck, but the interior of the truck was thoroughly splattered

with blood and the seat was soaked, Barry says he choked Kim but the autopsy found no such marks; Barry said Kim was wearing a brown sports jacket and plaid blouse, but she was wearing a white sweater and blue and red blazer; Barry says he pushed Kim over a ledge and into the river, but the 10-foot-high ledge at the scene is too far from the river's edge for her to have ended up in the water, and footprints were found in the mud at the river's edge; Barry says he put Kim in a plastic bag and dragged her from the truck to the river, but there was no evidence of a bag or its fragments along the drag trail; Barry says he wiped his fingerprints off the truck but 28 sets of unidentified fingerprints, four palm prints and one bloody palm print were found on the truck that match neither Kim nor Barry.

The phenomenon of false confessions is not widely understood by the public but they have been found to exist with alarming frequency, which has led to requirements in some states that all interrogations be recorded. The Innocence Project, a national nonprofit legal clinic that works to exonerate inmates using DNA evidence, reports that of its first 130 exonerations, 55 involved false confessions, while 101 involved mistaken identification and 21 involved faulty microscopic hair comparison matches. Of the 38 exonerations secured by Centurion Ministries over the years, founder Jim McCloskey says, four resulted from false confessions.

•••

Barry says his determination to free himself hardened the day he walked into prison and found himself housed next to two death row inmates.

"I made a promise to myself when I was in that situation that no matter what came my way in this facility, I would spend every day of life in here trying to live it as normally as I possibly could, as if I was on the streets," he says. "Because I believed that I belonged out there."

Barry lost his first appeal when the Montana Supreme Court ultimately upheld his conviction, finding that Barry's confession hadn't been coerced or resulted from an improper arrest. In the



Barry Beach and Kim Nees, pictured here as high-school seniors, grew up on the same block in Poplar.

years after, despite help from a series of pro bono attorneys, he was again turned away by the Montana Supreme Court, and ultimately the Ninth Circuit Court of Appeals, because Barry didn't raise certain issues—such as his ineffective counsel claim—within the statutory time limits and because he submitted no new evidence that merited revisiting the Supreme Court's previous finding that his confession hadn't been coerced.

Over the years, Barry began filing Freedom of Information Act requests on his own and spent hundreds of hours in prison researching his own case and the law. He developed a file and began sending it around the country to people he thought could help him whenever he saw a new book on wrongful conviction issues, or watched TV shows about it. In 1985, Barry says, he saw Centurion Ministries' Jim McCloskey on "60 Minutes" and sent him a letter.

"You're an innocent man sitting in prison, and you never, never give up and you try everything you possibly can, even when you're told you can't. You're fighting for your life," Barry says.

McCloskey left the business world for divinity school and founded the non-profit Centurion Ministries in 1980 after he began visiting prison inmates. He helped free his first innocent man in 1983, and since then the organization has grown to have five full-time employees. Centurion receives more than 1,000 letters seeking help each year, and satisfies itself through thorough investigation that a potential client is completely innocent of the crime—meaning no direct or indirect involvement or knowledge of the crime—before committing its resources to a case. Due to high demand and limited resources, McCloskey says Centurion can take anywhere from five to 10 years to accept a case, and once work is underway, it's taken between five and 18 years to free clients. After nine years of waiting, Barry's case was taken on by Centurion in 2000, and since then investigators Richard Hepburn and Paul Henderson have made more than 30 trips to Poplar and conducted more than 150 interviews around the country with people connected to the case. That process has only strengthened Centurion's resolve that Barry is innocent.

"We haven't learned one thing—not one thing in the field—that in any way incriminates Barry or creates suspicion in our minds," McCloskey says. "The only evidence against Barry was his confession and that confession was full of contradictions and was at odds with the crime scene. It's an obvious case of an innocent man."

Hepburn says Centurion's investigation hasn't found a single person who saw Barry out and about the small town of Poplar the warm summer night of Kim's murder.

And Centurion Ministries' investigation has also unearthed new information suggesting that Kim was murdered by a group of girls, not Barry.

A Poplar man who was 10 years old at the time of Kim's murder and lived on a hill overlooking the crime scene came forward to Centurion in 2002 and signed a statement describing what he witnessed the night of the murder. The man states that he woke up in the middle of the night to go to the bathroom and heard a girl screaming, and saw people fighting down below. He slipped on his shoes and crept down the hill and along the railroad tracks and watched from behind some bushes as a group of girls—he named Sissy Atkinson, Joanne

Jackson and Maude Greyhawk—beating Kim. "At first she was inside the truck. They dragged her out and threw her on the ground," he writes, and then they took turns hitting her with a tool. He says he saw three people drag Kim to the river, and that besides Kim's truck, three other vehicles were there. He says he didn't see Barry at the scene. The *Independent* has withheld his name due to safety concerns, and couldn't locate him for this story.

In 2003, a Poplar man named Dana Kim was stabbed to death by Tracy McGowan, who later pleaded guilty to the crime, according to the Associated Press. Centurion's investigation posits that Kim's death was linked to his bitter divorce and custody battle with Maude Greyhawk, which was scheduled for a final court hearing two days after Kim's death. Several people, including Kim's parents and siblings, told Centurion that Kim was going to reveal at that hearing that Maude had con-

ging about Kim's death, and says when he told her he believed it wasn't Barry, but other perpetrators, who were responsible. "She just said 'Duh!' She said she grew up in Poplar and never knew anyone who didn't know that," Hepburn says.

Centurion has taken this information to the attorney general's office and to Roosevelt County Attorney Fred Hofman. Hofman has facilitated Centurion's efforts by having an investigator conduct more interviews and compare, unsuccessfully, some of the fingerprints from the crime scene to a fingerprint database. He says it would take some kind of "smoking gun"—like another confession—to officially reopen the case, and that nothing discovered thus far merits that type of action.

"There are some issues that make you wonder, but at this point there's been nothing that jumps out at you and says, 'Gee, we need to make this case priority number one and get him' out of

Assistant Attorney General Mike Wellenstein, who's argued for the state against Barry's appeals since 1992, as well as against his recent DNA petition, says it's not uncommon for evidence to be destroyed following a case's first appeal, although the state can't locate records even tracking the destruction of the Beach case evidence.

Wellenstein downplays the role of the missing evidence: "Even if that evidence was there, I don't think it would make any change in this case. You have a valid confession and that's what it was based on from the very beginning."

Contacted for a response to Barry's exoneration efforts, Racicot, now the president of the American Insurance Association, seconds Wellenstein's confidence in Barry's confession.

"Barry Allan Beach confessed to the crime, so I think that, frankly, with all that history, any notion that there was somehow a mistake in the process is wanting for credibility," Racicot says.

Regardless, Barry and Camiel can point to dozens of cases across the country where confessions have proved false, and mistakes were made. With the backing of an inaccurate confession and a lack of evidence tying Barry to the crime, they hold firm to their claim that Barry's case is one such mistake.

...

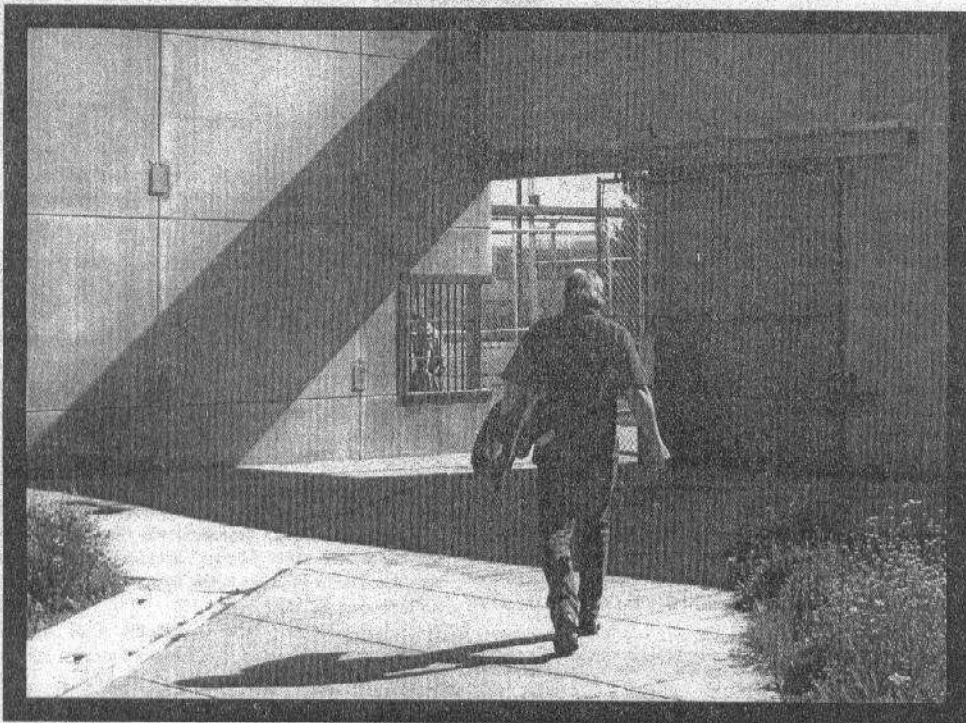
Back behind the prison walls, Barry holds his gaze steady, and one gets the sense that he's been waiting a long time to speak these words: "I would like to look you in the eye as well as Gov. Schweitzer and anyone else and tell you, I did not kill Kim Nees; I was not present when Kim Nees was killed; I had nothing to do with the murder of Kim Nees."

In mid-August, Camiel filed an application for clemency with Gov. Schweitzer. Schweitzer told the *Independent* Oct. 4 that his legal staff was still reviewing the application. Informed that Barry

hopes for an opportunity to speak to him face to face, Schweitzer says it's too early to commit to that, but notes that he offered to meet with inmate David Dawson prior to his August execution and thus, "it wouldn't surprise me that I would meet with individuals."

Eric Stern, Schweitzer's senior counselor, says he doesn't think the governor's office can or will respond to the application unless Schweitzer receives a recommendation from the Board of Pardons. In November, the Board of Pardons rejected Barry's pro se application to restructure his sentence so he might be eligible for parole; his 100-year sentence is one of the harshest sentences ever meted out in Montana for a single homicide by a juvenile, according to Centurion Ministries. The Parole Board issued a one-paragraph decision that it had found "insufficient cause" for a public hearing on his case. "In the Board's opinion, you have not satisfactorily proven your innocence of the crime..." the board's decision read in part.

Camiel knows there is some debate among state officials regarding the circumstances under which the governor can act on a clemen-



Barry Beach walks back into the minimum security portion of the Montana State Prison in Deer Lodge, where he is serving a 100-year sentence without the possibility of parole for Kim Nees' murder.

fessed her participation in Kim's death to him several times during their marriage.

Additionally, Centurion has collected many statements and letters from Poplar community members who say they've been present when Sissy Atkinson bragged about "getting away with the perfect crime" several times over the years.

"Like most people in the community, I believe Kim was beaten by several females, most of whom still live in the area. I have been at parties where they have bragged with statements like, 'we've killed before and we're not afraid to kill again,'" one letter reads. "It is frustrating for me that my friend is in jail and the real killers are walking the streets with arrogance and without remorse."

While many Poplar locals are willing to talk about their knowledge and/or beliefs regarding the girls' involvement, very few are willing to do so on the record. Over and over they cited to this reporter fear for their safety and that of their families; Poplar is a small town, they say, and they can't afford to make enemies. Centurion investigator Hepburn says this has been one of the most frustrating aspects of the Beach case. He tells a story about interviewing a woman who heard Sissy brag-

ging about Kim's death, and says when he told her he believed it wasn't Barry, but other perpetrators, who were responsible. "She just said 'Duh!' She said she grew up in Poplar and never knew anyone who didn't know that," Hepburn says.

The main active legal issue concerning Barry's case is a recent petition for DNA testing of physical evidence from the crime scene. A court order permitting DNA testing was granted in 2005 but the state says it can't locate the hair Racicot told the jury belonged to Barry, nor can it locate the bloody towel that was found near the scene, more than 100 slides with hairs from the scene, cigarette butts collected from the immediate area, or Kim's jacket. McCloskey has personally searched through every file in the Roosevelt County Attorney's office for the missing evidence, and the state has assured Centurion that neither the state crime lab nor the attorney general's files contain the evidence.

Camiel says that evidence could be a critical component to resolving lingering questions about whose DNA was present at the scene.

"If the hair that Marc Racicot was telling the jury about was DNA tested and it's not Barry Beach's, there's no doubt in my mind he would get a new trial," Camiel says. "That's one of the easiest ways to resolve this case."

cy application, but says, "we think as an executive he has that authority." He says the governor could also ask the attorney general's office to reopen the case or to lift deadline restrictions currently preventing a new court from hearing Barry's case.

Though Barry aches for exoneration, and is constantly working on legal efforts toward that end, he also says he's nervous about the prospect of reentering the free world after 24 years of institutional life and facing social stigmas he doesn't think he will ever be able to shake.

"I want to go and live my life. I want to go and do some of the things that I probably would have done in the last 24 years," Barry says, rattling off a long list of unfulfilled dreams that includes elk hunting, attending a professional football game and NASCAR race, coaching a little league team, seeing the country.

Barry laughs at the prospect of choosing what he would do first: "I probably would have my mother take me to Kentucky Fried Chicken so Mom and I could sit down for a bucket of chicken."

Friend Darlene Peterson, who keeps in weekly contact by phone and daily contact by mail with Barry,

says they talk about all the things he will have to relearn and adapt to if he is eventually released. She designed a website about his efforts and has met with state legislators in recent months about Barry's case and potential avenues for addressing it. She helped gather signatures from more than 150 of Poplar's residents on a petition urging Gov. Schweitzer to take action on Barry's behalf.

She hopes to one day soon be able to teach Barry how to drive in traffic and see for himself how the prices of blue jeans and gallons of milk have changed in 23 years. Barry's mom, Roberta Clencher, jokes about the lag that Barry will feel: "He thinks he's going to come out and wear his brown corduroy bell bottom pants and silk shirts." But there's a sadness in the joke, too, and she says she sometimes feels like she's stuck in the early '80s, when her son was young and full of dreams.

Barry still has his dreams, but 23 years behind bars have taken nearly everything else away from him, and he's pragmatic about the life that may be waiting for him on the other side of the prison walls.

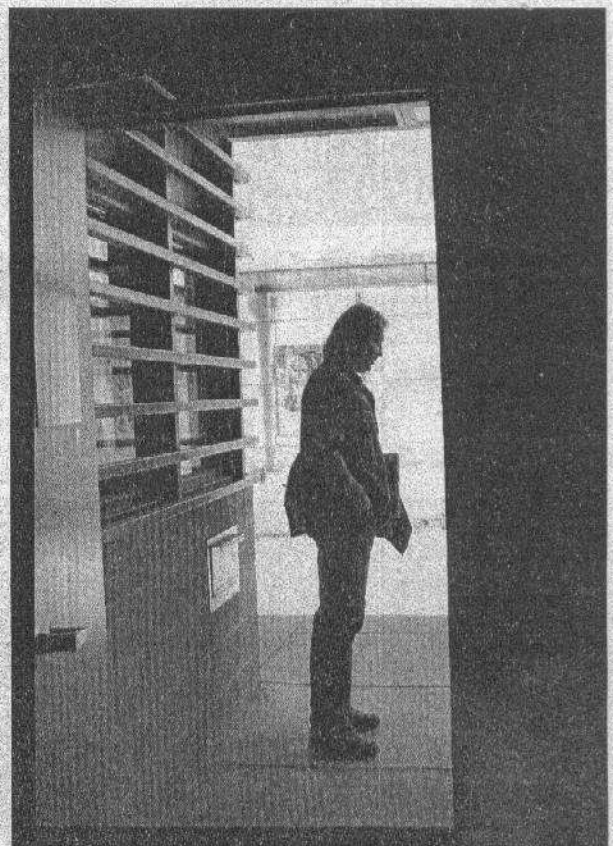
"I'm 44 years old and I've never had the chance to be married or to have a career," he says. "I don't have

a 401K to go home to; prison doesn't have a retirement plan. You don't get out of here after twenty-some years and have a secure future. Most importantly, even if I beat this and get to go home, society will never, ever accept me, because every time I go sign up for something I have to mark that little box that says I'm a convicted felon. So I'm fighting with everything I have to go back to a society that's never going to accept me."

But despite the challenges he knows stand between him and his release, and whatever comes after, Barry says he puts his trust and his hope in the truth. He says that's the one thing no one can take away.

"What I do have is something that an old traditional medicine man once told me: The truth needs no alibi," Barry says. "And I do have the truth. I've got almost 24 years of incarceration and I've never once lost sleep because of a guilty conscience, because I know that I didn't kill Kim Nees. So on the truth alone I will walk out of prison. They can call it justice, they can call it a pardon, they can call it whatever they want to call it—it's the truth." ■

jmcquillan@missoulaneus.com



"I want to go and live my life. I want to go and do some of the things that I probably would have done in the last 24 years," Barry Beach says.

the dish

\$5-\$15 and over

BLUE ANYON

Blue Canyon Kitchen • Tavern
3720 N. Reserve

adjacent to the Hilton Garden Inn
541-BLUE • www.bluecanyonrestaurant.com
Blue Canyon Kitchen • Tavern offers creatively-prepared American cooking served in the comfortable elegance of their lodge restaurant featuring unique dining rooms. Kick back in the Tavern; relish the cowboy chic and culinary creations in the Great Room; visit with the chefs and dine in the Kitchen or enjoy the fresh air on the Outdoor Patio. Parties and special events can be enjoyed in the Bison Room. Hours: M-Th 11am-10pm; Fr-Sa 11am-11pm; Sun 10am-10pm Sun brunch 10am-2pm Tavern till Mid Su-Th, 2am Fr-Sa. Located at 3720 North Reserve, Missoula 59808 adjacent to the Hilton Garden Inn. www.bluecanyonrestaurant.com \$5-\$15



Epicurean Bistro
1901 Stephens Ave.
327-8888

At the Epicurean Bistro, we use the freshest seasonal ingredients to bring world class Mediterranean and Indian cuisine to Missoula in a comfortable family bistro. Accompanying our tantalizing dishes, is a one-of-a-kind beer and wine list, delectable homemade desserts and gelatos. Our Foyer Cafe is now open daily from 3:00-5:00 serving Tapas and Desserts. Serving Lunch Tuesday-Saturday 11:00 am-3:00 p.m., Dinner Tuesday-Saturday 5:00pm-close. \$5-\$15

THE HIGGINS ALLEY

The Higgins Alley
424 Higgins
721-7757

The Higgins Alley, located downtown, is a new interpretation on a Missoula tradition offering an exceptional variety of authentic Italian dishes sure to suit even the most discerning palates. Every attempt is made to create delicious quality meals at reasonable prices. With our house made sauces, breads, pastas & Fresh Mozzarella we strive to create the freshest dining experience possible in downtown Missoula. \$5-\$15



The Mustard Seed Asian Cafe
Located outside Southgate Mall
Paxson St. Entrance
542-7333

Contemporary Asian Cuisine served in our all new bistro atmosphere. Original recipes and fresh ingredients combined from Japanese, Chinese, Polynesian, and Southeast Asian influences to appeal to American palates. Full menu available in our non-smoking bar. Fresh daily desserts, microbrews, fine wines & signature drinks. Take out & delivery available. \$5-\$15



Korean Bar-B-Que & Sushi
3075 N. Reserve
327-0731

We invite you to visit our contemporary Korean-Japanese restaurant and enjoy it's warm atmosphere. Full Sushi Bar. Korean bar-b-que at your table. Beer and Wine. \$5-\$15



Pearl Cafe & Bakery
251 E. Front St.
541-0231

Steaks, seafood, country French specialties. Breads & desserts baked fresh daily. Reservations taken for the warm & inviting dining areas, or come as you are for a light meal in the sidewalk cafe. Gorgeous wedding cakes, specialty cakes and desserts now available for your special occasions. Monday-Thursday 5-9pm, Friday & Saturday 5-10pm. \$5-\$15



Red Bird
120 W. Front Street
549-2906

A Hidden culinary treasure in the Historic Florence Hotel. Treat yourself to a sensuous dining experience, service, cuisine and ambiance delivered with creative and elegant detail. Seasonal menus featuring the freshest ingredients. Chef owned and operated. Intimate evening dining Tuesday-Saturday 5:00-9:30. Reservations recommended. \$5-\$15



Scotty's Table
529 South Higgins Ave.
549-2790

Enjoy the warm ambiance of our cozy neighborhood bistro with an urban feel.

Our chefs transport flavors from Europe and the Mediterranean offering a creative New American twist on classic fare. Featuring the freshest ingredients from local growers. Open for lunch Tue-Sat. from 11-3. Dinner served Tue-Sun. from 5-close. Beer and wine Available. \$5-\$15



Sushi Bar & Japanese Cuisine
549-7979

Corner of Pine & Higgins
Located in beautiful Downtown Missoula, serving traditional

Japanese cuisine and exquisite sushi. Sushi Hana offers a variety of traditional and local favorites, including nigiri-sushi, maki-sushi rolls and sashimi. In addition, we offer Tempura, Teriyaki and appetizers with a delicious assortment of sauces. Expanded selection of sakes, beer and wine. Open 7 days a week for lunch and dinner. \$5-\$15

\$5-\$15



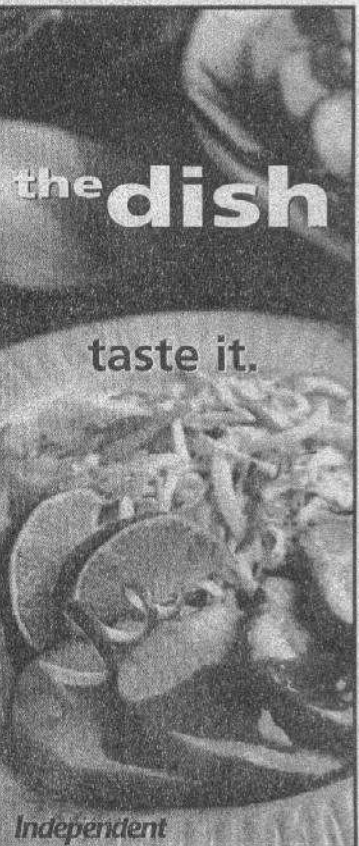
Biga Pizza
241 W. Main Street • 728-2579

Biga Pizza offers a modern, downtown dining environment combined with traditional brick oven pizza, calzone, salads, sandwiches, specials and desserts. All dough is made using a "biga" (pronounced bee-ga) which is a time-honored Italian method of bread making. Biga Pizza uses local products, the freshest produce as well as artisan meats and cheeses. Lunch and dinner, Mon-Sat, outdoor seating available. \$5-\$15



The Bridge Market
Corner of 5. 4th & Higgins Ave.
542-0002

Dine in, Drive through Delivery. Truly a Missoula find. Popular with the locals. Voted best pizza. Everything from thin crust, stone deck, hand-tossed pizza to wild salmon burritos, free range chicken, rice & noodle bowls, ribs, pasta, salads, soups and sandwiches, pizza by the slice. Unique selection of beverages including beer and wine. \$5-\$15



the dish

taste it.

Independent