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**PETITION FOR EXECUTIVE CLEMENCY**

**DONALD JAY BEARDSLEE**

**DECEMBER 30, 2004**

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#### **TO THE HONORABLE ARNOLD SCHWARZENEGGER:**

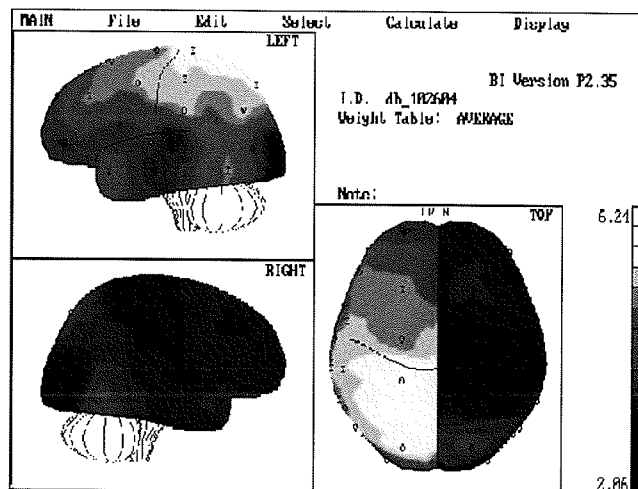
By this petition, Mr. Donald Jay Beardslee requests that, pursuant to California Constitution, Article V, section 8(a), you exercise your authority to grant executive clemency and modify his sentence of death to a sentence of life in prison without the possibility of parole.

#### **INTRODUCTION**

Executive clemency has long been recognized as an integral part of the criminal justice system with a special protective function to serve in capital cases. *See, e.g., In re Anderson*, 69 Cal.2d 613, 623 (1968). The legislative history of the provision and the practice of executive clemency by previous California Governors demonstrate that the power to grant clemency in a capital case is an “act of mercy” and an essential part of the executive function. *Phyle v. Duffy*, 34 Cal.2d 144, 160 (1949) (Traynor, J., concurring). The Constitutional Convention of 1878, in which the predecessor of Article V, section 8 was adopted, rejected an amendment that would have limited the Governor’s power to grant a pardon or commute a sentence to only cases in which “evidence is newly discovered after judgment establishing the innocence of the convicted party, or the injustice of the sentence.” 1 Debates and Proceedings of the Constitutional Convention 357, 369 (1880). Instead, the framers afforded a clemency applicant the right to present, and necessarily have considered, any factor that may justify the exercise of mercy.

Thus, it is not surprising that the decision to commute death sentences historically has focused on “(a) what has happened since the trial that may now make the penalty inappropriate; (b) what fact previously considered by the judge or jury is entitled to new weight and consideration due to subsequent developments; or (c) the existence of some mitigating factor that may have been present in the case but was previously unknown or not considered or given due weight by the trial court and jury.” Edwin Meese & John S. Mc Inerny, “Executive Clemency,” CEB, California Criminal Law Practice § 26.51, at 710 (1969).

Mr. Beardslee warrants executive clemency for three compelling reasons, none of which were available to the jury that sentenced Mr. Beardslee to death. First, the jury was unaware of the extent to which his actions and conduct were controlled by severe brain damage that impaired his functioning since birth. Dr. Ruben Gur, Director of Neuropsychology and the Brain Behavior Laboratory in the Department of Psychiatry at the Hospital of the University of Pennsylvania, recently conducted an assessment of Mr. Beardslee and concluded that he suffers from severe brain damage, which has particularly affected the right hemisphere of his brain. Exhibit (“Exh.”) 51 (Declaration of Ruben C. Gur, Ph.D) at 3 ¶6. Dr. Gur’s findings, which are reproduced as an image attached to his declaration and are copied below, are startling:



As pointedly illustrated by this image, the right hemisphere of Mr. Beardslee's brain is virtually non-functioning.<sup>1</sup> In Dr. Gur's professional opinion, the dystrophy or failed development of the right hemisphere likely was present since birth and was exacerbated by the traumatic brain injury that Mr. Beardslee experienced when he was in a serious automobile accident in 1961 and when a falling tree struck his head in 1968. Exh. 51 at 3 ¶7.<sup>2</sup>

Mr. Beardslee's demonstrable brain damage is critical to whether execution of the death sentence is appropriate. Because such information was not available to the jury, the prosecutor was permitted to argue that Mr. Beardslee was "not suffering from any mental disorder." *People v. Beardslee*, Penalty Phase Reporters Transcript ("PT") at 4339:25-26. Moreover, without conclusive evidence that Mr. Beardslee's mental deficits controlled his behavior, the prosecutor could, and did, forcefully argue that the murders were part of a cold and calculating plan to eliminate witnesses. *See, e.g.*, PT 4329-30:25-26, 1 ("The callousness with which the defendant coolly and deliberately carried out his scheme to murder Patty Gedding and Stacy Benjamin justify that decision."); PT 4338:21-22 ("Patty Gedding and Stacey Benjamin were eliminated as witnesses."). As we now know, however, Mr. Beardslee's actions were dictated by his lifelong brain damage:

The profound, likely lifelong damage to the right hemisphere of Mr. Beardslee's brain made him unable to correctly process and contextualize information. The impairment produced confusion and then paranoia under most unfamiliar circumstances, particularly those that involved social interaction with a number of different individuals. At such moments, when Mr. Beardslee's brain should have operated to put information and events into a realistic perspective, it instead was the very source of a distorted perception of reality, which was then processed by frontal lobes significantly compromised in their ability to moderate responses to

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<sup>1</sup> A normal brain appears as orange-pink in the image, as is seen in some regions of Mr. Beardslee's left hemisphere. Regions appearing in blue indicate severe impairment. Exh. 51 at 3 ¶6.

<sup>2</sup> To the extent that the State questions the presence and severity of the brain damage, counsel for Mr. Beardslee requests permission to conduct structural and functional imaging to conclusively prove Mr. Beardslee's brain defects. Exh. 51 at 3 ¶7.

subcortical, fight/flight impulses. Mr. Beardslee's inability to comprehend unexpected and changing circumstances, and flexibly integrate and respond to increasingly complex emotional stimuli, could itself be a source of confusion and panic that quickly overwhelmed him and triggered his susceptibility to mental dissociation.

These deficits and resultant behaviors were observed by Ricarda Soria at the time of the crimes. Ms. Soria described the chaos and confusion of many people arriving and leaving Mr. Beardslee's apartment, interpersonal and environmental dynamics that played to all of Mr. Beardslee's biological deficits. As the confusion and emotional tension increased, Mr. Beardslee was described as becoming strangely silent, and moving aimlessly from room to room, in a subdued and automatic fashion. Later, his actions were described as frankly unconscious. Given the nature and severity of Mr. Beardslee's neuropsychological deficits, I also would expect them to have had a significant impact on Mr. Beardslee's presentation and level of comprehension at trial. Mr. Beardslee's constricted emotional range was likely to be viewed as indicating aloofness, indifference or even callousness. The neuropsychological basis for Mr. Beardslee's affect, however, demonstrates that they were beyond his control. Exh. 51 at 5-6, ¶¶11-12.

Second, although the jury requested information from the trial court about the punishments imposed on Mr. Beardslee's co-defendants, the court refused to provide any information. PT 3783:22-24; PT 3785:9-17. Thus, the jury was left without the ability to weigh the relative culpability of the various participants in the crimes and decide whether a death sentence was the appropriate punishment for Mr. Beardslee's actions. The evidence presented in this Petition demonstrates that Mr. Beardslee's role in the crimes, when compared to those of the co-participants, does not warrant the ultimate punishment.

Third, the jury's decision to impose a death sentence was premised upon a mistaken belief that Mr. Beardslee posed a danger if sentenced to life without the possibility of parole. Indeed, the prosecutor urged the jury to sentence Mr. Beardslee to death precisely to protect "the inmates in state prison, the guards and other people among whom he would be associating with." PT 4399:18-22. The prosecutor's argument and the jury's decision are belied by Mr. Beardslee's impeccable prison record. Rather than being a danger at San Quentin, Mr. Beardslee has been a

model prisoner. In addition to being free of any rule violations, Mr. Beardslee has been characterized by guards and staff as being a hard worker who contributes to the orderly and safe functioning of the prison.

The public's support for the death penalty in principle entrusts to the Governor the power of clemency, and thereby bestows the awesome responsibility to ensure that there is nothing in an individual case that calls for staying the executioner's hand. The authority to commute a death sentence when warranted fulfills society's belief that our justice system is not only fair, but merciful. The circumstances of this case call for such an exercise of mercy.

#### I.

#### **MR. BEARDSLEE'S MENTAL IMPAIRMENTS AND THEIR RESULTING DEBILITATING AND LIFE-LONG EFFECTS WARRANT A COMMUTATION OF HIS DEATH SENTENCE.**

Donald Jay Beardslee was born in St. Louis, Missouri on May 13, 1943. Exh. 2 (Birth Certificate of Donald Jay Beardslee). He is the eldest of three children born to Lillian Alma Beardslee and Henry Cannon Beardslee. Henry was forty-two years old when Donald was born and sixteen years Lillian's senior. Lillian was Henry's second wife.

Donald was born with a congenital brain defect, the magnitude, scope, and effect of which has only recently been demonstrable. Exh. 51. The jury that decided Donald's penalty never learned about Donald's brain damage or the myriad ways in which it directed and influenced his behavior from birth. Although virtually everyone who knew Donald puzzled over his odd and socially inept behavior, only recently have the origins and explanations for his behavior been understood. As Dr. Gur describes, the organic deficits from which Donald suffers impair his ability to understand and respond appropriately to the simplest of social interactions. Exh. 51 at 5 ¶11. Faced with stressful or complex situations, Donald's severe mental impairments thwart any reasoned response. Exh. 51 at 5-6 ¶¶11-13.

Compromised from birth, Donald suffered further tragedies and torments in life that contributed to his difficulties and exacerbated his inability to cope with and adapt to increasingly complex situations as he aged. Donald tried in every way he could – often misguided, ill conceived, and poorly executed – to help others, contribute to society, and, most importantly, find help for the mental health problems he knew he possessed. Unfortunately for Donald, he rarely succeeded. His lack of success, however, stemmed not from a refusal or inability to feel emotions, appreciate some of his deficits, or to put forth his hardest efforts, but rather, tragically and ironically, from the very thing he tried hardest to mask and fix: brain damage.

Lillian had a difficult and painful pregnancy with Donald. Exh. 52 (Declaration of Donald Beardslee’s sister) at 1 ¶3.<sup>3</sup> Pictures of him as a baby attest to the abnormalities that plagued him his entire life. These pictures reveal marked facial asymmetry, which is reflective of damage to the right hemisphere of his brain. *See, e.g.*, Exh. 1 (Photographs) at 1, 6, 7, 8, 9, 10, 11. The pictures also show a happy child, who is clearly adored by his father. Exh. 1 at 2. As it turns out, Donald’s father was “the warm and affectionate parent” in the household. Exh. 52 at 2 ¶6. Henry apparently was an emotional man, who contemplated suicide after divorcing his first wife, whom he caught being unfaithful. Exh. 52 at 2 ¶6. Mental illness also affected others in the paternal family. One of Henry’s daughters from his first marriage was hospitalized with mental problems and underwent shock treatments. Exh. 13 (St. Louis County Hospital Records of Donald Jay Beardslee) at 9. Similarly, Donald’s sister sought psychiatric care when she was in her twenties. Exh. 13 at 9.

In contrast, Donald’s mother was “a very unexpressive person.” Exh. 52 at 2 ¶6. The eldest daughter of four children, Lillian grew up with virtually absent parents. Lillian’s mother

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<sup>3</sup> The declarations from Mr. Beardslee’s brother and sister are submitted under seal to protect their privacy.

was sickly so her children spent every summer with their maternal grandparents. Family tragedies plagued Lillian's family. Her paternal grandfather, who came from Germany and owned a dry goods business, committed suicide after a business failure. Her father, Adolf Schoen, also killed himself after being partially blinded in an accident.

Lillian's high expectations of Donald and rigid parenting techniques were demonstrated by her militant campaign to potty train Donald by the age of ten months. Exh. 52 at 1 ¶4. A series of pictures documenting Donald's toilet training experiences show a child not yet old enough to walk, strapped to the toilet seat and crying hysterically as he leans against the side of a wall. Exh. 1 at 3-5; Exh. 52 at 1 ¶4. The pictures are striking not only in the terror evidenced on Donald's face, but also because his parents thought to document what was clearly a traumatic event in the first place. Neither Donald's brother, who was born approximately one year after Donald, nor his sister, who was born in 1946, were subjected to this torment. Exh. 52 at 1 ¶¶1, 4.

From birth, Donald's behavior and development set him apart from his brother and sister, as well as the other children around him. His cousin Lynn described him as different than any other child she knew. Exh. 7 (Declaration of Lynne L. Stephenson) at 1 ¶2. His family uniformly describes him as "naïve," "gentle," "vulnerable," Exh. 7, at 1 ¶2, "childlike," Exh. 52 at 1 ¶3, and a "patsy," Exh. 53 (Declaration of Donald Beardslee's brother) at 2, ¶8. Donald's sister describes his peculiarities as such:

His communication was weird, he could not express emotion, he said socially awkward things and he was forever naïve. [My brother] and I grew, changed, and matured. Donald did not. All of the qualities that made him an odd ball remained throughout the years as did his childlike vulnerabilities. He seemed to stay stuck at age thirteen or fourteen. Exh. 52 at 1 ¶3.

Donald's difference plagued him over the entire course of his life.

Donald's functional abnormalities concerned and troubled his family. Everyone knew something was "off" or "odd" about Donald. Exh. 52 at 1 ¶2; Exh. 7 at 1 ¶3. Donald's younger



cousin found that his guilelessness and vulnerability invoked a desire to protect him. Exh. 7 at 1 ¶2. Donald's frailties inspired this protection from all members of his family, most poignantly from his father on his deathbed. As he was dying, Henry Beardslee begged Donald's younger brother and Donald's aunt to look after him. Exh. 52 at 5 ¶17; Exh. 53 at 1 ¶3. Although Donald's family watched Donald protectively, they also believed that if he just tried harder he could overcome his disabilities. Exh. 7 at 3 ¶11.

Pictures of Donald with his father attest to the warmth Donald's father felt for Donald and indeed, Donald had a special relationship with his father. Exh. 53 at 3 ¶10; Exh. 1 at 2. Henry had a workroom in the basement where he spent a lot of time with Donald and his brother. He had an adult-sized workbench, and he built a child-sized workbench for Donald and his brother. Exh. 52 at 2 ¶6. Despite the affection Henry showered on the two boys, Henry had a volatile temper that erupted when he was angry with his children. The basement sanctuary where Donald bonded with his father was also the room where punishments were exacted. Henry used a belt for whippings and because Donald was the oldest, he was whipped first. Exh. 53 at 5 ¶16.

Henry Beardslee possessed a tenacious capacity for punishment and retribution. Once, he poured a bowl of hot soup over Donald's head when Donald made a spelling error and then threatened to cancel the family's vacation that year. Henry was particularly critical of Donald's lack of coordination. As Donald's brother describes it,

My father bought both Donald and me baseball gloves, and he took us to the back yard to play catch with him. Donald had a very difficult time catching the ball. As hard as he tried to catch the ball, he seemed to just grab at the air and missed it every time. Whenever Donald dropped the ball, my father called him butterfingers. He called him that a lot. Exh. 53 at 1 ¶5.

Henry was a "man's man," and he expected a lot that Donald simply was not able to deliver. Exh. 52 at 3 ¶9.

Donald's physical awkwardness and lack of coordination extended beyond his inability to catch a ball. For instance, it took him a very long time to learn how to ride a bicycle. Donald could not balance on the bicycle and when his father let go of the bicycle, Donald wobbled back and forth and could not regain his balance. Exh. 52 at 3 ¶9. He walked with his knees turned inward, a noticeably different gait than others. Exh. 52 at 3 ¶9. His poor athletic coordination was all the more noticeable in comparison to his younger brother, who possessed athletic prowess and coordination. Exh. 52 at 3 ¶9. Peers and relatives mocked Donald's physical failures, calling him "goofy" and a "klutz." Exh. 52 at 3 ¶9; Exh. 7 at 1 ¶4.

As we now know, Donald's lack of coordination resulted primarily from his brain damage and the attendant physiological deficits he suffers on the left side of his body. Most noticeably, Donald suffered, and continues to suffer, from a congenital deformity of his left hand, which became noticeable to others as Donald became older. Exh. 17 (Missouri State Penitentiary Medical Records of Donald Jay Beardslee) at 2. Measured in 1971, his left palm was 8 inches and his right palm, 9 ¼ inches. Exh. 17 at 1. His brother first noticed Donald's left hand in the car one day. To him, Donald's hand seemed all bones and no muscle or flesh. He teased Donald until his mother told him to stop. Exh. 53 at 2 ¶6. Donald's sister also noticed his withered hand, but Donald's deformity was neither discussed in the family nor treated. Embarrassed by his deformity, Donald often concealed his hand in family photographs and tried in vain to compensate for it. Exh. 52 at 3 ¶10; Exh. 1.<sup>4</sup>

Donald's intellectual functioning was similarly compromised. Although of average intelligence and hard working, Donald struggled in school. He required significantly longer time

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<sup>4</sup> Photographs of Donald also illustrate his pronounced physiological asymmetry. Many of the photographs reproduced in Exhibit 1 are striking in the facial and structural abnormalities Donald possessed virtually from birth.

than other children to complete his homework and routinely needed help. Exh. 7 at 4 ¶17. Although he had difficulty reading and needed a tutor, neither of his siblings required this special attention. Exh. 52 at 3 ¶10. Donald's grades average in the Bs and Cs, which is a testament to how hard he worked. Exh. 4 (Southwest High School Records) at 1. Significantly, his verbal aptitude percentage scores are impaired and diverge greatly from his aptitude scores in space and mechanical ability. Exh. 4 at 1.

The pronounced difficulties Donald developed early in life were exacerbated by the abuse he suffered at the hands of his mother. Lillian insisted on giving Donald enemas until he was about eight years old. Exh. 52 at 1 ¶5. Every few months, she lined up Donald and his siblings and one by one took the children into the bathroom and administered the enemas. These enemas were completely gratuitous and a function of Lillian's disturbing particularities, as none of the children had digestion or constipation problems. For Donald and his siblings, this was an awful and humiliating experience. Exh. 52 at 1 ¶5.

As Donald got older, his oddities became more pronounced. Prominent among the constellation of impairments he exhibited was his social awkwardness. He tried desperately to fit into social situations, but inevitably failed. When he was trying to be part of a group, he often said inappropriate and bizarre things. His efforts led the other children to reject him. He was teased, ridiculed, and called names like "klutz," "stupid," and "gay." Exh. 7 at 1 ¶3. As his cousin Lynne describes it:

Regardless of what mean things the other children did to him, Don just took it. He could not defend himself and [his brother] and I had to protect him. We told other kids to leave him alone, but the teasing did not stop. There were many times we had to stick up for him because he could not stick up for himself. The name-calling made Don upset, but he never retaliated against the other kids. He would just become sad and quiet .... ¶¶ Because of Don's awkwardness, he really did not have any friends. He mostly tried to hang out with his sister's and brother's friends. Even then, he did not really fit in with the other kids. Exh. 7 at 1, 2 ¶¶4, 7.

Donald's inability to perceive social cues often lead him to say the wrong thing in situations where he was forced to act spontaneously. Exh. 52 at 4 ¶13.

Donald also experienced facial ticks and dissociative states from early in his childhood:

He often smacked his mouth or licked his lips repetitively. His left eye was droopy. He also frequently and repeatedly jerked his head in one direction. Everyone noticed this oddity about Don. Strangers stared at him and family members told him to stop. When he was told this he appeared unaware that he had been doing anything odd at all. These behaviors were random and they did not seem to be connected to the events going on around Don. Eventually we got used to these behaviors because they were so much a part of who Don was. Exh. 7 at 2-3 ¶10.

Donald frequently "zoned out" or dissociated, and often appeared in a trance, oblivious to others who might walk into the room. Exh. 53 at 3 ¶11. Donald's siblings and cousins describe him as lost in his own world, sometimes with his mouth hanging open and his eyes glazed over. Exh. 7 at 2-3 ¶10. Occasionally, when talking to people, his eyelids drooped as if limp for a few seconds. Exh. 52 at 5 ¶16.

Perhaps most symptomatic of Donald's debilitating brain damage are his long-standing inability to emote and affect modulation in his voice to connote both pleasure and sadness. Family members knew Donald was experiencing emotions, but he did not share them either by his words or his actions. Exh. 7 at 3-4 ¶16. He did not cry, and family members felt it was often impossible to tell if he really felt things at all. To an outsider, he was perceived as keeping all of his feelings inside. Exh. 13 at 9. Donald was not cold or unfeeling, however, but rather severely impaired in his ability to express emotions. For instance, he "appreciated when other people were sad, and although he had problems reacting appropriately, his actions and his attempts to sympathize, showed he was sad for them." Exh. 7 at 2 ¶9.

Donald's affect further exacerbated his ability to connect and communicate. When conversing, Donald skipped around topics a lot and experienced difficulty focusing on a topic for

very long. Exh. 7 at 3 ¶14. His tone was very flat and monotone and he typically responded with one-word answers. Exh. 52 at 5 ¶16. These pronounced behavioral characteristics, combined with a myriad of other deficits resulting from his severe brain damage served to ostracize Donald from his peers. Exh. 7 at 3 ¶14 (“This made him seem unemotional, even though he really was trying to connect with you.”).

Sadly, Donald has some understanding of his differences and their effect on his relationships with others. He grappled with ways in which he could fit in and belong. He watched how people acted and then tried to mimic what they did, often with awkward results. Exh. 53 at 1 ¶4. As his sister noted, “all the kids I knew adjusted their behaviors to situations, but Donald clung to behaviors and engaged in them regardless of the situation.” Exh. 52 at 4 ¶12. “He just wanted to fit in, but was not able to do so.” Exh. 53 at 1 ¶4.

Donald’s failures did not engender resentment or bitterness. On the contrary, Donald was “sweet, gentle or caring.” Exh. 7 at 2 ¶9. He uniformly avoided confrontations and when relentlessly mocked, instead of reacting with anger, he became disappointed, frustrated, and sad. Exh. 7 at 2 ¶6. The only time his brother – who describes Donald as one of the most passive people he has known – saw Donald defend himself is when their father forced him out of the car and made him confront a peer who had tormented and ruthlessly teased Donald. Exh. 53 at 2 ¶17. Donald never defended or stood up for himself in any situation. Exh. 52 at 5 ¶15.

Because of Donald’s intense desire to belong, but biological inability to understand social cues or defend himself, he was vulnerable and easy prey for anyone looking to take advantage of him. People who know Donald best have consistently described him as a “patsy.” Exh. 52 at 6 ¶21; Exh. 53 at 2 ¶8. As his brother describes him, Donald was a born target:

We had to look out for Donald, just to make sure that no one was taking advantage of him because he was such an easy mark .... He was a target and victim in many ways. Girls dated him because he was in the military academy,

which gave them access to the school's dances and other social events. They used Donald so that they could go to the dance and meet other guys. I am not sure if Donald ever knew what was really going on. Exh. 53 at 2 ¶8.

Donald could not figure out simple, childish card tricks that others easily deduced right away. Instead, he continued to be amazed and puzzled. Exh. 7 at 3 ¶13. Donald stayed childlike as the years went on and as others "grew older and ... developed more complex ways to communicate with and express emotions to others, Donald stayed stuck at age ten." Exh. 7 at 5 ¶20.

Not surprisingly, given Donald's profound deficits and inability to understand complex social situations and adapt his behavior accordingly, his judgment was abysmal. A typical example of this was the time he, his brother and his brother's friend rode their bikes to the outskirts of St. Louis. As the sun was setting, his brother began to worry because there was no way that they were going to be able to make it all the way home before dark. Donald determined that the best thing to do was to find a house and ask whoever lived there to allow them to spend the night. Donald believed that when they awoke in the morning they could finish riding home. Donald, without any pause or hesitation, asked a man who they encountered if the boys could spend the night with him. Fortunately, the man suggested that he call their mother instead. Exh. 53 at 6-7 ¶22.

Donald's father died on May 7, 1954, six days before Donald's eleventh birthday. Exh. 3 (Death Certificate of Henry Cannon Beardslee). This was the defining traumatic event in Donald's life. Approximately three to four years before Henry died, he was diagnosed with colon cancer. He had several operations and long hospital stays. Watching him die was excruciating for the family and the sight of his father bedridden tormented Donald and his siblings. Exh. 53 at 3-4 ¶12. During the last few months of his life, he was convalescing at

home until he died during the night. Lillian had his body immediately removed from the house and did not tell the children he had died until they came down from their rooms in the morning.

Donald and his siblings suffered immeasurable grief and fear upon the death of their father. As Donald's brother stated,

After our father died, we felt like all of our protection was gone. There was a new vulnerability in all of us kids.... We did not understand what had happened and no one explained it to us. One day there was love and laughter in our home and then all of a sudden our father was gone.... I had horrible nightmares after my father died and I would wake up in the middle of the night in a cold sweat. Exh. 53 at 4 ¶14.

In a home where the only affection given to Donald came from his father, life for Donald became bleak. Henry's death fundamentally altered Donald. His brother noted that Donald was at his happiest and most content when Henry was still alive. Exh. 53 at 3 ¶10. When Lillian told Donald that his father had died and was no longer in the home, Donald withdrew inside of himself. Exh. 52 at 5 ¶17. For the next year, Donald "shut down" and retreated inside of himself, becoming even quieter and more displaced. Exh. 7 at 4 ¶18; Exh. 52 at 4 ¶17.

Lillian did nothing to help her children cope with their father's death, and, in fact, shut them off from expressing their grief. She forbade them from attending their father's funeral and Henry was never again discussed within the family. Exh. 53 at 4 ¶13. She did not keep his memory alive for the children. On the contrary, on one occasion Donald's brother caught her throwing all their father's belongings in the garbage can. When confronted, she denied throwing it away, but nevertheless did not remove his belongings from the garbage can. Seeking to keep some tangible remembrance of their father, Donald's brother enlisted Donald and his sister to retrieve the items and bury them in a secret place, where the elements eventually destroyed all that they had tried to save. Exh. 53 at 4 ¶13.

Henry's death forced Lillian to work to care for her three young children. Exh. 53 at 4 ¶15. As a consequence, Donald and his siblings spent much of their time alone and unsupervised. Because Donald was the eldest, he was designated as man of the house. This was a role that Donald's profound mental impairments made him ill-equipped to handle and he struggled trying to live up to his mother's expectations but failing despite all of his efforts. Exh. 53 at 3 ¶10.

Eventually, Lillian's sister, Lynn, came to live with Donald and his family. Like Lillian, she worked full time but she helped out with the children when she came home from work and took care of the house on the weekends. Known as the "witch" of the family, Lynn took on many of Henry's responsibilities and quickly established herself as the disciplinarian in the household. Exh. 52 at 2-3 ¶8. She was very strict and rigid with the children. She screamed at them when they did not behave precisely as she expected. Exh. 52 at 2-3 ¶8. She regularly beat the children for the slightest infractions and her temper was quick to rise. Exh. 53 at 4 ¶15. She sat over the children as they did their homework and screamed and yelled at them when they made mistakes. Exh. 52 at 2 ¶7. Even Lillian was uncomfortable with Lynn, but she was too fearful of Lynn to challenge her authority. Lillian could not bring herself to ask Lynn to leave and she remained with the family for eight years. Exh. 52 at 3 ¶7.

When Donald was fifteen years old, his mother sent him away to Western Military Academy in Alton, Illinois. Lillian was worried that he did not have any male influences in his life and thought that a military academy would be good for him. Exh. 52 at 5-6 ¶18. The experience for Donald and his brother, who later joined him, was traumatic. According to Donald's brother, the U.S Marine Corps was a "cakewalk" compared to the life at the academy. Exh. 53 at 5 ¶17.



The military academy was not run by mature, responsible adults, but rather by senior classmen who lived to humiliate the underclassmen, and whose abuses were tacitly permitted. Exh. 53 at 6 ¶ 20. Senior classman employed various methods of intimidation and hazings to torture cadets like Donald. They instigated “blanket parties” in which they buried cadets under a blanket and then beat them. Exh. 53 at 6 ¶ 20. At mealtime, cadets were forced to keep their arms, resting on one another, out in front of them above the table. If a cadet’s arm dropped, he was punished. Exh. 53 at 6 ¶ 20. A hot fork heated up in a toaster and applied to a cadet’s skin was another method of abuse frequently employed. Exh. 53 at 6 ¶ 20. Beatings by upperclassmen were accepted without resistance or complaint simply because that was the culture of power and control. Exh. 53 at 6 ¶ 20.

Bereft of social skills, physical prowess, and the ability to navigate, manage, and respond to complex social situations, Donald suffered degradation and trauma in this harsh environment. Exh. 53 at 5-6 ¶ 18. Weak and vulnerable, Donald was an easy target for ruthless boys, and he was teased, taunted and beaten during the three years that he spent there. Exh. 52 at 5-6 ¶18. Even his younger brother, who was sent to the academy the following year, had to intervene to protect his older brother. Exh. 52 at 5-6¶ 18; Exh. 53 at 5 ¶18. His school performance continued to decline as his mental deficits placed him further behind his peers. He scored mostly C’s and D’s (designated as “M” and “P” in the records). Exh. 5 (Western Military Academy Records of Donald Jay Beardslee) at 1. Significantly, when he was 17, and presumably a junior, his score in the Iowa Reading test placed him at the 7.9 grade level. Exh. 5 at 1.

Donald escaped military school whenever he could, frequently hitchhiking back to his mother’s home. Older men routinely picked up Donald and sexually used him. Exh. 52 at 7 ¶23. Donald ultimately withdrew from military school on May 28, 1961, shortly after his eighteenth birthday.

A few months later, on August 4, 1961, when Donald was eighteen years old, he was in a head-on collision with another vehicle. Exh. 10 (Missouri State Highway Patrol Accident Report) at 1. He sustained a compound leg fracture, head injuries, lost several teeth and was hospitalized in traction for several months. PT 4027:7-13. In keeping with Donald's inability to emote, he remained reactionless to the traumatic event and the tremendous pain his severe injuries caused. Exh. 52 at 5 ¶ 16. While he was hospitalized, an adult male prowling the hospital's halls found Donald and sexually molested him.

After his car accident, Donald was unable to return to school and he was home-schooled by a private adult male tutor. Donald had always been ostracized because of his social awkwardness, but the injuries sustained after his accident further isolated him. He did, however, put forth his best effort in academic pursuits. On June 13, 1962, Donald successfully graduated from Southwest High School, although he ranked in the lower half of his class. Exh. 4 at 1.

A year after his car accident, on August 17, 1962, Donald enlisted in the United States Air Force. Family members puzzled over this choice. Exh. 7 at 4-5 ¶19. Although he did well in structured environments, "because he operated best when there were fixed rules that he could follow," family worried that Donald would struggle in that environment. Exh. 7 at 4-5 ¶ 19.

Donald was sent to Lackland Air Force Base in Amarillo, Texas, for basic training. He graduated in October of 1962 and he received his advanced training in aircraft maintenance. On January 17, 1963, he was assigned to Bunker Hill Air Force Base in Indiana as an aircraft mechanic. Exh. 11 (United States Air Force Personnel Records of Donald Jay Beardslee, 1963-1968) at 6. He stayed there until he was transferred to the 343rd Consolidated Aircraft Maintenance Squad based at the Duluth International Airport. He remained stationed in Duluth until he was honorably discharged on October 6, 1966. Exh. 11 at 6.

As it turned out, Donald functioned fairly well in the military, primarily because the rigid rules provided a comprehensive structure that did not ask more of Donald than to follow directions. His relative success under conditions that do not require him to interpret complex situations is amply demonstrated in his military records. Donald's first performance evaluation, in September 1963, describes him as performing at below average levels in some categories. For instance, he was deemed to know "only the routine duties." Exh. 11 at 12. More specifically, his superiors noted that Donald "was developing confidence in his aircraft maintenance abilities as his training has progressed. With proper off job guidance and close supervision on the job Airman Beardslee can develop into a definite asset to the United States Air Force." Exh. 11 at 13.

Donald's performance improved after an additional year's exposure to the job requirements and the military strictures. Still, Donald's executive functioning deficits distinguished him as a follower and not a leader. A 1964 report highly compliments Donald on his ability to follow direction, but did not characterize him as taking a leadership role, developing improved management procedures, seeking out additional responsibilities, or serving as an excellent example for others to follow. Exh. 11 at 10. His 1965 yearly report further evidenced Donald's capacity to flourish in a rule-bound environment, noting that he "always works hard to insure that his work is satisfactory.... He is a good team worker." Exh. 11 at 8. Donald scored highest in his ability to get along with other people, the degree to which he accepts authority and meets the everyday stresses and strains of military life, and in the performance of his duties. Exh. 11 at 9. Donald's performance evaluations reflect the degree to which Donald can excel and perform in an environment where he is divested of decision-making power, is not asked to interpret and react to complex social cues, but rather merely asked to follow orders. See also Exh. 51 at 6 ¶13 ("Mr. Beardslee has at times ameliorated the

dysfunctional impact of his impairments through the containing influence of a structured environment governed by clearly defined rules and predictable expectations.”).

Despite Donald’s over-all relative success in the military, his mental impairments affected his behavior and raised concerns from his supervisors. Although Donald followed directions religiously, his personal appearance and dress were subpar.<sup>5</sup> Exh. 11 at 8. On October 4, 1963, approximately one year after joining, correspondence to Air Force Administrators reflected that Donald had “personnal [sic] problems which need evaluation.” Exh. 11 at 32. Two weeks later, on October 18, 1963, the captain of the base medical service issued a report recommending that he be temporarily withdrawn from his duties because of ‘severe emotional problems.’ Exh. 12 (United States Air Force Medical Records of Donald Jay Beardslee, 1963-1968) at 15. More specifically, medical reports note, “airman is experiencing sever emotional stress of a situational type. He is handling the problems well, but the stress is of overwhelming magnitude. For now he is to be relieved of duties ... but will be able to participate in the program at a future date.” Exh. 12 at 6.

On January 20, 1965, Donald suffered a life threatening injury when a dead tree fell and hit him on the head. Exh. 11 at 30. The incident was described as follows: “[Donald] was in a sitting position, with his legs folded up under him and with the tree still resting on [his] head. The tree that struck the airman was about six (6) inches in diameter. [Donald] was moaning and had blood running from his nose.” Exh. 11 at 39. Two days later, he was still unconscious and unable to correspond. Exh. 11 at 31. Donald was hospitalized in a civilian hospital for over three weeks before he was stable enough to be transferred to the Duluth Air Force Dispensary

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<sup>5</sup> A disheveled appearance often is symptomatic of a major mental illness. In Donald’s case, this is consistent with his subsequent diagnosis of a disorder on the schizophrenia spectrum.

with a diagnosis of skull fracture and frontal lobe injury. Exh. 12 at 9. Donald's neurological examination revealed significant abnormal findings:

Left facial paralysis central, anosmia (loss of smell) right sided, left biceps reflex and the left triceps are slightly hyperactive. Diplopia (double vision) in all gazes with a question of lateral nystagmus on both sides. Gait: Patient has a wide base and somewhat of a staggering nature to his gait.

Exh. 12 at 10.

Donald had a prolonged recuperation from his traumatic brain injury, marked by significant post-traumatic symptoms and setbacks. Over a year later, on April 12, 1966, he was evacuated by air for a neurosurgical consult for post-traumatic encephalopathy coupled with double vision. Exh. 12 at 7. The persistent headaches, dizziness, and lost senses of taste and smell that Donald continued to suffer well after the head injury, strongly indicate lasting brain damage that necessarily exacerbated Donald's congenital defects. Exh. 51 at 3 ¶7. Singly, the injuries to Donald's frontal lobe wrought by the tree-felling incident were significant enough to compromise his abilities to understand, manage, and react appropriately to complex and stress inducing situations. Combined with Donald's profound cerebral dystrophy, these injuries created severe and striking functional deficits. Exh. 51 at 3-5, ¶¶8-11.

Shortly before Donald was discharged from the Air Force, he married his only wife, Karen (Kip) Ann Hansen. They married on June 18, 1966, in St. Louis. Exh. 6. (Application for Marriage License and Marriage License for Donald Jay Beardslee and Karen Ann Hansen, June 1966) at 1. They lived with Donald's mother and according to Donald's sister, Kip never lifted a finger to help with the housework. Exh. 52 at 6 ¶20. The marriage only lasted two years. Donald never married again.

Donald was employed by Moog Industries, where he had been employed for close to two and one half years, and working as a machinist when he was arrested for the murder of Laura

Griffin. Exh. 16 at 2. Shortly after turning himself into the police, Donald was admitted to the St. Louis County Hospital on a suicide watch. Exh. 13 (St. Louis County Hospital Records of Donald Jay Beardslee, January 1970) at 8. The admitting note states that Donald “entered the hospital because he wanted help,” Exh. 13 at 8, exemplifying Donald’s life-long campaign to plead for psychological counseling and guidance for his mental impairments. Believing something was wrong with his brain and his functioning, but incapable of identifying and or fixing it, Donald constantly and consistently sought treatment for his problems. It is a tragic irony that on one hand, Donald’s cognitive strengths explain in many ways why and how he was able to mask the true depth of his deficits throughout much of his life and on the other, provided him with an insight into his impairments that made him feel damaged and abnormal. More tragically, Donald’s repeated pleas for help largely went unanswered or ignored by the very institutions designed to provide Donald with opportunities to reform himself.

While in the St. Louis County Hospital, Donald was medicated with Librium, Elavil, and Chloral Hydrate. Exh. 13 at 14-15. A psychological evaluation performed on January 14, 1970, noted Donald’s deficits in attention, a tendency towards concreteness, and a “low self-concept and strong feelings of impotence, e.g., he sees himself as having relatively little control over what goes on in his world or what happens to him”. Exh. 13 at 26-27. More expansively, the report notes:

On an objective more easily controlled instrument, Mr. Beardslee produced an almost classic paranoid Schizophrenic profile. There is little or no reason to believe that he was malingering or admitting to too many symptoms. Although behaviorally, he did not appear psychotic, there was much evidence of the presence of bizarre ideation, a paranoid-like suspiciousness, and a tendency for unbridled aggression. In addition, there were some depressive indications, but not to the point that this would be a major part of his diagnosis. Exh. 13 at 27.

Based on Donald’s initial plea, the presiding judge ordered Donald to undergo a psychiatric evaluation at Fulton State Hospital. While there, Donald expressed confusion over

certain aspects of the crime and did not recall salient features of the crime scene such that he did not know whether he committed the crime at all. Exh. 14 (Fulton State Hospital Medical Records of Donald Jay Beardslee, January – March, 1970) at 2. Noting his flat affect and slightly depressed mood, one physician’s psychiatric impression was Schizoid personality and or schizophrenia, residual type. Exh. 14 at 3. Yet another doctor read his MMPI profile (Minnesota Multiphasic Personality Inventory) as “being associated with traits such as guilt, feelings of inferiority, and inadequacy, lack of confidence and particularly, attacks of anxiety, tension, and depression when faced with life stresses.” Exh. 14 at 6.

A month after returning from Fulton State Hospital and having been deemed fit to be tried, Donald was sent to the Alexian Brothers Hospital for examination. There, he was diagnosed as suffering from schizoid personality with brain damage. Exh. 15 (Alexian Brothers Hospital Records of Donald Jay Beardslee, May-June 1970) at 1. Significantly, some periods of possible dissociation were noted in the past, ranging from a few minutes to a few hours, as well a “long involved history of behavioral disorder, brain damage and some episodes of bizarre behavior. Exh. 15 at 3, 7.

An examining doctor elaborated:

Past history indicates this patient has a lifelong pattern of a very immature, impulsive individual with very poor judgment. He has always been a detached withdrawn person who cannot relate to other people, with considerable depression, isolation and withdrawal. ... Although EEG and psychological testing are within normal limits, these are both insensitive instruments in eliciting brain damage. There has been definite brain damage following a severe cerebral concussion or contusion. ... Diagnosis: 1 - Schizoid Personality; 2 - Brain damage. This is a very withdrawn schizoid patient with a history of definite brain damage which is intensified by the use of alcohol. The patient evidently committed a very bizarre unprovoked homicide when under the influence of alcohol. It is felt that his basic personality deficit combined with the brain damage and alcohol resulted in the homicide. Exh. 16 (Letter from Murray E. Finn, M.D., to Donald H. Clooney, August 14, 1970) at 1-3.

Donald's capital penalty phase jury never saw the reports nor heard the conclusions drawn by the various physicians who examined Donald that speak to his major mental illness and the existence of brain damage. More critically, the jury never heard that the bizarre behaviors and inappropriate affect that define Donald's interaction in the world stem in large part from the cerebral dystrophy and frontal lobe deficits. Exh. 51 at 5-6 ¶¶12-13. Dr. Gur's conclusions, consistent with earlier clinically significant observations, thoroughly discredit the depiction of Donald as a cold-blooded, remorseless killer manufactured by the state and relentlessly emphasized during Donald's penalty phase.

On December 8, 1970, Donald plead guilty to the Missouri homicide and was sentenced to nineteen years in prison. On December 11, 1970, Donald was committed to the Missouri Department of Corrections after receiving a sentence of nineteen years. A month later he was assigned to work at the hospital at the Missouri State Penitentiary in Jefferson City. Exh. 24 (Missouri Department of Corrections Records) at 1.

As in the military, Donald performed very well in the structured environment of prison. Much of his exemplary conduct while incarcerated is set forth in more detail in Section III, but some of the highlights are worthy of noting here. In 1971, the chief medical officer supervising Donald at the hospital described him as pleasant and congenial. Exh. 24 at 1. In his performance evaluation Donald was evaluated as a capable worker with a good attitude. Exh. 24 at 5. In the same year, his correctional caseworker stated that Donald had made an excellent institutional adjustment. Exh. 24 at 22. Donald's institutional record is excellent throughout the seven years that he spent in the Missouri State Penitentiary.

Although the evaluations speaking to Donald's adherence to the rules and regulations praised his discipline free conduct, Donald's psychological evaluations noted his impaired neurobiological and psychiatric functioning. One illuminating analysis is as follows:



This man has been described in the chart as being of above average intelligence and thus capable. This may be, however, it should be noted that he achieves at the ninth grade level even though he has completed high school. ... First of all, the inmate is an extremely cautious, uncertain, and hesitant individual. He is fearful of making a decision, does not like to commit himself, and arrives at solutions only after much rumination. ...¶ The inmate is not at all comfortable when in the presence of others. ... He wonders if they simply tolerate him and thus mask their dislikes or criticisms of him. ... It is recommended that some consideration be given to psychiatric intervention at the time he is paroled. ... Prognosis is judged to be reasonably good if psychiatric intervention takes place and if there can be some controls exercised with respect to drinking. There is some suggestion that his tolerance for alcohol is low. Exh. 18 (Psychological Assessment of Donald Jay Beardslee by Richard B. Cravens, Ph.D., December 23, 1972) at 1-4.

The prospect of psychological counseling was raised with Donald, and once again, he embraced the opportunity. An evaluation conducted in 1976 states, "It has been suggested that he seek psychiatric care and counseling; he eagerly embraces this idea. He started some within the institution, but was unable to continue due to the lack of available personnel. He now verbally states that he wants 'to find out about myself, why the incident happened, and try to prevent anything of his nature or any other antisocial action from occurring in the future.'" Exh. 19 (Psychiatric Assessment of Donald J. Beardslee by Henry V. Guhleman, Jr., M.D., January 5, 1976) at 2.

Donald was paroled on July 11, 1977. In a parole agreement with the State of California, Donald was released and moved to San Mateo County to live with his mother until he could establish his own residence. As eagerly requested by Donald and urged by Missouri Prison officials, Donald initially received psychological counseling, consisting of three to four sessions. Unfortunately, his counseling was abruptly terminated after a few months. *People v. Beardslee*, Guilt Phase Reporters Transcript ("RT") 4139:18-24.

Despite the lack of needed mental health assistance, Donald diligently sought to fulfill the conditions of his parole. After several short-lived jobs, Donald found his niche in April 1979,

when Hewlett Packard Corporation of Palo Alto hired him as a fabric operator. Exh. 23 (Hewlett Packard Records of Donald Beardslee, 1979-1981) at 1. Donald eventually rented a one-bedroom apartment in Redwood City. Exh. 25 at 1-6. Donald was given high performance evaluations at Hewlett Packard across all categories of evaluation. Additional comments are that Donald has performed above average during his first three months of employment. Exh. 23 at 2-8. For example, one comment states: “Don, for the first three months at HP, you have been an above average performer. You’re eager to learn and have a strong desire to do a good job, and do most of the time. You have been a great help to the section with the support you’ve given us in overtime.” Exh. 23 at 2. As noted in Section III, Donald’s parole adjustment was equally positive. Exh. 25 at 6.

Donald had few friends, but the friends he had valued his thoughtfulness and dedication. He did not engender fear and, if anything, pity for his palpable loneliness. Exh. 8 (Declaration of Eileen Young) at 2-3. Eileen Young characterized him as very sensitive, gentle, and always very polite. Exh. 31 (Transcript of Interview of Eileen Marie Young) at 2. She further described him as being “very big on trying to help people who had problems.” Exh. 31 at 6. Her sentiments are echoed by Tyd Palmer. Exh. 9 (Declaration of Gary “Tyd” Palmer) at 1-4.

Not surprisingly, given his brain deficits, to the extent Donald had work difficulties, they arose when he started to hurry or was unsure about a job. Exh. 23 at 8. Donald’s stellar job evaluations abruptly changed in April 1981, which also not surprisingly corresponds to the time that Ricki Soria was living with Donald. Exh. 23 at 9-10. Ricki’s helplessness fed into Donald’s naiveté and guileless. As detailed in Section II, Donald’s debilitating mental impairments and his profoundly poor judgment lured Donald into contact with Ricki Soria’s cohorts and ultimately to his involvement in the crime. As we now know, Donald’s involvement in the crimes was directly attributable to his inability to appreciate the complex social situation, react

accordingly and consciously to the traumatic events, or engage in appropriate self-protective mechanisms. Instead, as he had been for his entire life, Donald was again the “patsy.”

Psychological testing not disclosed to Donald’s penalty phase jury but conducted while he awaited trial is consistent with prior reports in documenting Donald’s major psychiatric and neurobiological disturbances.<sup>6</sup> On a MMPI conducted in 1983, Donald’s profile was synonymous with paranoid states and paranoid schizophrenic reactions. Exh. 20 (Psychological Evaluation of Don Jay Beardslee by Alex B. Caldwell, Ph.D., August 24, 1983) at 2. Describing Donald’s judgment, Dr. Caldwell noted, “[it] appears uneven with occasional lapses of forethought and breakdowns of his impulse control.” Exh. 20 at 1. A subsequent MMPI confirmed that Donald’s thinking is disordered and his profile does not match sociopathic profiles. Exh. 21 (Minnesota Multiphasic Personality Inventory of Beardslee, March 13, 1984). Lest there be any doubt of the magnitude and scope of Donald’s impairments, a psychological evaluation conducted at San Quentin, after Donald was sentenced to death, indicated that evaluating psychologist “suspect[ed] that during periods of extreme stress, he may present with transient psychotic symptoms and may become at risk for self-mutilation or suicide.” Exh. 22 (Psychological Evaluation of Donald Jay Beardslee by Maurice J. Lyons, Ph.D., May 1, 1984) at 1.

This compelling and comprehensive picture of the biological bases that inform and determine Donald’s functioning in the world coupled with the rich social history information about Donald’s life previously not presented to the jury provides a more honest, nuanced, and

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<sup>6</sup> Contrary to the District Attorney’s presentation of Donald as a cold, calculating threat to society during Donald’s trial, he was most agreeable to permitting Donald to remain uncuffed during his lengthy testimony in Frank Rutherford’s trial. Indeed it was disingenuous of the prosecutor to present Donald as a terrifying menace during his trial while explicitly acknowledging, along with Officer Buchalter, that Donald posed no threat to the security of the courtroom and all participants. Exh. 39 (Excerpts from Preliminary Hearing in *People v. Cleo Frank Rutherford*, reporter’s transcript pages 1281-82) at 1-2.

complex understanding of Donald's action with respect to this crime. Without this critical understanding, the jury's decision was incorrect. Commuting Mr. Beardslee's sentence not only ameliorates this injustice, but also recognizes the powerful and debilitating effects of severe brain damage.

## II.

### **CLEMENCY IS WARRANTED IN THIS CASE BECAUSE MR. BEARDSLEE'S PUNISHMENT DOES NOT REFLECT HIS RELATIVE CULPABILITY AND IS UNJUSTLY SEVERE COMPARED TO THE PUNISHMENT RECEIVED BY OTHERS INVOLVED IN THE CRIMES.**

The death sentence Mr. Beardslee received is disproportionate to his level of culpability, and is strikingly inconsistent with the punishment received by those who conceived, orchestrated, and carried out the crimes in which he inexplicably became involved. Of all those who participated in the crimes that led to Mr. Beardslee's death sentence, his actions made the least sense. He did not know the victims, had nothing to do with the plan Frank Rutherford and Ed Gedding hatched to kill Stacey Benjamin and Patty Gedding, and had no reason to be involved in the events that led to their deaths. Though evidence of mental problems suggested at the time of his trial provided some explanation for this otherwise puzzling behavior, the pervasive and catastrophic brain damage revealed in recent evaluations make tragically clear the injustice of executing Mr. Beardslee, where his actions and reactions over the course of the crimes was largely a result of pronounced brain dysfunction and major mental illness.

In stark contrast to Mr. Beardslee's impaired functioning and death sentence are the calculated activities of those who initiated and propelled the events that resulted in two deaths, and the dismissed charges, plea bargain, and life sentence they received. Barring clemency, the injustice of these disparities will culminate in the State of California taking Mr. Beardslee's life on January 19, 2005.

During trial, the prosecutor perpetuated a misinformed and misleading view of Mr. Beardslee, arguing that Mr. Beardslee “is an extremely dangerous and merciless individual. He is, in short, a cold-blooded killer without compassion who may kill again for the slightest provocation. The death penalty will certainly deter him from ever killing again.” PT 4337:5-8. This description, as well as the justification for taking Mr. Beardslee’s life when the other participants were spared, rests on four primary arguments encapsulating Mr. Beardslee’s involvement in the crimes: (1) he was more assertive in plotting and initiating both crimes; (2) he was more culpable because he was present at both crimes and delivered the fatal blows; (3) he was more calculating in attempting to avoid detection and cover up the crimes; and (4) his lack of remorse set him apart from the rest and warranted the most extreme penalty. A related, but separate factor – Mr. Beardslee’s plea thirteen years earlier to second-degree murder – was emphasized repeatedly to establish his extreme dangerousness.

Each of these arguments and characterizations represent a grave misunderstanding of Mr. Beardslee’s mental state, mental functioning, and the facts related to the crimes for which he was convicted. A more complete view of Mr. Beardslee’s impairment and background, the events surrounding Stacey Benjamin’s and Patty Gedding’s deaths, and the backgrounds and motivations of the other participants, point to the injustice of his sentence given his role in the crimes.

**A. Mr. Beardslee Played No Role In Planning And Initiating The Crimes And Had Very Little Connection To Those Principally Responsible.**

The events that escalated out of control the weekend of the crimes caught Mr. Beardslee completely off guard. The evidence plainly shows not only that others devised a scheme to set up and murder Stacey Benjamin and Patty Gedding over a week before the crimes took place, but also that Mr. Beardslee knew nothing about it even as the contributory events were

unfolding. At trial, Donald was portrayed as a calculating killer uniquely motivated to eliminate witnesses and avoid detection because of his parole status. PT 4349:21-25; PT 4237:15-21; PT 4231:20-22. In truth, it was simply his chance association with Rickie Soria that led to Mr. Beardslee's involvement in the crimes.

Mr. Beardslee did not know Rickie Soria and her friends until two months before the crimes occurred. At that time, Mr. Beardslee, age thirty-seven, worked full-time for Hewlett Packard in its manufacturing facility. PT 3985: 3-15; Exh. 23 at 1-11. A machine operator with an excellent work record of two and a half years, Mr. Beardslee happened to see Rickie Soria hitchhiking on El Camino Real in Redwood City, California and offered her a ride. *People v. Rutherford*, Preliminary Examination Reporters Transcript ("RPX") 697:16-18. Rickie Soria was eighteen and had been moving from one temporary living situation to another, and was, in her own words "a speed freak." She had been selling drugs and prostituting herself to support her drug habit. Exh. 47 at 2.

Although Mr. Beardslee paid Rickie Soria for sex the day he first picked her up hitchhiking, their later acquaintance was platonic. RT 1232:3-5; RPX 699:4-9. Mr. Beardslee took Rickie Soria shopping at the mall the day he picked her up hitchhiking. RPX 697:18-26. Later, when she called him, seriously ill from excessive drug use and seeking help, he picked her up, took her to the emergency room, purchased medication for her, and let her stay in his apartment while he nursed her back to health. PT 696:20-26 – 697:1-10; RT 1237:1-21; RT 1238:1-10.

It was during Rickie Soria's stay with him that Mr. Beardslee came into contact with Frank Rutherford, Ed and Patty Gedding, Stacey Benjamin, and Bill Forrester. They were all people Rickie Soria knew, mostly through Bill Forrester, whom she had dated in high school. RPX 413:13-26 – 414:1-15. Over the course of his acquaintance with Rickie Soria, Mr.

Beardslee either met each of them once or twice or heard about them, but otherwise had very little to do with them. RT 1240:1-18; RT 1243:3-9, 19-24; RT 1245:11-17. The group was volatile – they stole from each other, were physically abusive, and were involved in criminal activity that ranged from drug dealing, to burglary, to attempted murder and murder. RPX 708:13-19; Exh. 47 at 2; Exh. 34 at 4; Exh. 44, 45, & 46; Exh. 38 at 2-3, 5; PT 3939:16-23. Donald was wholly unaccustomed to their lifestyle. RT 1238:5-10; RT 1248:12-22; RT 1245:3-7. Far from being involved in their schemes and skirmishes, Donald feared them and tried to protect Rickie Soria from their influence. Exh. 8 at 3; Exh. 9 at 3.

Indeed, it was a particularly serious disagreement between Ed Geddling, Patty Geddling, and Stacey Benjamin that launched the plan to kill Patty and Stacey.<sup>7</sup> Frank Rutherford, Ed Geddling, and Rickie Soria began discussing the plan at least two weeks before the crimes occurred. RPX 420:25-26; RPX 421:11-13; RT 806:9-17. Frank Rutherford had agreed to take care of the killing for Ed, and Rickie Soria was to assist by calling the women to set them up. RPX 422:5-7; RPX 423:6-8; Exh. 34 at 3. Bill Forrester became involved in the scheme some time later, after Stacey Benjamin cheated him out of money in a drug deal, leaving him furious and vengeful. RT 446:19-447:5. Notwithstanding the finger pointing in which the other participants engaged, everyone agreed that Mr. Beardslee knew nothing about these plans. RT 449:4-7; RPX 744.

On the day Patty Geddling was shot, Rickie Soria, Frank Rutherford, and Bill Forrester arranged to have Stacey Benjamin and Patty Geddling come to Mr. Beardslee's apartment in the

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<sup>7</sup> Ed Geddling had been in jail for burglary and when he got out, he came home to find his wife Patty involved with Stacey Benjamin. He kicked Stacey out of the house and beat up Patty, causing Patty to then leave him. Exh. 34 at 4; RPX 423:11-15. After the murders, Frank Rutherford's girlfriend, Dixie Davis, commented that these precipitate events triggered Ed's decision to bring the murder weapon over to Frank's house and their planning of a method to set up Stacey and Patty. Exh. 34 at 4. During this time, a friend of Ed Geddling's, George McLaren, also remembered Ed, saying that he wanted Patty killed. Exh. 43 at 1.

evening to set them up. Donald learned about this plan only when he got home from work that day and well after the scheme had been arranged. RT 1247:15-25. Upon arriving home, Ricki told him to call Frank and then go pick Frank up. Donald complied, learning only when Frank got in the car that he was carrying a shotgun, which was in fact the shotgun that Ed Geddling had given him. Exh. 33 at 11; Exh. 34 at 1-2, 5-8. While waiting for Stacey and Patty to arrive, Rickie Soria was playing with bullets for the shotgun, and Frank Rutherford had made a garrote and was testing the strength of it. RT 451:9-12; RT 568:13-24; RT 569:2-8; RT 570:9-12. Although Mr. Beardslee knew that the set up was going to take place in his apartment, he never realized that a plan was in place to murder Benjamin and Geddling.<sup>8</sup> RT 1248:2-6.

**B. Mr. Beardslee's Inability React Appropriately To The Stressful Events Leading Up To The Crimes Left Him Overwhelmed And Swept Along As The Crimes Were Directed And Carried Out By Others.**

Frank Rutherford shot Patty Geddling in the shoulder shortly after she and Stacey Benjamin arrived at Donald's house. RT 1261:4-26; RT 1262:1-7. From that point on, Frank Rutherford and Ed Geddling directed virtually all of the events, discussing what to do about Patty, and again agreeing that she had to be killed. RPX 479. In contrast to inspiring Ed's and Frank's goal driven behavior, the shooting of Patty accelerated Mr. Beardslee's inability to cope with the situation, and triggered biologically based, but maladaptive coping mechanisms. As a result, he "shut down" and the behaviors to which the prosecutor ascribed cunning and calculation, were, on closer inspection, rudimentary and automatic responses to emotional

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<sup>8</sup> Illustrative of relative culpability, Frank Rutherford upon arrest repeatedly asked officers if they had arrested Ed Geddling. Instead of discussing Mr. Beardslee, Frank Rutherford instead talked only about Ed Geddling being a dangerous person. RT 3766:20-3767:3. Similarly, when questioned after the murders, Frank Rutherford's girlfriend, Dixie Davis, stated that several things Frank said and did led her to realize that he was responsible for the killings. Exh. 33 at 27. She also realized that Ed Geddling was a conspirator when Frank told him about the killings later that weekend and suspiciously he was not even affected by his wife's murder. Exh. 33 at 29. In addition, prior to the events, Ed Geddling specifically told Rickie Soria that Patty Geddling was going to be killed. RPX 904:1-16.



stimuli. His confused reflections on that weekend when read with an appreciation of the debilitating impairments, only recently fully explained and illustrated, document the level of neurocognitive dysfunction.

From the moment the first shot was fired, Donald “was at a total loss.” RT 1262:17. In the stress and confusion that followed, Donald “went on automation.” RT 1262:18; RT 1262:25. As explained in more detail in Section I, this reaction is consistent with Donald’s severe brain damage and mental illness. Under the chaotic circumstances presented by near strangers converging in a violent and frightening context that he did not understand, Donald’s reactions were severely limited by his impaired ability to reason, problem-solve, and interpret events around him. Exh. 51 at 3-4. Rickie Soria’s observations of Mr. Beardslee during the crimes, confirm this picture of atypical and abnormal functioning. Rickie Soria described Mr. Beardslee as bizarrely quiet, anxious, and lost in his own world as he nonetheless numbly participated in crimes disconnected to him. RPX 1230-31:4. The panic and paranoia triggered by the overwhelming situation left Donald incapable of viewing his situation from a realistic perspective, interpreting the context of his actions, exercising meaningful executive functioning, and instead left him entranced by whatever stimuli and influence was most salient and obvious. Frank Rutherford’s commanding presence certainly provided this latter guidance.

Frank Rutherford took charge of the course of events from the very beginning, not only shooting Patty initially, but directing the roles each person should play, and propelling them all towards the killings. RT 925:23-26 (Frank telling each person what to do when Stacey and Patty arrived); RT 930:1-5 (Frank told Bill where to stand); RT 944:10-12 (Frank winked at Donald when suggesting they take Patty to the hospital); RT 960:5-8 (Frank handed shells to Don, who said “I’m not going to do this.”); RT 962:26–963:4 (Frank decided that Stacey and Patty would not be taken away together); *People v. Rutherford*, Reporters Transcript (“RRT”) 988:7-10

(Frank sending Donald to take Patty Gedding away and instructing him to “do a good job”). In addition to the direction he provided, Frank Rutherford also inspired fear. Exh. 33 at 7 (Detective Morse to Frank Rutherford’s girlfriend: “just about everybody we interviewed is deathly afraid of your boyfriend.”); PT 3758:17-26.

Though unquestioning adherence to Rutherford’s commands makes sense given the current understanding of Donald’s limited and confused functioning, it did not necessarily make sense to those around him, or to the jury that decided his fate. Knowing that he never had anything to do with the victims or the other participants, Rickie Soria commented on how strange it was for Mr. Beardslee to become involved in the crimes, particularly when nothing he had said, done, or anything that she could imagine, indicated that he previously had any motive for doing the victims harm. RPX 1256:3-5. Without an understanding of the impairment Mr. Beardslee suffered, it was all too easy to attribute more sinister motivations to explain his actions and cast on him unjustified blame.

Furthermore, though Mr. Beardslee readily admitted his involvement in the crimes, no finding was ever made, and the evidence was not conclusive, on whether he fired the shot that killed Patty Gedding, the crime for which he received the death penalty.<sup>9</sup> According to the evidence, Bill Forrester shot Ms. Gedding first, RT 1288:16-26, and testimony by the pathologist at trial indicated that the first wounds Patty Gedding received were chest wounds that would have been fatal in less than five minutes. RT 702:22-25; PT 3569: 1-13. Although Mr. Beardslee claimed that he also shot Ms. Gedding, several minutes passed from the time Bill Forrester shot her until the time when Mr. Beardslee could have.

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<sup>9</sup> See, e.g., *People v. Beardslee*, 53 Cal. 3d 68, 90, 93 (1991) (jurors may have concluded that Mr. Beardslee only aided and abetted in the crimes and was not the actual perpetrator).

After Bill Forrester's shots, Mr. Beardslee walked across the road to where Patty Gedding was and tried to see what had happened to her. RT 1289:10-15. He then walked back across the road to the car where Rickie Soria was sitting. While Mr. Beardslee was at the car talking to Rickie Soria, Bill Forrester got in the van and turned it around so that it was facing the opposite direction down the road. RPX 495:13-26. After the van was turned around, Mr. Beardslee spent some time talking to Bill Forrester about how to fire the gun and also went back to the car to ask Rickie Soria if she knew how the gun worked. Only after all of these events did Mr. Beardslee fire shots in the direction of Patty Gedding. RPX 496:1-16. He estimated that *ten* minutes passed in the time it took for him to figure out how to use the gun. Exh. 28 at 2. Given this time frame, it is likely that Donald Beardslee's shots, if they indeed struck Patty Gedding, were not fatal.<sup>10</sup>

In addition to the fact that Mr. Beardslee's shots likely were not the cause of Patty Gedding's death, his actions were not the result of malicious intent as the prosecution argued, but the chaotic and tragic effect of his extensive brain damage. His severe mental impairments made it impossible for him to perceive his situation appropriately and to apply his own reasoned responses to the complex, stressful, and extraordinary events that transpired in the course of the crimes. Instead, he followed the lead of Frank Rutherford, Ed Gedding, Bill Forrester and Rickie Soria and conformed to his distorted sense of severely limited choices.

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<sup>10</sup> Pathologists who reviewed the case have noted that "there may not be a separate shot to the head" as asserted by the prosecution at trial, and that it is difficult to assess fully the nature of Patty Gedding's injuries given the documentation generated by the prosecution's expert, Dr. Lack. Exh. 48 (Dr. Boyd Stephens Letter to John Balliet) at 2. Review of additional data such as x-rays, tissue slides and histology reports would be necessary to assess the accuracy of Dr. Lack's opinions that supported the prosecution theory. Exh. 49 (Declaration of Dr. Thomas W. Rogers) at 21. Importantly, "discrepancies between the notes, report and testimony by Dr. Lack raised unresolved and potentially significant questions whether the head wounds suffered by the decedent were inflicted post- or ante-mortem." Exh. 49 at 2.

**C. Mr. Beardslee's Actions After The Crimes Did Not Reflect A Calculated Attempt To Avoid Detection.**

Though Donald was portrayed at trial as carefully concealing and destroying evidence, Rickie Soria, Bill Forrester, and Frank Rutherford were principally responsible for the actions that were attributed to Donald. It was Rickie Soria who came up with the idea to tell Donald's landlord that a firecracker had gone off in the apartment after Patty Gedding was first shot. RPX 829:2-10. When Donald was worried about the landlord, Rickie told him that she had given him the firecracker story and Donald then repeated the same thing. RPX 841: 17-26. Though the prosecutor focused at trial on how carefully Donald cleaned up his apartment after Patty Gedding was shot, it was Frank Rutherford who directed everyone to clean up blood on Donald's couch and floor, and Rickie and Bill who did the work while Donald sat in the bathroom with Patty. RPX 829:24-26 – 830:1-9. Driving back from Half Moon Bay after Patty had been killed, it was Rickie Soria and Bill Forrester's idea to wipe down the van before abandoning it. RRT 1257:1-6. This was yet another point the prosecutor highlighted in arguing that Donald was cunning and calculated in his attempts to avoid detection. In truth, Donald had no role in initiating these attempts to conceal the crime.

To the contrary, when confronted by law enforcement after the crimes, Mr. Beardslee immediately told them that he was on parole and that he would do anything to cooperate with them. Far from seeking to avoid detection, Mr. Beardslee confessed his involvement completely and walked the investigating officers through every step of the weekend's events. RT 1187:25–1188:1; RT 1190:16-26; RT 1194:11-26. After turning in all of the other participants, Don also testified against them with no benefit to himself. RT 476:18-22.

Mr. Beardslee's straightforward and naïve cooperation is in marked contrast to Frank Rutherford's actions. Frank made Donald wash his clothes for him after Frank shot and

struggled with Patty Gedding, RT 955, carefully cleaned the shotgun that was used to shoot Patty Gedding, Exh. 34 at 49-50, and saved the empty shotgun shells and left them with his girlfriend to throw out. Exh. 36 at 2. Frank also changed out of another set of clothes that he left for his girlfriend Dixie Davis to clean after the Stacey Benjamin murder. Exh. 34 at 49-50. He further cleaned off his shoes after Stacey had been killed, fearing that “otherwise they’ll trace the dirt.” Exh. 34 at 36. Prior the Stacey Benjamin murder, Frank told Dixie to cover for him by saying that he had been with her all weekend. Exh. 34 at 43-44. Ed Gedding likewise focused on his alibi. He had Rickie take him to his girlfriend’s house after Patty Gedding had been shot in the shoulder so that he would be sure to have an alibi after she had been killed. RPX 905:1-14.

**D. In Contrast To The True Lack Of Remorse Displayed By Some Of His Co-Defendants, Mr. Beardslee’s Bearing Was The Result Of Impaired Mental Functioning.**

A direct effect of Mr. Beardslee’s brain damage is a flat affect beyond his control that makes him appear indifferent or callous. Exh. 51 at 5. Because of his impaired and restricted emotional range, Mr. Beardslee at times may seem to react inappropriately to people around him, laughing when matters are grave or failing to express emotion when expected. Exh. 51 at 5. These symptoms of underlying dysfunction created an impression of remorselessness that the prosecutor used relentlessly in arguing for the death penalty for Mr. Beardslee.

In contrast to the damage that uncontrollably restricted Donald’s emotional reactions, others involved in the Benjamin and Gedding crimes exhibited actual behaviors and emotions that reflected truly indifferent and cavalier attitudes about the lives they took and terrorized.<sup>11</sup>

This was particularly true of Frank Rutherford, whose history reflected a reliance on threats and

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<sup>11</sup> A psychologist who evaluated Rickie Soria “was impressed by Rickie’s lack of remorse or guilt over the deaths of her two companions,” and noted that Rickie laughed when referring to Stacey’s death. Exh. 47 at 2.

violence that served as a testament to his disregard for nearly everyone around him. Exh. 38 at 17 (continually threatening witness so that he did not appear in court against Frank in burglary case); Exh. 40 (assault with deadly weapon); RT 578:20, 24-26 (frequently employed beating and shooting in enforcing various “contracts” he was involved in); RT 617:9-11, 23-26 (reputation for violence).

Frank Rutherford’s utter lack of decency also was plain throughout the Benjamin and Geddling crimes themselves. Rutherford’s often-quoted comment as he was trying to strangle Stacey Benjamin, that she was a “die hard bitch,” was characteristic. RT 1034:3. When telling Ed Geddling about the murders the day after the crimes, Rutherford laughed about it, Exh. 34 at 40-41, and later again laughed about slitting Stacey’s neck. RT 630. During his trial for the crimes, Rutherford commented to a guard as he was being transported from the courtroom to his cell that “this is the thanks I get for helping people.” Exh. 42 at 1. His phone privileges later were taken away in San Mateo County Jail because he had telephoned the mother of a prime witness in the Benjamin/Geddling case and had made threats of violence against both her and her son. Exh. 41 at 2.

In spite of the fact that some jurors recognized his mental problems, and struggled to credit them somewhat, Exh. 50, Donald Beardslee ultimately received the death penalty for actions, and reactions, that were based in large part on his brain damage and major mental illness. And though the jury evaluating Mr. Beardslee’s culpability against mercy wanted to know the charges against the other actors involved in the crimes, it was not allowed to see that full context – due both to the lack of information on Mr. Beardslee’s severely impaired functioning, and the denial of information regarding the fates of those more insidiously entwined in the events that led to the Benjamin and Geddling deaths.

**E. The Prior Second-Degree Murder Plea Used In Aggravation To Distinguish Mr. Beardslee As Deserving Of The Death Penalty Was Significantly Flawed.**

On January 3, 1970, after consulting with his family, a priest, and a family attorney, Mr. Beardslee turned himself into the Missouri police fearing that he had been involved in the death of a woman, Laura Griffin, whom he had met at a bar late in December.<sup>12</sup> Although Mr. Beardslee was not sure what had happened, why, or exactly what his role had been in the woman's death, the local authorities illegally interrogated Mr. Beardslee at length, and eventually generated a description of events from Donald that matched the forensic details established in the initial police investigation, but not the events as first recounted by Mr. Beardslee, or necessarily as related by witnesses and subsequent forensic results.<sup>13</sup>

In addition to this confusing and questionable basis for Mr. Beardslee's involvement, officers initially investigating the death found Ms. Griffin's will set neatly out on her bed in her home where her body was found. The death was investigated as a suicide, and Griffin's relatives confirmed that she had in fact attempted or threatened to take her own life on two prior occasions. In spite of this shaky foundation, a Missouri court accepted Donald Beardslee's constitutionally deficient plea to second-degree murder in a surprising change of heart – the plea

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<sup>12</sup> Before turning himself in, Mr. Beardslee's lawyer, Donald Clooney, checked with the local police department and determined that a woman had been killed, and that the police had no leads or suspects. Thus, Clooney advised Mr. Beardslee that his potential role in her death would remain confidential with Clooney if he decided not to turn himself in. Distracted, Mr. Beardslee decided to do so, despite the fact that he could well have avoided facing charges for a crime he was not sure he had committed. PT 4064:8-21; PT 4065:1-2.

<sup>13</sup> When Donald Beardslee decided to come forward to law officers, his lawyer assured him that he would be placed in the County Hospital for psychiatric care and instructed him not to discuss the details of the crime out of his presence. PT 4065:21-23. Nonetheless, when an officer named Jack Patty began asking questions, Donald Beardslee allowed himself to be interrogated at length about the Griffin crime and events leading up to it. This lengthy, and illicit, conversation never was tape recorded or described in a report, because, as Patty acknowledged, "[o]fficially, he didn't tell us." Exh. 29 (Transcript of Telephone Conversation between Carl Holm and Jack Patty, December 1, 1982) at 5. Nonetheless, Patty also later explained that Donald's statements had been particularly helpful because "we had no evidence really ... [n]o fingerprints ... no physical evidence at all." Exh. 29 at 20.

came after a jury had already been selected and was awaiting the beginning of Mr. Beardslee's trial – and sentenced him to nineteen years.

This prior crime was argued extensively in aggravation against Mr. Beardslee in the Benjamin and Geddling trial,<sup>14</sup> even though little about Mr. Beardslee's actual conduct at that time seemed reliably reported or determined. Certainly as aggravating, yet never considered in evaluating Donald Beardslee's culpability relative to the other Benjamin and Geddling co-defendants, were the crimes Frank Rutherford and Rickie Soria had been involved in prior to their arrest.

Frank Rutherford and Rickie Soria and another man named "Bill," robbed and raped Carol Bork before taking her to a warehouse to try to kill her. The events that terrorized Ms. Bork, over the course of a night shortly before the Geddling and Benjamin murders, took place when she had her six-month-old daughter with her. Exh. 38 at 2-3. When the police would not prosecute the case she left the state and later spoke to San Mateo County Investigator Buchalter from Minnesota where she was staying with a friend. Frank is "a psychotic nut" she stated. Exh. 38 at 3. Frank Rutherford choked her and put a knife to her throat and all three raped her. Exh. 38 at 7-8. The night they tried to kill Carol, Frank talked how he also was going to kill Stacey Benjamin. Exh. 38 at 17.

Frank Rutherford also had a prior record involving assault with a deadly weapon, threats to kill his uncle, and a variety of drug and weapons charges. Exh. 40, 45. Rickie's record included drug charges and theft, Exh. 46, stealing a care at age twelve, and armed robbery in Sacramento for which she avoided arrest because she ended up testifying against someone else who wound up doing time for the crime. Exh. 47 at 2.

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<sup>14</sup> PT 4339:5-12; PT 4340:9-15; PT 4344:5-15.



In short, the jury premised its death verdict on missing evidence and misinformation. Despite this, the jury sought to balance the relative culpabilities of the co-participants by requesting the court to inform them that the punishments imposed on those more culpable for the crimes. The court's refusal to tell the jury of the nature of disparate treatment of the co-participants undoubtedly and impermissibly skewed its sentencing determination.

### III.

#### **MR. BEARDSLEE'S MODEL BEHAVIOR IN PRISON, INCLUDING HIS POSITIVE ATTITUDE, COOPERATION, AND AFFIRMATIVE ASSISTANCE TO PRISON STAFF, JUSTIFY A GRANT OF CLEMENCY IN THIS CASE.**

Virtually every California Governor in the past half century has interpreted the clemency power as requiring consideration of an applicant's good conduct in prison. Since 1941, five California Governors – Culbert Olson, Earl Warren, Goodwin Knight, Edmund G. Brown, Sr., and Ronald Reagan – explicitly recognized that a prisoner's behavior in prison, good conduct, and potential for rehabilitation are important factors in granting clemency to death-sentenced prisoners. *See, e.g.*, Edwin Meese & John S. McNerny, "Executive Clemency," CEB, California Criminal Law Practice § 26.51, at 710. Indeed, the California Legislature expressly has provided that the commutation process must allow investigation and consideration of an applicant's "good conduct, or unusual term of sentence, or any other cause, including evidence of battered woman syndrome." Cal. Penal Code § 4801.

Considering an inmate's exceptional institutional behavior for commutation not only recognizes a factor that was unavailable at the time of sentencing, but promotes the safety of corrections staff and encourages other inmates to engage in positive behavior. Granting clemency to death-row inmates who have minimized the danger to those working at San Quentin, and promoted respect for authority and compliance with rules, increases the safety and security of institutional staff and other inmates.

This factor is particularly important in this case because the jury's decision to sentence Mr. Beardslee to death was based upon the prosecutor's argument that Mr. Beardslee would be a threat to guards and fellow inmates if sentenced to life in prison. PT 4337:5-7 ("He is an extremely dangerous and merciless individual. He is, in short, a cold-blooded killer without compassion who may kill again for the slightest provocation."); PT 4340:18-20 ("We do not know when the defendant will strike out in his murderous ways."); PT 4340:21-22 ("Who knows what types of pressures he might suffer or cause the defendant to react and kill?"); PT 4341:6-24 (though defendant had some prior good behavior in prison, if sentenced to life in prison, "he has no motivation" to behave); PT 4399:18-22 ("society includes the inmates in state prison, the guards and other people among whom he would be associating with and they, of course, are human beings also and they ... have a right to the protection of freedom in assaults and things that go on in prison"). Although the jury did not have the benefit of over twenty years of Mr. Beardslee's record at San Quentin, we now know that the prosecutor's assertions were quite false.

Mr. Beardslee's behavior and conduct in prison unquestionably demonstrates that he is entitled to commutation. Since his incarceration, he has been a model inmate, adapting extraordinarily well in the structured institutional environment and contributing to the safety of the institution. Mr. Beardslee's excellent institutional adjustment is demonstrated throughout his California Department of Correction ("CDC") file with comments by correctional staff describing his cooperative, helpful nature, extremely positive attitude, hard work, and dedication toward self-improvement.

**A. Mr. Beardslee Is A Model Prisoner Who Impeccably Follows Institutional Rules and Regulations.**

Mr. Beardslee is a paradigmatic prisoner, respecting authority and following institutional rules and regulations with precision. In his over twenty years of incarceration at San Quentin, Mr. Beardslee has maintained an exemplary record without a single rules violation. Indeed, Mr. Beardslee's prison file is devoid of any indication that he has ever presented a problem for staff. Quite the reverse, he was classified as "Grade A" within days of entering San Quentin in March 1984 and has since maintained that classification. Exh. 27 at 1-4. Mr. Beardslee's most recent classification program committee review, like his previous reviews throughout the past twenty-plus years, indicates that Mr. Beardslee "gets along well with all staff and inmates." Exh. 27 at 5.

Mr. Beardslee's exceptional institutional conduct for the past twenty years mirrors his behavior in previous institutional settings. While incarcerated in Missouri, Mr. Beardslee was characterized as a "model inmate" whose institutional adjustment was "excellent." Exh. 24 (Missouri Department of Corrections Records) at 22 (Mr. Beardslee "has made an excellent institutional adjustment"), 25 ("Institutionally Beardslee has made an excellent adjustment."), 27 (Mr. Beardslee "has received no conduct violations during his incarceration since 1970 and it is felt that his institutional adjustment has been excellent."), 27 (describing Mr. Beardslee as a "model inmate"); *see also* Exh. 27 at 17. The Missouri Board of Probation and Parole described him as "a model inmate who is following rehabilitative efforts and follows to the line key programs outlined by both the Board and the Department of Corrections." Exh. 26 at 27. Mr. Beardslee was awarded substantial merit time between 1971 and 1977 for his good behavior and his many blood donations. Exh. 27 at 38-39. After the Missouri authorities paroled Mr. Beardslee to California, he was designated a "low risk" and placed on minimum supervision.

Exh. 25 (California Parole Records) at 9-13. Prior to his involvement in the crimes for which he was sentenced to death, Mr. Beardslee was described by his parole agent as a “model parolee” who was making an “excellent parole adjustment,” was “very cooperative,” followed the rules, and posed no supervision problems. Exh. 27 at 18 (“he was a model parolee with no involvement in any questionable activity, no known arrests, steady employment, etc.”); Exh. 25 at 4-6 (“excellent parole adjustment”), 11 (“very cooperative”).

Following his arrest in April 1981, Mr. Beardslee was housed in the San Mateo County Jail, where he was given trustee status and, at his own request, worked in the kitchen and cleaned cells. Exh. 26 (San Mateo County Jail Records) at 1-16. In addition, Mr. Beardslee assisted authorities in maintaining the security of the jail. While working in the kitchen, Mr. Beardslee reported that a knife was missing. Exh. 26 at 14. Thus, it is unsurprising that, according to a deputy sheriff, Mr. Beardslee “posed no problems while incarcerated” at the San Mateo County Jail. Exh. 25 at 15.

**B. Mr. Beardslee Affirmatively Contributes to Institutional Safety and Security.**

In addition to his exceptional conduct in following institutional rules, Mr. Beardslee makes an affirmative contribution to the safety and security of the institution. Mr. Beardslee is well known among CDC staff for his extremely positive attitude, his hard work, and his contribution to maintaining the orderly operation of the institution as well as preventing incidents. *See, e.g.*, Exh. 27 at 5, 8 (noting that he “has an excellent attitude, and is knowledgeable and cooperative”); 10 (Mr. Beardslee “performed his [work] duties in an excellent manner and contributed to the orderly operation of Donner Section housing unit.”); 11 (commending Mr. Beardslee “for his hard work, positive attitude and program success.”). Prison staff routinely characterize Mr. Beardslee as “cooperative and friendly” with both correctional personnel and other inmates. Exh. 27 at 5, 8, 9, 11. Mr. Beardslee “contribute[s] to the orderly

operation” of the prison and is “instrumental in preventing incidents” in the unit. Exh. 27 at 10-11.

**C. Mr. Beardslee Consistently Strives Toward Self-Improvement By Availing Himself of Existing Educational Programs and Psychological Assistance.**

Mr. Beardslee consistently works toward self-improvement by availing himself of institutional education and counseling programs. Mr. Beardslee’s CDC classification reports demonstrate his interest in the arts program as well as an interest in the library books collection. Exh. 27 at 6-7. Throughout his incarceration in Missouri, Mr. Beardslee participated in the Toastmasters’ program (an educational non-profit organization that helps members develop speaking and listening skills) and the Great Books Clubs, and took college classes. Exh. 24 at 20, 27, 28, 34. Mr. Beardslee received a certificate of achievement for successfully completing an intensive tutorial seminar in medical terminology. Exh. 24 at 21, 31. On one occasion, Mr. Beardslee was given temporary community release to appear before Toastmasters in Jefferson City, Missouri. Exh. 24 at 20; Exh. 27 at 17. He completed a GED refresher course even though he already had graduated from high school, and, by 1976, Mr. Beardslee had completed forty-three college course hours. Exh. 24 at 24, 25, 34. Just prior to his parole from Missouri State Prison, Mr. Beardslee completed the first section of the Toastmasters International Communication and Leadership Program. Exh. 24 at 20.

Mr. Beardslee has also taken advantage of and sought counseling assistance. Mr. Beardslee himself suggested that he might need counseling, Exh. 27 at 36, and, while on parole, Mr. Beardslee participated in an outpatient psychiatric clinic for as long as such counseling was made available to him. Exh. 25 at 1.

**D. Mr. Beardslee Contributes to the Institutional Environment Through His Hard Work and Efficiency.**

Mr. Beardslee has consistently received glowing reports for his “exemplary” work efforts and his “excellent attitude” while incarcerated. Exh. 27 at 8-12. (Exhs. F, G, H, I, L). CDC Correctional Officer R.A. Petersen’s remarks are typical of the staff’s assessment of Mr. Beardslee:

Since inmate BEARDSLEE has been a worker in Donner Section, he has been working in the capacity of Clerk. From the start, he has learned the job very competently. Due to circumstances, he suddenly became the only Clerk in the Unit, and despite the heavy workload that was facing him, he managed to handle the job with a high degree of excellence. If there is something that needs to be done quickly, due to time constraints or such, inmate BEARDSLEE handles it with quick dispatch and if necessary, does take it back to his cell and work through his off duty hours. He voluntarily works on his regular days off, making sure that the yard list[s] are ready and correct, and staying on top of any emergencies that occur. . . . Inmate BEARDSLEE has been very much an asset to Donner Section. Exh. 27 at 12.

When the Condemned Workers Program was terminated and Mr. Beardslee was therefore “unassigned” from it, the classification committee was sure to note that this change was due solely to a change in the institutional policy discontinuing the program “and is no reflection on his work assignment.” Exh. 27 at 10. On the contrary, the committee said that Mr. Beardslee “performed his duties in an excellent manner and contributed to the orderly operation of Donner Section housing unit.” Exh. 27 at 10. The committee goes on to commend Mr. Beardslee “for his hard work, positive attitude and program success.” Exh. 27 at 11. Mr. Beardslee is noted as being an “extremely competent and dedicated worker” who efficiently and accurately handled the unit clerical workload. Exh. 27 at 11.

Mr. Beardslee also worked while incarcerated in Missouri, and his work records there are similarly positive. When working in the x-ray department and emergency room of the prison hospital, he was reported as doing an excellent job, and as being a “pleasant and congenial”

person who “gets along well with both civilian and inmate personnel.” Exh. 24 at 1-15, 25. His work reports indicate that he is a “willing and conscientious worker” who readily and willingly endeavors to increase his knowledge and who evidences a “sincere desire to learn...and has applied himself fully to that end.” *See, e.g.*, Exh. 24 at 7, 8. Mr. Beardslee ultimately worked his way up to become the night supervisor in the emergency room, and his work and training reports in that position were excellent as well. Exh. 24 at 24. In addition to his contribution at the prison hospital, Mr. Beardslee also worked in nursing care, and as a cleaner, a maintenance worker, and a clerk. As with each of the jobs he has held, Mr. Beardslee has performed very well in those positions. Exh. 24 at 9-15.

While housed at San Mateo County Jail awaiting trial, Mr. Beardslee contributed his services by volunteering to work at night cooking and cleaning. Exh. 25 at 1. He was granted trustee status, Exh. 25 at 13, 15, and worked in the kitchen and cleaned the cell and office areas. Exh. 25 at 3-12.

In short, Mr. Beardslee has adapted exceptionally well and offered unusual and important contributions to the institutional environment and safety. He is the epitome of a model prisoner, and his hard work, cooperation, positive attitude, and outstanding contribution to the functioning of the institution and to institutional safety warrants a grant of clemency in this case.

### CONCLUSION

The jury that determined Mr. Beardslee deserved to die was misled in three fundamental respects. The evidence presented in this Petition constitutes exceptional circumstances to warrant the exercise of mercy. A commutation of Mr. Beardslee's death sentence is not only a merciful result, it also is the just result.

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