

**ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE**

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November 13, 2018

Jane E. Young, Esquire  
Deputy Attorney General  
New Hampshire Attorney General's Office  
33 Capitol Street  
Concord, New Hampshire 03301

Re: State v. Pamela Smart - Petition for Commutation of Sentence

Dear Deputy Attorney General Young:

I write in response to the request for a recommendation regarding the Petition for Commutation of Sentence filed by the defendant/petitioner, Pamela Smart. There is no doubt that the Petitioner committed the crimes for which she has been convicted; the evidence of her guilt is overwhelming. The question presented is whether her sentence should be reduced for the reasons cited by the Petitioner in her Memorandum, irrespective of her guilt. Having reviewed her Petition, the Memorandum, the case file, and other materials, I recommend that the Petition be denied.

The Petitioner claims that the process and evidence that led to her conviction was unfair; that is not true. What is unfair is that Greg Smart died at the hands of a young boy who was manipulated by the Petitioner to carry out a murder for her own selfish reasons. The Petitioner took advantage of her job in a high school and engaged in an affair with a

male student who was initially 15 years old. She then manipulated that boy to do her bidding and kill her husband so that she could avoid the financial consequences of a divorce and carry-on her intimate relationship with that boy. The murder the Petitioner orchestrated not only led to Greg Smart's death, but also negatively impacted many other lives as well.

Despite the long-lasting results of her criminal conduct, the Petitioner asserts that she deserves "mercy and compassion," something that she ensured was never shown the victim, her husband. In addition, she claims that her conduct in prison, her character, what she terms a "disproportionate sentence," the trial record, alleged post-trial evidence, and pre-trial publicity, all "warrant executive grace." Those claims are without merit.

In her Petition and Memorandum, the Petitioner places the blame for her crimes and current predicament everywhere but where it belongs, squarely on herself. Contrary to what the Petitioner alleges, the news media is not to blame for her convictions. Neither is the jury, the judge, the prosecutors, or her lawyers; she is to blame. She committed the criminal acts and left behind the telltale evidence; overwhelming evidence, much of it directly from her, that proved beyond any reasonable doubt that in 1990, she orchestrated a criminal conspiracy that led to the death of her husband.

I will discuss the procedural background of this case and the evidence of the Petitioner's guilt, and then address the reasons why her claims and request for a commutation of sentence should be rejected.

## **I. PROCEDURAL BACKGROUND**

On March 22, 1991, a Rockingham County jury convicted the Petitioner of Accomplice to First-Degree Murder, Conspiracy to Commit Murder, and Tampering with a Witness. Those charges stemmed from the murder of her 24-year-old husband of less than

one year, Gregory Smart. Presently, the Petitioner is serving a mandatory sentence of life imprisonment without parole for the Accomplice to First-Degree Murder conviction.

Following her convictions, the Petitioner filed motions for a new trial, each of which was denied by the trial court. In 1993, the New Hampshire Supreme Court affirmed the Petitioner's convictions. *See State v. Smart*, 136 N.H. 639 (1993). On August 20, 1993, the Petitioner filed a Petition for Writ of Certiorari with the United States Supreme Court, alleging several errors in her case. That petition was declined on October 12, 1993. In April 1997, the Petitioner filed a State court Writ of Habeas Corpus seeking reversal of her convictions. The Court denied that writ and on appeal, the Supreme Court summarily affirmed the trial court's order. Subsequently, the Petitioner filed Writs of Habeas Corpus in Federal Court, each of which was denied, thereby affirming her convictions.

On December 7, 2004, the Petitioner filed her first Petition for Commutation of Sentence. In that Petition, the Petitioner alleged that there were two errors at her trial that justified an early release from prison: (1) the denial of her right to a fair trial due to publicity; and (2) the trial judge did not allow her to recall two witnesses to the stand for further cross-examination. The Petitioner also touted her achievements in prison and provided letters of support. The State objected to the 2004 Petition, and it was denied.

On February 26, 2018, the Petitioner filed another Petition for Commutation of Sentence. In her most recent Petition, she has changed her strategy and raised many claims that were not included in her 2004 Petition. As she did in 2004, the Petitioner has taken liberty with the facts of her case in an effort to portray them in her favor. However, the facts that supported the Petitioner's conviction have not changed, only her explanation of those

facts has changed. Despite her efforts though, the facts confirm that the Petitioner is guilty of her crimes and received a fair trial.

## II. FACTS

In 1989, the Petitioner married Gregory Smart and the two lived in Derry, New Hampshire. T 1495-96.<sup>1</sup> The Petitioner worked as the Director of Media Services for School Administrative Unit 21. T 1496. Greg Smart “worked at the Metropolitan Life Insurance as an account representative.” T 1496.

In the fall of 1989, fifteen-year-old sophomore high school student Cecelia Pierce met the Petitioner through a program at school called Project Self-Esteem. T 1292-93. Pierce and the Petitioner were each facilitators in that program and worked together. T 1293. In the fall of 1989, the relationship between the Petitioner and Pierce grew closer after Pierce became the Petitioner’s intern. T 1294, 1508. Pierce was not only young at the time, but she also had low self-esteem. T 1634. The Petitioner considered Pierce to be “a good person,” T 1634, and the two developed “a friendship.” T 1635. As a result, Pierce saw the Petitioner “[a]t least twice a day” and the two “hung around more and more.” T 1295.

Around December of 1989, the Petitioner started working on a project with some students, which was referred to as the “orange juice commercial.” T 1295-96. Those students included Cecelia Pierce and Bill Flynn. T 1296, 1510. At the time, the Petitioner knew Flynn and considered him “a good kid,” someone who “was easy to talk to, friendly.” T 1509. As work on the orange juice commercial progressed, the 22-year-old Petitioner spent more time with Pierce and Flynn, including working on the project on the weekends. T

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<sup>1</sup> “T” is a reference to pages from the trial transcripts in this matter.

1297. In addition, the Petitioner would “go out” with Pierce and Flynn, and sometimes one or two other students, in the “nighttime.” T 1297.

The Petitioner began to form an attachment to Bill Flynn. Cecelia Pierce saw the Petitioner and Flynn at the Petitioner’s office “[j]ust about every day” in December 1989, and January 1990. T 1300. Around February 1990, the Petitioner announced to Pierce that she “loved Bill.” T 1300. Pierce did not believe the Petitioner at first since she was married and 22-years-old, and Flynn was only 15-years-old. T 1301. However, the Petitioner told Pierce “over and over again,” that she was “serious.” T 1301. About a week later, Pierce told Flynn that the Petitioner wanted to see him, which is when the Petitioner told Flynn that she loved him and thought about him “all the time.” T 725, 1301-02. Flynn “was pretty happy” when the Petitioner revealed her feelings to him as he “liked her.” T 725-26. He was 15-years-old and found the older, 22-year-old Petitioner “very attractive.” T 725-26. The two also had interests in common, including music. T 726.

The Petitioner told Cecelia Pierce that she had professed her love to Bill Flynn. T 1302-03. The married-Petitioner also told Pierce “that she had a choice either to kill Greg or get a divorce.” T 1302-03. The Petitioner explained that the divorce option was not appealing to her “[b]ecause Greg would take the dog and the furniture, and she wouldn’t have any money and she wouldn’t have a place to live.” T 1303. At first, the Petitioner spoke to Pierce about Greg Smart needing to be killed “every few days, and then it was every day.” T 1304. The Petitioner told Pierce “[t]hat she was going to have somebody kill Greg.” T 1319. However, the Petitioner said she could not find anyone, so “she said Bill [Flynn] was going to do it.” T 1319.

Cecelia Pierce confirmed that the Petitioner was unhappy in her marriage. T 1304. One day around April 1990, Pierce overheard the Petitioner arguing with her husband Greg on the phone, talking about a divorce. T 1304-05. “[T]hey started fighting over who was going to take the dog and the furniture and everything.” T 1304. The Petitioner made it clear that “she didn’t want anyone to know they were having trouble.” T 1305. Bill Flynn was also present with Pierce one time in the Petitioner’s office when she and Greg Smart got into a “big argument” and divorce was mentioned. T 793. The Petitioner later testified at trial that things were not good with her and Greg in the time before his murder. She claimed that in December of 1989, Greg had admitted to cheating on her. T 1496, 1499-1500. Despite that alleged admission, the Petitioner claimed that she and Greg had affirmed their love for each other and remained committed to their marriage. T 1501. However, as the Petitioner’s affair with Bill Flynn proved, that was not the case.

The Petitioner made it clear that she was not committed to her marriage and wanted Greg Smart dead, well before the actual murder in May 1990. Around the end of March or early April 1990, Cecelia Pierce told a co-corker that “she had a friend named Pam who wanted to find somebody to kill her husband.” T 1445. According to that co-worker, Cindy Butt, Pierce explained that her friend Pam “was having marital problems and wanted to have her husband killed.” T 1449. Cindy Butt later testified at the Petitioner’s trial and told the jurors what Pierce had said about the Petitioner’s desire to have her husband killed. When the Petitioner testified at trial, she never disputed what Butt said.

True to her stated desires, the Petitioner orchestrated a plan to have her husband killed. As part of her plan, she worked to solidify her relationship with Bill Flynn and intensify their connection and her control over him. For example, the Petitioner’s

relationship with the teenaged-Flynn went from just kissing to sex. T 729, 738. Prior to having sex the first time, the Petitioner told Flynn that she wanted to dance for him, “[l]ike a striptease type thing, like a woman had done for her man in the movie Nine and a Half Weeks.” T 734. The Petitioner told Flynn that she was going to buy a special outfit for the occasion as well. T 735. After having sex for the first time, the Petitioner and Flynn had sex many times afterwards. T 861-62. In addition, the two wrote more than a dozen letters back and forth to each other. T 865-66. Those letters were “[l]ove letters,” which contained some “sexually explicit” content. T 866. One of the notes from the Petitioner to Flynn that was an exhibit at trial contained “lyrics to a song that she said reminded her of me.” T 869-70. The Petitioner told Flynn that she wanted to be with him for the rest of her life, and he told her the same. T 935. The Petitioner also bought alcohol for the underage Flynn and drank it with him. T 862-63. In these ways the Petitioner enticed Flynn and established her control over him in order to manipulate him to do her bidding.

Part of the Petitioner’s strategy in manipulating Bill Flynn included appealing to his desire to be with her and protect her. One night when she was alone with Flynn, the Petitioner started crying, which got Flynn upset. T 744. The Petitioner told Flynn that the only way they were going to be able to be together, was to “kill Greg.” T 744, 746. The Petitioner told Flynn that she could not divorce Greg because “everything’s in his name. He’ll take the cars, [and] he’ll take Haley [their dog].” T 742. The Petitioner also told Flynn that divorce would mean she would not have any money, and would not be able to move closer to where Flynn lived. T 742-43. The Petitioner further justified having Greg killed by claiming that he “was abusive toward her.” T 743. The Petitioner told Flynn about a time when Greg was drunk and grabbed her, threw her down, and then threw her out of the house

when it was snowing out. T 743. In these ways, the Petitioner manipulated Flynn to carry out her plan to kill her husband.

At first, the plan was to try and find someone to kill Greg Smart. The Petitioner asked Bill Flynn, "Could you get anyone to do this? How much would it cost to hire somebody?" T 745. Eventually though, the plan turned from finding someone else to kill Greg to Flynn killing Greg himself. The Petitioner told Flynn, "All right, this is how you could do it." T 747. She proceeded to lay out detailed plans for killing Greg, including telling Flynn where to park his car, what clothing to wear, how to disguise his appearance, what weapon to use, and where to hide inside the house to ambush Greg. T 747-48, 832. As part of the plan, the Petitioner told Flynn that she would leave the bulkhead to their condo open so he could get inside to ambush Greg and kill him. T 746. The Petitioner also told Flynn "to ransack the house" so that it would look like a burglary. T 746. The Petitioner assured Flynn that anybody who helped him could take anything they wanted from the house, such as the stereo system, Bose speakers, and jewelry, since she was insured. T 746. Finally, the Petitioner said that she would arrange to be at a meeting on the night Flynn went to commit the murder to give herself an alibi. T 748.

The Petitioner also discussed some of the plans for Greg Smart's murder with Cecelia Pierce. She told Pierce how they were going "to make it look like a burglary." T 1304, 1320. Pierce was also present when the Petitioner discussed the murder plans with Bill Flynn. T 1324-25. During those times, the Petitioner told Bill not to hurt her dog and "told Bill not to kill Greg in front of the dog because it would traumatize the dog." T 1325. The Petitioner also mentioned the subject of insurance to Pierce before the murder, telling Pierce that with Greg dead, "she was sure she'd get a lot of insurance." T 1424.

Bill Flynn agreed to the Petitioner's request to kill Greg Smart and in March 1990, made plans to carry out her request. T 754. On that date, the Petitioner told Flynn that she would be at a meeting and that he could kill Greg that night. T 752. The Petitioner went through the plan again with Flynn, who told her that he did not have a car or a gun yet. T 752. The Petitioner told Flynn to "hurry up" and get one so he could kill Greg that night. T 752. She also told Flynn that she had left the bulkhead to her home unlocked so he could get in. T 753. Flynn told her that he would try to get what he needed to carry out the murder that night, but he was unable to and did not follow through with the attempt on Greg's life. T 753, 755. Later that night after he was supposed to have killed Greg, Flynn called the Petitioner. T 755. She had asked him to call her after he carried out the murder, but instead he called and told her he had not carried out her plan to kill Greg. T 755. Upon hearing that news, the Petitioner "snapped" at Flynn and "started getting extremely angry." T 755. She yelled at Flynn and told him that he did not love her and that if he did, he would have killed Greg for her. T 756. The Petitioner reminded Flynn that killing Greg was the only way they could be together. T 756. Flynn got upset and cried. T 756. The Petitioner told him that since he had no intention of killing Greg, they could not be together and she was breaking up with him. T 756. She told Flynn, "So that's it. It's over between us," and hung up on Flynn. T 756. Flynn had never seen the Petitioner so angry before. T 756.

The next day at school, Cecelia Pierce found Bill Flynn and told him that the Petitioner wanted to talk to him. T 757. Flynn went and found the Petitioner who told him that "she was sorry she got mad." T 757. The Petitioner said, "Don't worry about it. I've got another meeting coming up. You can do it then. So everything's all right. You don't

have to worry about it.” T 757. Flynn said “all right” and that he would do it, meaning kill Greg Smart. T 758.

In order to carry out the Petitioner’s plan, Flynn tried to recruit some of his friends, Patrick “Pete” Randall, J.R. Lattime, and Raymond Fowler, to help. T 750, 759. At first, Randall and Lattime refused to help. T 759. Fowler agreed though after Flynn told him that the Petitioner said he could take “anything in the house.” T 760. As part of the plan, Fowler obtained a knife to use in the murder. T 761. The Petitioner offered the use of her car so that Flynn and Fowler could get to her home and kill Greg. T 762.

The murder plan went forward one night in April 1990. T 764. The Petitioner had told Flynn that she would leave the bulkhead door open to her house and the keys in her car. T 764. She also told Flynn that she would be at a meeting that night and where he could get her car. T 764. Some friends dropped Flynn and Fowler off where the Petitioner had left her car. T 767. Flynn and Fowler took the Petitioner’s car as planned and drove to Flynn’s house where they got a duffel bag with clothes and other items to use during the murder. T 769. A knife was in the duffel bag. T 771. After leaving Flynn’s house, they drove to a drug store, in part to buy gloves so they would not leave any fingerprints. T 769-70. The Petitioner had suggested they buy the gloves. T 770. However, she also said that if they did leave fingerprints behind that they could explain them away by saying that Flynn had been at her home before, in connection with a school project. T 770.

After they bought the gloves, Flynn and Fowler drove toward Derry and the Petitioner’s home. T 772. On the way there, Flynn got “scared” and decided he did not want to go through with the plan to kill Greg. T 772. He purposely told Fowler, who was driving, to take a wrong turn in the hope they would get lost on their way to the Petitioner’s home. T

772-73. They did get lost and Fowler stopped to ask for directions, which led them back to Derry. T 773. After getting directions, the two eventually arrived at the Petitioner's home. T 774. By the time they got there though, it was late. T 776. They could see that Greg was already home, since his truck was there and a light was on in the bedroom. T 774-76. At that point, Flynn and Fowler abandoned the plan to kill Greg and left, since the plan required them arriving before Greg got home so they could ambush him and make the murder look like a burglary. T 776.

After the failed attempt to kill Greg Smart, Bill Flynn and Raymond Fowler drove to a phone booth where Flynn called the Petitioner. T 776-77. He told her that they could not "do it" because Greg had already been home. T 777. The Petitioner told Flynn, "All right, just hurry up and get back here." T 777. Flynn and Fowler did as the Petitioner asked and drove to the school and picked her up. T 778. The Petitioner asked Flynn what happened, and he explained that they had become lost and decided not to go through with the plan. T 778-79. The Petitioner questioned Flynn more about the failed attempt and was unhappy when he told her they had planned to use a knife to kill Greg because she had said to use a gun. T 779. They dropped Fowler off and then the Petitioner and Flynn were alone. T 780. Once alone, the Petitioner angrily questioned Flynn, "How the hell did you get lost?" T 780. The Petitioner berated Flynn, telling him that he should not have got lost since he knew the way and she had given him written directions. T 780. The Petitioner accused Flynn of getting lost on purpose and said, "You knew the way and you don't love me and you got lost on purpose, and if you loved me you'd do this because you'd want to be with me." T 780. Flynn assured her that he "loved her very much." T 780. The Petitioner responded and said that she had another meeting coming up on May 1<sup>st</sup>, which was the last

meeting, . T 780. She told Flynn that he “had to do it then or that was it.” T 780-81. Flynn “promised her” he would do it, told her that he wanted to be with her, and said he would do it so he could be with her. T 783.

The Petitioner spoke to Cecelia Pierce about the failed attempt to kill Greg Smart. On the day it happened, the Petitioner told Pierce that she had a meeting that night and “was going to let them take her car to Derry to kill Greg.” T 1328. By “them,” the Petitioner meant Bill Flynn and Raymond Fowler. T 1329. The next day, the Petitioner told Pierce that Flynn and Fowler had taken “a wrong turn and that by the time they got to Derry, Greg was already home. So they just turned around and came home.” T 1330. The Petitioner was angry about the failed attempt and told Pierce that “she couldn’t believe how stupid they [Flynn and Fowler] were.” T 1330. After that, the Petitioner talked to Pierce “[a]lmost everyday” about “the planning and murder of Gregory Smart.” T 1332. At one point while Pierce was present, the Petitioner told Flynn to memorize the directions for the next time and “not to screw up again.” T 1327.

After the failed attempt to kill Greg Smart, Pete Randall and J.R. Lattime agreed to help Bill Flynn with the next attempt. T 783. Flynn told them that the Petitioner had agreed that they could take “anything from the house” as payment. T 783. Flynn also told Randall and Lattime that the Petitioner “would probably give them like a thousand dollars each.” T 783. After that conversation with Randall and Lattime, Flynn told the Petitioner about the promise to pay Randall and Lattime \$1000 each and she objected, even though she told Flynn that Greg had a \$90,000 life insurance policy. T 791. The Petitioner was worried that taking out that much money out of the insurance money or the checking account would cause too much attention, so she agreed to a \$500 payment for each one instead. T 784-85.

Prior to the murder, the Petitioner also continued to talk about the murder plan in Cecelia Pierce's presence. The week before the murder, Pierce was in a car with the Petitioner and Bill Flynn. The Petitioner discussed the murder plan with Flynn during that drive, including how Flynn "could get to the [Petitioner's] condominium without being seen." T 1333-34. Pierce recalled that the Petitioner told Flynn "to be careful not to leave any fingerprints." T 1334.

On May 1, 1990, the Petitioner told Cecelia Pierce "[t]hat Bill [Flynn] was going to go up there and he was going to kill Greg." T 1336. The Petitioner explained to Pierce how she would be at a meeting that night when the murder occurred. T 1336. The Petitioner essentially manufactured a reason to be away from her home when the murder occurred so she would have an alibi, just like she had done for the prior murder attempt. T 994-1000, 1015-16.

On the day of the murder, the Petitioner told Bill Flynn that she had left her bulkhead open in order to allow them to enter her residence. T 790. Flynn had secured a gun from J.R. Lattime to use during the murder. T 798. Lattime had taken the gun from his father and the Petitioner had provided the cash to buy bullets for the gun. T 798, 801. Part of the plan that night was to use Lattime's grandmother's car to get to the Petitioner's home to kill Greg. T 800. Since the grandmother's car was kept in Haverhill, Massachusetts, the Petitioner picked up the boys (Flynn, Randall and Lattime), and drove them to get the car. T 800, 805-06. During the ride, the Petitioner asked to see the gun and Flynn showed it to her. T 807. The group also went over the plan to kill Greg. T 158. The Petitioner told Flynn and Randall to get into her home through the bulkhead, which she would leave unlocked. T 158. She told them they should ransack the home and take what they wanted while they waited for

Greg to arrive. T 158. The Petitioner instructed them not to turn on any lights otherwise Greg would be suspicious and get scared and not go in the house. T 158. The Petitioner also said not to hurt her dog and that when Greg got home, they “were to kill him.” T 158. Randall asked the Petitioner about using a knife versus the gun to kill Greg, and she said that using a gun was better since she did not want to “get blood on the sofa.” T 159.

Once the Petitioner, Flynn, Lattime and Randall arrived in Haverhill, Lattime and Randall got into the grandmother’s car and Flynn and the Petitioner stayed in her car. T 810. The group then drove back to New Hampshire. T 810. The Petitioner dropped Flynn off and then left and went to the school to wait until the meeting she was using as an alibi started. T 811-12.

In the meantime, Flynn, Lattime and Randall picked up Raymond Fowler and the four drove to Derry. T 813-14. Once in Derry, they parked in a plaza near the Petitioner’s home. T 815. The group waited until after it got dark, and then Flynn and Randall walked to the Petitioner’s home. T 817, 819. Flynn and Randall had gloves on as they arrived at the Petitioner’s home and entered through the bulkhead door she had left unlocked for them. T 824. Once inside, Flynn did as the Petitioner had asked and put her dog in the basement so the dog would not get hurt or see the murder. T 826. Flynn and Randall then ransacked the house to make it look like a burglary had occurred. T 827. At some point, Randall took a knife out of the butcher block in the house and the two waited for Greg Smart to arrive. T 830. The Petitioner had suggested that they hide in the coat closet near the door to ambush Greg, but Flynn and Randall decided against that. T 832.

Eventually, Greg Smart arrived back home. T 836. When he entered the home, he was confronted by Flynn and Randall and forced to his knees. T 837-40. Randall held a

knife in front of Greg's face. T 845. Flynn said, "God forgive me," and then fatally shot Greg in the head. T 847. After that, Flynn and Randall ran out of the house, dropping the knife and one of the gloves along the way. T 848-50. After getting back to the car, they and the others drove to Seabrook. T 851. Along the way they threw out the black clothes they had worn during the murder. T 851. Raymond Fowler eventually told the police about the clothing being thrown out and showed the police where he thought that had occurred, however, none of the clothing was ever found. T 1180.

After the murder, the Petitioner left her meeting and drove home. She went inside and discovered Greg Smart dead and then went to her neighbor's for help. T 49-50, 1171-72. The neighbor called 911 and the police arrived. T 51-52, 61. When the first arriving officer entered the Petitioner's home, he saw Greg dead on the floor. T 67. The officer searched the home and noted it appeared ransacked. T 73. He also found a small dog in the basement. T 74.

Later, other officers arrived and a formal investigation ensued. T 1165-66. As part of the investigation, Derry Police Detective Daniel Pelletier met with the Petitioner to get permission to search her home. T 1166-65. The detectives who later searched the Petitioner's home found no signs of forced entry, meaning no signs that anyone had broken in. T 98, 120. The home appeared to have been ransacked and a knife was missing from a butcher block set of knives in the kitchen. T 111-12. During a search outside the Petitioner's home, police found a latex glove on the ground, some jewelry boxes and a plastic handled knife. T 125-28, 138.

The Petitioner met with detectives several times during the investigation, including twice the night of the murder when she wrote out a written statement. T 1168, 1170, 1173.

She spoke with detectives again on May 3, 1990. T 1173. During that interview, detectives told the Petitioner that they needed a list of the people who had recently been in her home so they could account for any fingerprints they might find. T 1173. In response, the Petitioner gave the detectives a list of nine people who had been in her home recently. T 1174.

However, the Petitioner left off Cecelia Pierce and Bill Flynn's names even though she knew they had been in her home recently. T 1174. For example, Pierce had been to the Petitioner's home several times, including staying there the week before Greg Smart was murdered. T 1310. Bill Flynn had also stayed over at the Petitioner's home. T 1311. Pierce had actually walked in on the two of them having sex, so clearly the Petitioner purposely omitted their names when she talked to the detectives about people who had been in her home. T 1311-12. Further, the Petitioner never mentioned Bill Flynn's name during those interviews with the police. T 1174. That was despite the Petitioner telling Detective Pelletier that she was going to help solve the murder in any way she could. T 1601.

The Petitioner also lied to other police officers, a prosecutor and in court, to hide her relationship with Bill Flynn and her connection to Cecelia Pierce. On March 17, 1990, the Petitioner had been driving her car when she was involved in an accident. T 1317, 1639. Cecelia Pierce, Bill Flynn, and Traci Collins were in the car with the Petitioner during that accident. T 1317, 1639. After the accident, the Petitioner completed an accident report where she listed the names of the passengers who had been in the car with her. T 1640. The Petitioner deliberately left off Pierce and Flynn's names. T 1640. Several months later when the accident case went to trial, the Petitioner compounded her initial deception and lied on the witness stand. During the trial, the prosecutor asked the Petitioner who had been with her at the time of the accident. T 1639, 1641-42. In response, the Petitioner said that only Traci

Collins and Cecelia Pierce had been with her. T 1642. The Petitioner obviously lied on the witness stand and committed perjury when she failed to mention that Bill Flynn had been with her during the accident. T 1642. At her later murder trial, the Petitioner characterized the lie she told at the accident trial as “more of an intentional avoidance of a bigger problem.” T 1642.

In addition to deceiving the police and the Court, the Petitioner deceived others as well. When interviewed by the news media after Greg’s murder, she told a reporter “what a happy marriage” she and Greg had together before his murder. T 1601. That was contrary to what she had told Cecelia Pierce, Bill Flynn and others about her marriage. It was also contrary to her claim at the murder trial that Greg had cheated on her and contrary to the fact that she had been carrying on an affair with a teenaged boy.

The Petitioner’s plan for after the murder included buying a condo closer to where Bill Flynn lived and using some of the insurance money to buy a car. T 887, 889. She took Flynn along on some of her car shopping trips after the murder. T 890. About a week after Greg Smart’s murder, the Petitioner had told Flynn that there was more life insurance money available than she had previously thought. T 792-93. Before Greg’s murder, the Petitioner had told Flynn that Greg had a ninety thousand dollar insurance policy. T 791. However, after the murder, the Petitioner told Flynn, “I can’t believe it. There was [sic] two insurance policies, one for ninety and one for fifty thousand [dollars].” T 792. She also told Flynn, “Don’t worry about anything. Everything’s going to plan.” T 792.

About a week after Greg Smart was killed, the Petitioner also spoke with Cecelia Pierce about his murder. T 1341. The Petitioner described some of the details of the murder scene and how the boys had locked her dog in the basement. T 1341. The Petitioner

complained to Pierce that the police had ruined her furniture with fingerprint dust. T 1341. She also complained about how the boys were “stupid” because they had not properly disposed of their gloves after the murder. T 1341.

In the weeks after the murder, the Petitioner went on with her new life with Bill Flynn and the police continued to follow up on leads and investigate Greg Smart’s death. T 1175. No real progress was made until June 19, 1990, when Detective Pelletier was called about a lead in the case that had been developed by the Seabrook Police Department. T 1176. Seabrook police officers had interviewed Vance Lattime, Sr., and Ralph Welch. T 1177. Detective Pelletier reviewed those interviews and learned that Pete Randall and Vance Lattime, Jr., had admitted to a friend, Ralph Welch, about “their participation in the [Greg Smart] murder.” T 1052-57, 1177-78. Welch later told Vance Lattime Jr.’s parents about Randall and Lattime’s admission, which led to Lattime’s parents and Welch going to the Seabrook Police Department. T 1066-67, 1070. Lattime’s parents brought along a gun, which was later confirmed to be the one that was used to kill Greg Smart. T 423.

While all that was occurring on June 10<sup>th</sup> at the Seabrook Police Department, Bill Flynn was at the Petitioner’s new home in Hampton, where he had stayed overnight with the Petitioner. T 900.<sup>2</sup> While Flynn and the Petitioner were at her home, Pete Randall and Vance Lattime, Jr., arrived unexpectedly. T 901. They told Flynn and the Petitioner that Ralph Welch had gone to the police and was telling the police everything about what they had done to kill Greg Smart. T 901. The Petitioner “wasn’t too happy,” upon hearing that news and was hysterical. T 538, 902. There was discussion about what to do, and it was agreed that Flynn would call Welch and tell him “it [their involvement in Greg Smart’s

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<sup>2</sup> As promised, the Petitioner had moved to Hampton to be closer to Bill Flynn after Greg Smart’s murder.

murder] wasn't true." T 902. The group also decided to go to Seabrook and try to get the murder weapon that had been left at Vance Lattime's house. T 540. They all got into the Petitioner's car and she drove them to Lattime's house. T 904. Once there, they found out they were too late and that the gun (the murder weapon) had already been taken to the police station. T 540. The group eventually returned to the Petitioner's house, where they went their separate ways. T 907. Meanwhile, the police conducted searches and interviews, and secured arrest warrants for Flynn, Randall and Lattime. T 1184. The next day, June 11, 1990, Flynn, Randall and Lattime, turned themselves into the police. T 1184.

After his arrest, Flynn never spoke to the Petitioner again. T 914. However, after his arrest and incarceration, the Petitioner contacted Flynn through his mother. While Flynn was incarcerated, his mother received an anonymous letter in the mail, which also contained a cassette tape. T 914-15. She brought that letter and tape to Flynn. T 915. When Flynn saw the tape and played it, he realized that it was the same tape that he had made and given to the Petitioner on the first night he had stayed over at her house. T 915. By sending that tape to Flynn, the Petitioner was trying to maintain her connection and influence over him even after his arrest. She likely hoped that she could appeal to his love and infatuation for her and convince him to stay silent about her role in Greg Smart's murder. The Petitioner tried to exercise the same control and influence over Cecelia Pierce in an effort to keep her silent as well.

On June 11, 1990, after Bill Flynn was arrested, detectives interviewed Cecelia Pierce. T 1188. As she had done before in prior interviews with the police, Pierce did not tell them about the Petitioner's affair with Flynn or about the Petitioner's role in Greg Smart's murder. T 1188. Pierce said that she did not tell the police what she knew about the

murder plan because she was scared since the Petitioner had told her that she would get “in trouble.” T 1338-39. On June 14<sup>th</sup> though, Pierce went to the police and told them what she knew about Greg’s murder. T 1190-91. That included specific information that implicated the Petitioner. T 1196. Thereafter, Pierce agreed to cooperate with the investigation and, unbeknownst to the Petitioner, let the police record her subsequent conversations with the Petitioner. T 1192-93.

The first recorded conversations between Cecelia Pierce and the Petitioner were over the phone on June 19, 1990. T 1198. The detectives used equipment that not only allowed them to record the call onto a cassette tape, but also allowed them to listen in on the conversation in its entirety as it occurred. T 1194, 1199. Besides that phone call, the detectives also monitored and recorded two “face-to-face” conversations between Pierce and the Petitioner that were captured using a “body wire” recording device on July 12 and 13, 1990. T 1218, 1221, 1223, 1228, 1230-31.

The original cassette tapes from each of the three recorded conversations between the Petitioner and Cecelia Pierce were later taken to an “FBI audio enhancement expert,” Bob Halvorsen. T 1205, 1233. Halvorsen was an electrical engineer who specialized in tape recording, was “a contractor for the FBI,” and was “an expert in the area of tape enhancement.” T 1097, 1100, 1102. Halvorsen used specialized equipment to conduct an audio enhancement of the recordings of the conversation between the Petitioner and Pierce. T 1104-07. The enhancement was completed in order to “make the intelligibility clearer, and make the tape clearer to understand and reduce the noise.” T 1108. The enhancement process consisted of removing extraneous sounds like “hum,” background noise, interference, and static. T 1103-07. The voices of the people on the tapes, including their

inflections and the speed of their voices, were not affected during the process. T 1106, 1108. In addition, Halvorsen testified that no “additions or deletions” were made to the tapes during the enhancement process, T 1109, and that any “doubling” “would be evident” from the tapes. T 1124.<sup>3</sup>

Detective Pelletier also testified to the tapes’ accuracy and fidelity as well, confirming that he was present when the tapes were enhanced, and listened to the tapes after Bob Halvorsen completed his work. T 1206, 1234-35. Detective Pelletier confirmed that the tapes were fair and accurate representations of the conversations he overheard between the Petitioner and Cecelia Pierce on June 19, July 12, and July 13, 1990. T 1206, 1225, 1232. Cecelia Pierce likewise testified that the tapes were fair and accurate representations of the recorded conversations between her and the Petitioner. T 1368.

The recorded conversations between Cecelia Pierce and the Petitioner confirmed that the Petitioner was an active participant in the plot to kill her husband. During their meetings, the Petitioner counseled Pierce on how to respond to police questions about the murder, including withholding information and lying about the Petitioner’s role in it. The Petitioner tried to scare Pierce to keep quiet by telling her that if she told the truth about the Petitioner’s part in the murder, Pierce would be an accessory to murder and the Petitioner would go to jail for the rest of her life. The Petitioner also discussed with Pierce her (the Petitioner’s) willingness to lie to the police to hide her culpability and role in the murder, including her affair with Bill Flynn. In addition, the Petitioner complained that the murder would have been the “perfect” crime until one of the boys told Ralph Welch about the murder. The recordings also revealed the Petitioner for who she truly was when she thought no one else

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<sup>3</sup> “Doubling” can occur when two people talk over each other.

was listening, a crude and deliberate liar, and a manipulator who preyed on high school students.

What follows are some of the most inculpatory recorded exchanges between Cecelia Pierce and the Petitioner from their conversations on July 12 and July 13, 1990.

**Recorded in-person conversation between Cecelia Pierce and the Petitioner on July 12, 1990**

In this excerpt, the Petitioner said that she was upset that two of her co-conspirators (Pete Randall and Vance Lattime, Jr.) had told Ralph Welch about the murder plot.<sup>4</sup> She also expressed fear that one of the love notes she had written Bill Flynn might be discovered. The Petitioner confirmed that she would not reveal her affair with Flynn unless the police had hard evidence of it, like one of the notes she and Flynn had written to each other:

**Petitioner:** But the problem is my heart is like fucking having a heart attack, like I can't even fucking believe this because why would they have told Ralph, if they never would have told Ralph you know. Pg. 14<sup>5</sup>

...

**Petitioner:** ... but if I get arrested the only way I would ever confess to um the affair would be if they had a note.... Pg. 15

**Pierce:** Do you know where that note went? Pg. 15

**Petitioner:** No, I, Bill has it, I coulda sworn Bill said he ripped it up. Pg. 16

In this excerpt, Cecelia Pierce told the Petitioner that the Attorney General wanted to question her. The Petitioner told Pierce about accomplice liability in murder cases and tried to convince Pierce not to tell the police the truth. The following exchange then occurred:

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<sup>4</sup> Copies of the July 12 and July 13, 1990 transcripts from the recordings are attached as Exhibits #1 and #2 respectively. The page references are to the cited pages in the copies of the attached transcripts.

<sup>5</sup> These page references are to the page numbers of the attached transcript marked as Exhibit #1.

**Petitioner:** Because, uh, all I can say is that no matter what they try and make you talk about, (sigh) if I were you I didn't know a damn thing. Pg. 19

...

**Pierce:** Well, all I know is that I had to come and talk to you because I, I mean I don't know what to do I have to go talk to the Attorney General, I'm sick of lying, you know. Pg. 20

**Petitioner:** Well, you know, I'm just telling you that if you tell the truth, you're gonna be an accessory to murder. Pg. 20

In this excerpt, the Petitioner lamented how the murder plan was proceeding without issue until the boys told Ralph Welch the details:

**Pierce:** Did you now, seeing what happened, wouldn't you rather had just divorced Greg? Pg. 20

**Petitioner:** Well, I don't know, you know. Nothing was going wrong until fucking they told Ralph. Pg. 20

In these excerpts, the Petitioner tried to convince Cecelia Pierce not to tell the police the truth about the murder plot because the Petitioner would go to prison:

**Petitioner:** ... and I like to think I've done a lot for you too in that you have nothing, you know I've done nothing for you in my entire life, when I think I've been a very good friend to you and that's the thing, even if you send me to the fucking slammer or you don't, and if anybody sends me, it's gonna be you, and that's the big thing, and that's what it comes down to. That's the big thing. That's what it comes down to. Pg. 24

**Pierce:** (inaudible) Pg. 24

**Petitioner:** But what good is it gonna do if you send me to the fucking slammer. Because if you think that's going to be the end of your problems.... Pg. 24

...

**Petitioner:** No shit. If you think people bother you now with questions, you know its never gonna fucking end *I mean just let it end with the fact that you don't know anything.* Pg. 29

**Recorded in-person conversation between Cecelia Pierce and the Petitioner on July 13, 1990**

In this excerpt, the Petitioner spoke to Cecelia Pierce about the fact that Pierce might have to testify in the grand jury about the murder and that Pierce did not want to lie:

**Pierce:** Well I did know about it before hand. Pg. 5<sup>6</sup>

**Petitioner:** *Yeah but if you say that you're gonna get in trouble anyways.* Pg. 5

**Pierce:** Umhum. Pg. 5

**Petitioner:** *So you are better off just just lying.* Pg. 5

In this excerpt, the Petitioner and Pierce discussed one of Bill Flynn's prior failed attempts to kill Greg Smart, when Flynn said he got lost on the way:

**Pierce:** Well, that time, if he hadn't have forgotten directions he could have killed Greg then and then.... Pg. 7

**Petitioner:** *I know*, I really... Pg. 7

**Pierce:** ...I wouldn't have even spent the next week with you. I know but if... Pg. 7

**Petitioner:** *I know* but it's history now, cause ya know, we can't talk about shit that should have happened. Pg. 7

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<sup>6</sup> These page references are to the page numbers of the attached transcript marked as Exhibit #2.

In this excerpt, the Petitioner coached Pierce on how to lie to the police if they asked her about the murder, and gave Pierce examples of what the police might say to her to get her to tell the truth, and how Pierce should respond:

**Petitioner:** And even if, if Pete if they say well Pete said that that Bill told him that you knew, then all you have to say is well Bill told Pete the wrong thing. Pg. 8

In this excerpt, the Petitioner tried to convince Pierce not to tell the truth about what she knew about the murder. The Petitioner said that Pierce would probably be arrested if she told the truth, and as a result the rest of them, including the Petitioner, would go to prison for the rest of their lives:

**Petitioner:** If I thought if you told the truth it's going to do you any good, that's one thing, but it's not. If you tell the truth – you cannot change what you know, you know, you can't and if you tell the fuckin' truth you are probably going to be arrested and even if you're not arrested you're gonna have to go and you're gonna have to send Bill, you're gonna have to send Pete, you're gonna have to send J.R. and you're gonna have to send me to the fuckin' slammer for the rest of our entire life and unfortunately that's the situation you're in. Pg. 9

In this excerpt, the Petitioner and Pierce talked about that fact that Raymond Fowler had spoken about the murder plot. The Petitioner asked Pierce to signal her if Pierce was “wired” by the police to record their conversations. The Petitioner also agreed that otherwise it would have been the “perfect murder” because the boys followed the Petitioner’s plan to make it look like a burglary:

Pierce: All I can say is if Raymond hadn't run his mouth off. Pg. 9

**Petitioner:** I know. Give me some signal that if you ever come down to me and you're wired that you are going to give me. Pg. 9

Pierce: I'll just wink. Pg. 9

...

Pierce: All I have to say is...Um if Raymond hadn't run his friggin mouth off this would have been the perfect murder... Pg. 9

**Petitioner:** Right. Pg. 10

Pierce: ...because they set everything up... Pg. 10

**Petitioner:** No shit... Pg. 10

Pierce: to look like a burglary just like you said... Pg. 10

**Petitioner:** No shit...so it's not my fault. I fucking Raymond... Pg. 10

Pierce: Had not run his mouth off everything was set up perfect. Pg. 10

**Petitioner:** No shit. Pg. 10

In this excerpt, the Petitioner again tried to convince Cecelia Pierce not to tell the police the truth about what she knew about the murder. The Petitioner also told Pierce that she would be shocked if the police had a witness she did not know about, and how the Petitioner would deal with that witness if they existed – not denying the truth of what that witness said but instead, attacking the witness's credibility:

**Petitioner:** ...So you have to go there and just fucking say the same god damn fuckin' story, you know, and don't change it and that's it. And the only thing is I don't know what they are going to ask you. I would totally shit if they said to you well Bob Smith that lives next door to Pam said she saw Bill walking into the house on the night of Greg's murder but I'd be like the stupid bitch she waited three fucking months to say what she say, you know what I mean?

Pg. 11

In his excerpt, the Petitioner expressed her concern that one of the boys was going to tell the police about the murder plot and her role in it. The Petitioner admitted that she knew about the murder plot in advance and would have to lie about it:

Pierce: So he's not gonna say you offered to pay him, he's going to say you knew about it before it happened which is the truth. Pg. 12

Petitioner: ***Right*** – well so then I'll have to say no I didn't and then they're gonna believe me or they are gonna believe J.R. 16 years old in the slammer. And then who me with a professional reputation and a course that I teach, that's the thing. Pg. 12

The Petitioner's recorded conversations with Cecelia Pierce confirmed much of what Pierce, Bill Flynn, Pete Randall, and J.R. Lattime, Jr., told the police and the jury about the murder plot and the Petitioner's role in it. The recordings also confirmed the lengths the Petitioner was willing to go to hide her role in the murder, including lying to the police and trying to convince Pierce to lie as well. However, the Petitioner's efforts to convince others to lie for her and to lie herself to avoid arrest failed, and she was arrested on August 1, 1990. T 1245. Despite her arrest, the Petitioner continued to try and convince people to lie for her in order to hide her role in her husband's murder.

After the Petitioner's arrest, she was concerned that Cecelia Pierce would be a witness against her at trial. However, because the Petitioner was in jail she could not contact Pierce directly and ask her to lie for her. So instead, the Petitioner decided to try to nullify Pierce as a potential witness by attacking her credibility. To do that, the Petitioner turned to an acquaintance, George Moses. Moses was interviewed by the police on November 1, 1990 about his interactions with the Petitioner after her arrest. T 1245. He said that he knew the Petitioner from attending the high school where she worked. T 668. In mid-August, after

the Petitioner was arrested, Moses visited his step-mother in prison where he also saw and spoke with the Petitioner. T 668-69. During his first conversation with the Petitioner, she told Moses that she had been charged with conspiracy to commit murder and was “waiting to get out.” T 672. The Petitioner explained to Moses that “there was a girl, Cecelia Pierce, that had been there as one of the big witnesses.” T 672-73. The conversation went no further because a guard interrupted them and stopped the conversation. T 673.

About two weeks after the Petitioner spoke to George Moses in prison, she spoke to him again over the phone. T 673-74. Moses had called his mother in prison and after they were done talking, the Petitioner got on the phone. T 674-75. The Petitioner identified herself as “Pam,” and said, “I need you to do me a favor. Will you lie for me?” T 677. The Petitioner wanted Moses to lie and say that he had “overheard a conversation between Cecelia Pierce and another woman who worked at the school.” T 678. The Petitioner asked Moses to tell her lawyers that when he overheard that conversation, he heard Pierce say “that everything that Cecelia had given to the police was a lie.” T 678. The Petitioner said that if Moses lied for her, “it might help her case.” T 678. Moses told the Petitioner that he was not sure about doing what she asked, *i.e.*, passing along a false story to her lawyers. T 679.

After George Moses got off the phone with the Petitioner, he did not do what she asked. Instead, Moses told his mother that the Petitioner had asked him to lie for her. T 680. His mother told him not to “lie about anything.” T 680. Moses followed his mother’s advice and never spoke with the Petitioner’s lawyers and lied to them as the Petitioner had requested. T 695-96. Later, Moses told Derry Police Detective Pelletier about the Petitioner’s request to lie for her. T 680.

George Moses later testified at the Petitioner's trial about how the Petitioner asked him to lie about Cecelia Pierce. When the Petitioner testified at trial, she never disputed what Moses said.

When the case against the Petitioner went to trial, the Petitioner was confronted with all the evidence against her and finally admitted that she had an affair with Bill Flynn, the two wrote explicit love letters to each other, and that she had loved Flynn. T 1514-16, 1518, 1520. The Petitioner also admitted that she had made a conscious decision not to tell the police about the affair, that she kept things from the police, and that she did everything she could to cover up her relationship with Flynn. T 1586, 1596, 1679. The Petitioner also acknowledged that she had made "conscious" decisions to lie to the police. T 1588. For example, she testified that she purposely did not tell the police about driving Bill Flynn, Pete Randall, and J.R. Lattime to Haverhill to pick up a car on the night of the murder, even after the three boys had been arrested for her husband's murder. T 1594-95. The Petitioner admitted that she deliberately withheld that information and other information from the police that would have allowed them to solve the murder. T 1596-97. She acknowledged that she knew that if she had told the police that information and about her affair with Bill Flynn, that would have provided a motive for her husband's murder and connected her to the killing. T 1596-97.

With respect to Cecelia Pierce, the Petitioner conceded that she had manipulated Pierce and lied to the police. For example, before she was arrested the Petitioner had told the police that she had "counseled Cecelia Pierce to tell the truth and just answer questions." T 1701. However at trial, the Petitioner agreed that had been "a bold faced lie," and she never counseled Pierce to tell the truth. T 1701. On the contrary, the Petitioner admitted that she

had done “everything in...[her] power to prevent Cecelia Pierce from going to the police.” T 1754-55. The Petitioner confirmed she did that because she did not want Pierce to go to the police and tell them about her affair with Bill Flynn and she did not “want to get arrested.” T 1742-43.

When faced with the secret recordings of her conversations with Cecelia Pierce, the Petitioner admitted at her murder trial that it was her voice on the tapes and that she had not known at the time that the conversations were being secretly recorded. T 1704. The Petitioner’s attorney questioned her about the tapes and posed the following questions to her about them: “What’s that all about? What’s going on?” T 1581. In her testimony that followed, the Petitioner never contested what she had said on the recordings and never contested the accuracy or authenticity of the recordings or the transcripts of those recordings. T 1495-1770. She conceded that she had made many incriminating statements during her recorded conversations with Cecelia Pierce. T 1717. In fact, during her direct examination at trial, the Petitioner adopted and embraced what she had said on the recordings and what was reflected in the transcripts, but tried to explain it all away as a “game” that she had employed “[t]o get information” by acting like she knew about the murder. T 1583. The Petitioner tried to justify what she had said to Pierce as her “own little investigation.” T 1649. When confronted on cross-examination with what she had said on the recordings with Pierce, the Petitioner changed her explanation for why she had said those things and claimed for the first time that she had been acting irrationally and had been “confused.” T 1649,

1672.<sup>7</sup> However, it was clear from the recorded conversations with Pierce that was not the case; the Petitioner knew exactly what she was doing when she admitted her role in the murder and tried to get Pierce to lie and cover up her role.

At one point during the trial when confronted with her lies, the Petitioner admitted that honesty was “not always” the best policy for her, T 1688, and that her “truth varies under the circumstances.” T 1600. Those admissions and others led the jury to conclude that the Petitioner was not credible and after considering all the evidence, the jury convicted her of accomplice to first-degree murder, conspiracy to commit murder, and tampering with a witness. T 2046-47. The Petitioner was sentenced to mandatory life without parole for the murder charge. T 2048. It is that sentence the Petitioner is seeking to reduce with her commutation request.

### **III. THE PETITIONER’S CLAIMS IN SUPPORT OF HER COMMUTATION REQUEST**

The Petitioner claims that there are several reasons why her request for a commutation of sentence is justified. Many of her claims are ones that have already been rejected at trial or on appeal. Others are based on factual claims that when viewed in context, are unpersuasive. Regardless, none of the Petitioner’s claims justify commuting her sentence. The State will address each claim in turn.

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<sup>7</sup> When the Petitioner’s attorney had asked her at trial how she was “feeling during the summer” after the murder she, told him that she had been “obsessed” with finding out who murdered her husband. T 1583-85. The Petitioner never said that she had been irrational and confused as an explanation for what she had said on the tapes. Those new explanations did not come until later on in the trial when the Petitioner was cross-examined by the Prosecutor.

A. **Claim regarding the Petitioner's achievements and character versus the goals of sentencing in New Hampshire.**

The Petitioner cites her "conduct, achievements and outstanding character" as warranting a sentence reduction. Pet's Memorandum, pg. 8. In essence, the Petitioner claims that her rehabilitation efforts in prison are "consistent with a parole-eligible prisoner" and weigh in favor of her requested sentence reduction. The State disagrees.

The Petitioner's efforts at rehabilitation must be viewed in light of the express goals of sentencing in New Hampshire. "The legislature has vested in the trial court the ability to adapt sentencing to best meet the constitutional objectives of punishment, rehabilitation and deterrence." *State v. Henderson*, 154 N.H. 95, 97 (2006). No single factor is essential to justify a particular sentence in a case so long as the trial court considers all three goals. *See State v. Wentworth*, 118 N.H. 832, 842 (1978). In her Memorandum, the Petitioner essentially focuses on just one goal of sentencing, rehabilitation. However, even that one claim is in doubt.

The Petitioner has never accepted full responsibility for the crimes she committed: accomplice to first-degree murder; conspiracy to commit murder; and tampering with a witness. Instead, she has blamed her co-conspirators, the police, the trial judge, the jury, and the media for her convictions. The Petitioner cannot make a credible argument that she has been rehabilitated when she continues to lie and blame others for the crimes that she committed. Accepting full responsibility for her crimes would be a sign that she is on the path to rehabilitation.

In prison the Petitioner has, at times, made good use of the available resources and endeavored to help herself and others. That is proof that being in prison is not an

impediment to her potential for rehabilitation. In addition, inmates like the Petitioner who behave in prison at times do not receive disciplinary infractions and as a result they do not lose their valued privileges. Therefore, while the Petitioner may have several motives for her conduct in prison, there is no doubt that helping herself is one of them. While that does not necessarily diminish her efforts at rehabilitation, it does put them in context, as does a consideration of New Hampshire's other goals of sentencing: punishment; deterrence; and confidence in the justice system.

As to punishment, the New Hampshire Supreme Court has held that "retribution...remains a societal goal," and that the legislature may properly conclude that certain criminal conduct is so serious that the offender "must be isolated from society for the remainder of his life." *State v. Farrow*, 118 N.H. 296, 303 (1978). While it is surely punishment, the sentence the Petitioner received pales in comparison to the impact of her actions on Greg Smart and his family and friends. Unlike Greg's family and friends, the Petitioner's family and friends can still visit her, talk to her, and write to her. The Petitioner ensured that Greg's family and friends have been denied those comforts forever. That magnitude of loss weighs against commuting the Petitioner's sentence.

Deterrence, both general and specific (*i.e.*, individual), is another factor to consider in this case. New Hampshire courts have long acknowledged that general deterrence is a legitimate consideration in imposing sentence for a particular offense. *See State v. Darcy*, 121 N.H. 220, 225 (1981) ("The real purpose of all sentencing is to reduce crime, and our Constitution recognizes deterrence as a legitimate purpose of sentencing."). In the seminal case of *State v. Wentworth*, 118 N.H. 832 (1978), the New Hampshire Supreme Court discussed the role of general deterrence in sentencing in more detail:

Contrary to defendant's assertion, the emphasis on deterrence in this case is not inconsistent with N.H. Const., pt. I, art. 18, which states in part that "the true design of all punishments (is) to reform, not to exterminate mankind." It should be noted that this constitutional language sanctions "punishment" as a method of reforming the criminal. *See State v. Farrow*, 118 N.H. 296 [] (1978). This same language also recognizes deterrence as a valid purpose of sentencing; the implication is that reform will result from the deterrent effect of punishment. General deterrence is also recognized in other language in the article when it states that if the same "severity is exerted against all offenses, the people are led . . . to commit the most flagrant with as little compunction as they do the lightest offenses." *Id.* Rehabilitation, which in the modern sense of the word includes counseling and training, is not a constitutional requirement. The defendant in this case is an educated, highly motivated individual with no prior record and with no apparent criminal tendencies apart from the practice of civil disobedience to accomplish what he considers to be an important goal. He is not in need of rehabilitation in the modern sense of the word. The State, however, does need to deter repetition of this offense both by the defendant and others. Both individual and general deterrence were important considerations for the imposition of sentence in this and related cases. To accomplish these purposes, the sentence needed to be more severe than in ordinary criminal trespass cases. In deciding on the degree of severity to obtain the necessary deterrent effect, the trial judge was entitled to consider the dedication and motivation of the offender who would not likely be deterred by a lighter sentence, but who with others might be induced by a more severe sentence to use lawful, instead of unlawful, means to protest. The object is not to stifle protest, but to deter unlawful conduct.

*Wentworth*, 118 N.H. at 842-43.

In *Wentworth*, the New Hampshire Supreme Court concluded that so long as a trial court does not fail to consider the circumstances of the particular individual Petitioner in imposing its sentence, "[g]eneral deterrence is a permissible consideration." *Id.* at 843. In the context of this Petitioner's crimes, general deterrence is particularly appropriate.

Through her choices and conduct, the Petitioner ensured the death of her husband, Greg Smart. Other like-minded or similarly situated potential criminals must be warned that if they engage in conduct like the Petitioner's, their actions too will be met with significant punishment. Therefore, commuting the Petitioner's sentence would be contrary to the goal of general deterrence.

Specific or individual deterrence is also an important consideration in this case to ensure that when the Petitioner is released, she never again engages in similar conduct. A significant sentence ensures that the Petitioner understands the seriousness of her offense, the loss to Greg Smart and his family, and that the justice system will not tolerate taking the life of another. Commuting the Petitioner's sentence would send the message to her that Greg Smart's life is worth something less than it was before, when she was originally sentenced. That would be unfair to the victim, his family, and contrary to the goals of our criminal justice system.

Finally, consideration of the goals of sentencing requires recognition that a particular sentence may be imposed in order to instill confidence in the criminal justice. The New Hampshire Supreme Court recognized that as a valid sentencing factor even in the absence of rehabilitation or deterrence. In *Darcy*, the Court observed:

Many persons who are incarcerated for having committed homicide are not dangerous. They committed their crimes, as did this defendant, under a set of circumstances which are not likely to recur. It may be argued that a crime of this nature, committed in the heat of passion, is not likely to be deterred by imprisonment. Yet it is recognized that there are some crimes for which imprisonment may properly be thought to be the appropriate sentence even though it may not have a deterrent effect; otherwise, the seriousness of the crime would be unduly depreciated.

*Darcy*, 121 N.H. at 225-26. The Court also stated that "public confidence in the system of justice" is an "important consideration" in sentencing. *Id.* at 225.

A domestic violence murder like this one is exactly the type of crime that requires a significant sentence in order to instill public confidence in the system of justice and send a strong message of deterrence. In New Hampshire, statistics kept by the Attorney General's Office show that historically approximately 50% of our murder cases are domestic violence related cases. New Hampshire's framework of criminal offenses and protections addressing

domestic violence reflect the seriousness with which our Legislature and criminal justice system treat this issue. Greg Smart's murder was one of the most extreme forms of domestic violence and as such, the architect of his murder - the Petitioner, deserves a significant prison sentence. To do otherwise reduces the deterrent effect of sentences in domestic violence cases and sends the wrong message to the Petitioner and others like her.

The last factor that should be considered regarding the Petitioner's rehabilitation claim is her disciplinary record in prison. According to the Superintendent at the Bedford Hills Correctional Facility, the Petitioner's "discipline record is less than exemplary considering she has received 2[6] Disciplinary infractions, consisting of [8] Tier III's and 18 Tier II's." Tier III infractions are the most serious, followed by Tier II (more serious) and then Tier I (less serious) infractions.

The fact that the Superintendent of the facility where she is housed considers the Petitioner's disciplinary records to be "less than exemplary," also weighs against her claim of rehabilitation and her request for a sentence reduction.

To summarize, while the Petitioner has taken steps towards her rehabilitation, that rehabilitation is far from complete. Of particular note is her lack of acceptance of responsibility for her crimes, which is clear proof that she is far from rehabilitated. In addition, while rehabilitation is one component of sentencing in New Hampshire, it is not the only one. There are other considerations such as punishment, deterrence and confidence in our justice system that weigh against commuting the Petitioner's sentence.

**B. Petitioner's claim that the jurors have questioned her sentence.**

Another factor the Petitioner cites as support for her sentence reduction concerns the jurors' knowledge of and opinion of her sentence. Pet's Memorandum, pg. 17. The

Petitioner claims that the deliberating jurors were ignorant of the “sentencing disparity” between her potential sentence and that of her co-conspirators. The Petitioner also claims that some of the jurors’ after-the-fact opinions support her argument that her sentence is “inequitable.” The first part of her claim is inaccurate and the second part is without merit.

The first part of the Petitioner’s claim is that the jury did not know what her potential sentence was versus those of her co-conspirators. That is not true. Vance Lattime, Jr., testified at trial that he was originally charged as an accomplice to first-degree murder and faced a sentence of life without parole. T 525. He explained to the jury that as a result of his cooperation with the State, he had pled guilty to a reduced charge of second-degree murder and would receive a sentence of thirty years to life in prison, with twelve years deferred. T 526. Co-conspirator Bill Flynn also testified at trial about his plea agreement with the State. T 855-60. Flynn told the jurors that he was pleading guilty to second-degree murder and would be receiving a sentence of forty years to life, with twelve years deferred. T 856. Flynn also told the jury that if he violated the terms of this agreement, he could be charged with first-degree murder and that the penalty for that charge (the same one the Petitioner was charged with), was life without parole. T 857-58. Finally, Pete Randall testified about his cooperation agreement with the State. T 210-19. Randall told the jury that pursuant to his agreement with the State, he would be receiving a sentence of forty years to life, with twelve years deferred. T 213-14. He explicitly told the jury that but for his plea agreement, he would be facing “life without parole” on the charges. T 215.

Based on the trial testimony from at least three witnesses, it is clear that the jurors repeatedly heard that but for their plea agreements, the Petitioner’s co-conspirators faced life without parole sentences, the same sentence that the Petitioner faced. Accordingly, there is

no truth to the Petitioner's claim that her jurors were not informed about her potential sentence versus the sentences her co-conspirators received and could have received.

The second part of the Petitioner's claim is that some jurors expressed the opinion, after the trial, that the Petitioner's sentence is unfair. In the Petitioner's case, the fact that some jurors might now think that her punishment is too harsh is irrelevant to whether she committed the charged offenses, which is what they originally concluded beyond a reasonable doubt. Those same jurors may have felt that the Petitioner's punishment fit the crime had they known that the Petitioner's crime was a potential capital offense, which would have subjected her to a mandatory sentence of life without parole or death. Regardless, the Petitioner's claim regarding how some members of her jury may feel about her sentence now does not impact the propriety of that sentence or her conviction and does not weigh in favor of commuting the Petitioner's sentence.

**C. Claim regarding recent social and political sentiments regarding executive clemency.**

The Petitioner claims that events in other states and beliefs held by certain organizations should trump New Hampshire's sentencing law for first-degree murder cases. Pet's Memorandum, pg. 17. The Petitioner makes two separate arguments in support of this claim. Both should be rejected.

**1. The Petitioner's argument regarding sentence commutations in other states.**

The Petitioner points to actions taken by governors in other states in cases where clemency and commutation was granted. The Petitioner references those other cases and argues that like those other murderers, she should be granted a sentence reduction because: she only played an "ancillary" role in Greg Smart's murder; granting her a commutation

would “reinforce the rehabilitative goals of the justice system” and “correct an unjust” and “grossly disproportionate” sentence. The Petitioner is wrong on all counts.

First, while it may be informative, what other States have done with their murder cases is not binding on New Hampshire. Sentencing courts in New Hampshire sentence defendants based on the facts of that particular case and the applicable New Hampshire law. That makes sense since the defendant’s crime was committed in New Hampshire, the results of that crime were felt in New Hampshire, and the goals of sentencing are set by New Hampshire courts. And as already discussed, based on the facts of this case and the law in New Hampshire, the Petitioner’s sentence was and is appropriate under New Hampshire law and should not be reduced.

Second, apparently unlike some of the out-of-state cases cited by the Petitioner, this Petitioner did not play just an “ancillary” role in Greg Smart’s murder. As fully set forth in the facts, the Petitioner orchestrated and facilitated Greg’s murder; she was not merely a bystander. Greg’s murder only occurred because the Petitioner wanted him killed for her own selfish reasons. She chose the killer and encouraged that killer to carry out the crime, and then she profited from it. Accordingly, her role in Greg’s death was far from “ancillary,” unlike some defendants in the murder cases cited by the Petitioner in her Memorandum.

Next, the Petitioner’s claims about rehabilitation have already been addressed in this response and as previously stated, they are not sufficient to justify commuting her sentence. As already stated, rehabilitation is not the only goal of sentencing. In addition, to the extent she so desires, the Petitioner can continue her rehabilitation efforts in prison. And finally, the Petitioner’s claims about rehabilitation fall short in light of the fact that she has never accepted full responsibility for her crimes.

Last, unlike whatever may have happened in the cases from the other states that the Petitioner cites in her memorandum, this Petitioner's sentence was not "unjust" or "grossly disproportionate." The Petitioner was convicted as an accomplice to first-degree murder, of conspiracy to commit murder, and tampering with a witness. The facts of the murder she orchestrated more than justify her sentence, a sentence provided-for in established New Hampshire law. The Petitioner's sentence was not only just, it was less than what she could have faced for soliciting the murder of Greg Smart. Soliciting the murder of another is a potential capital murder offense in New Hampshire, and carries a mandatory life without parole sentence or a possible death sentence. That puts the Petitioner's sentence in context, in addition to what has already been stated.

As for the Petitioner's claim that her sentence is unjust because it is grossly disproportionate to the sentences that her co-conspirators received, the law and the facts prove otherwise. A sentence is not disproportionate unless the Petitioner shows that her sentence is "grossly disproportionate to the crime." *State v. Enderson*, 148 N.H. 252, 259 (2002) (citation omitted). In essence, a Petitioner must prove that there is "a great imbalance between the gravity of the offense and the harshness of the penalty...." *State v. Sweeney*, 124 N.H. 396, 402 (1983). The Petitioner cannot meet that burden here given the "gravity of the offense," which is murder. By her actions, the Petitioner initiated and then facilitated the murder of her husband because she wanted to be with her juvenile-lover and did not want to suffer the financial consequences of a divorce. Unfortunately for Greg Smart and his family and friends, the Petitioner's plan worked and Greg was murdered. Given that result, there is no imbalance between the Petitioner's sentence and the deadly result of her crimes.

As for the difference between the sentence the Petitioner received versus that of her co-conspirators, the difference in their sentences does not render her sentence disproportionate. “Not all persons convicted of a particular crime must receive the same sentence. This has never been the law. Even if the crimes are identical, the defendants may not be.” *State v. Fraser*, 120 N.H. 117, 122 (1980) (quotation marks and citations omitted). The Petitioner was very different than her co-conspirators at the time of the crime. She was much older and unlike most of them, was an adult under our law. The Petitioner, unlike her co-conspirators, was educated and had a career. She, unlike them, had a significant financial motive to commit the crime. She, unlike them, manipulated others to commit murder. And finally, none of the other defendants tampered with witnesses before trial and then took the witness stand and repeatedly lied under oath, something this Petitioner did and that merits a greater sentence. *See State v. Burgess*, 156 N.H. 746, 754 (2008) (a court may consider “a defendant’s false trial testimony as a factor in sentencing”). Those facts distinguish the Petitioner from her co-conspirators and justify the difference in her sentence from theirs.

Another distinguishing factor between the Petitioner and her co-conspirators is that they took full responsibility for their actions, pled guilty, and cooperated with the State. Since this case involved a criminal conspiracy, the most effective means to prove that conspiracy and explain its inner workings to the jury was to gain the cooperation of some of the co-conspirators. That was also practically and legally necessary in order to hold all those involved accountable for their actions. That is a reason why the co-conspirators who cooperated with the State received lesser sentences.

In addition, in New Hampshire, as in all states, it is appropriate to encourage guilty pleas “by providing the opportunity for lesser punishment.” *Fraser*, 120 N.H. at 122-23.

Once that plea is entered, it is “permissible to extend a proper degree of leniency...in return for [the] guilty plea. This does not entitle the defendant [Petitioner], who went to trial and was convicted, to the same consideration.” *Id.* at 123. The Petitioner, unlike her co-conspirators, never took full responsibility for her actions and never cooperated with the State. On the contrary, she tried to obstruct the investigation by withholding information from the police, tampering with witnesses (Cecelia Pierce and George Moses), and lying on the witness stand. Accordingly, her sentence is appropriately greater than her co-conspirators’ sentences.

Last, the Petitioner’s sentence is proportional to the sentences imposed for like crimes with similar defendants in New Hampshire. In the case of *State v. Lucille Sanchez*, 152 N.H. 625 (2005), Sanchez’s boyfriend, Baltazar Salas-Robles told the police in 2002 that he had murdered Sanchez’s aunt in 1989. *Id.* at 627. After he was arrested for an unrelated crime, Robles confessed to the police “that the defendant [Sanchez] had solicited him to kill her aunt so she could claim her inheritance.” *Id.* Sanchez was subsequently arrested and charged with first-degree murder, conspiracy to commit murder, and solicitation to commit murder. *Id.* Robles later “reached a plea agreement with the State and agreed to testify against the defendant.” *Id.*<sup>8</sup> Sanchez was convicted of first-degree murder and conspiracy to commit murder after trial. *Id.* at 626. She received a mandatory life without parole sentence on the murder conviction.

In 2008, Diana Saunders called the police and reported that she had found her boyfriend, David King, dead in their home. *State v. Diana Saunders*, 164 N.H. 342, 346

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<sup>8</sup> Robles pled guilty to second-degree murder and received a 15 years to life sentence, with a concurrent 7 ½ to 15-year sentence on a conspiracy to commit murder charge.

(2012). A neighbor reported seeing two men in the area before the murder, Scott Mazzone and Saunders' step-son, Derek Saunders. *Id.* at 346. Upon questioning, Derek told the police that Diana had given him \$8000 to have King killed because she wanted him gone. *Id.* at 347. Derek also implicated his friend, Scott Mazzone in the murder. *Id.* Derek told the police that he and Mazzone went to kill King and that Mazzone had committed the actual murder. *Id.* at 348. Eventually, Derek agreed to cooperate with the police and testify against Diana Saunders at trial. *Id.* He pleaded guilty to second-degree murder and received a 20 years to life sentence. Mazzone also agreed to cooperate with the State and plead guilty. He pled guilty to second-degree murder and received a sentence of 33 years to life in prison. Another person who knew about the murder in advance and was involved was Roy Saunders. Roy was Diana Saunders' former husband. Roy told the police that Diana wanted King dead because she could not stand him, claimed he was abusive, and wanted to inherit his \$500,000 life insurance policy. Roy killed himself before he could testify at trial.

Derek Saunders testified at Diana's murder trial about the plot to kill King. Based on that testimony and other evidence, the jury convicted Diana of accomplice to first degree-murder, conspiracy to commit murder, and two theft charges. *Id.* at 346. The Court later imposed the mandatory life without parole sentence on the murder charge.

In both the *Sanchez* and *Sanders* cases, neither defendant was present during the murder or committed the murder herself. Instead, Sanchez and Saunders engaged in the same conduct as the Petitioner; they solicited others to commit the murder for their financial gain. In addition, just like what occurred in the Petitioner's case, the actual killers in the *Sanchez* and *Sanders* cases cooperated with the police and received lesser sentences in return for their acceptance of full responsibility, guilty pleas, and cooperation.

The *Sanchez* and *Sanders* cases are cases with very similar facts and sentencing outcomes to the Petitioner's case. As such, those cases demonstrate that the Petitioner's sentence is not an aberration or disproportional in New Hampshire. Therefore, the Petitioner's sentence should not be reduced.

**2. The Petitioner's claim that United State Supreme Court cases regarding juvenile murderers should apply to her.**

The Petitioner claims that the developments in United States Supreme Court case law pertaining to juvenile murderers "can and should be applied to" her. Pet's Memorandum, pg. 25. Specifically, the Petitioner argues that she should be given the benefit of the holding in *Miller v. Alabama*, because she was a "young adult" at the time of the murder. The Petitioner's view of the law is mistaken.

In 2012, the United States Supreme Court ruled that mandatory life without parole sentences for killers under the age of 18 were unconstitutional. *See Miller v. Alabama*, 567 U.S. 460 (2012). The *Miller* court did not preclude a life without parole sentence for juvenile murderers instead, merely ruled that the sentence could not be imposed without a sentencing hearing that considered at least five sentencing factors set out by the Court. In a later decision, the Supreme Court clarified that its decision in *Miller* was retroactive. *See Montgomery v. Louisiana*, 577 U.S. \_\_\_, 136 S.Ct. 718 (2016).

Nowhere in the *Miller* or *Montgomery* cases did the Court do what the Petitioner asks here and extend its holdings to murderers like the Petitioner who were adults over the age of 18 at the time they committed their crimes. Therefore, by its express terms the *Miller* case is inapplicable to this Petitioner. She was 22 years old at the time of the murder, not a juvenile, and well past the age of 18. The same cannot be said about her co-conspirators though.

Bill Flynn was only 15 when he began his relationship with the Petitioner and 16 when he carried out her wishes and killed her husband. Likewise, the rest of the Petitioner's co-conspirators were also younger than she at the time of the murder. Pete Randall was 16 and Vance Lattime, Jr. was 17, both juveniles at the time of the murder. Raymond Fowler was 18, the oldest of the co-conspirators, but still younger than the Petitioner. So unlike the Petitioner, all but one of her co-conspirators was actually the juvenile-aged offender encompassed by the *Miller* case. Despite her express exclusion from the *Miller* holding, the Petitioner argues that she should still receive the benefit of the mitigation of youth discussed in *Miller*. The Petitioner also cites the "vulnerability and immaturity of young persons" like her as a further justification for commuting her sentence. Pet's Memorandum, pg. 27. However, the evidence adduced at trial refutes any claim that her actions were due to her "vulnerability and immaturity."

The trial transcript is replete with examples that show that the Petitioner did not act out of "vulnerability and immaturity," but out of selfishness and greed. She was the adult in the conspiracy and the one who took advantage of the "immaturity of young persons" to facilitate the murder of her husband. For example, it was the Petitioner who initiated the murder plan by enlisting Bill Flynn (age 15/16) to help carry out the murder. The Petitioner then orchestrated the murder by making detailed suggestions about how to commit the crime, she created an alibi for herself, and she provided transportation for her co-conspirators so they could get a car to carry out the murder. The adult-Petitioner used Cecelia Pierce (then age 15) to help cover her affair with Flynn. After the murder, the Petitioner tried to manipulate Pierce into withholding information from the police and coached Pierce about

lying to the police. The Petitioner also lied and manipulated the news media in an effort to portray herself as a victim.

Those facts and others prove that far from being immature and vulnerable, the Petitioner was manipulative, cunning and decisive. She, the adult, took advantage of the “vulnerability and immaturity of young persons” to carry out a murder and then cover it up afterwards; no one took advantage of her. In fact, nowhere in her Memorandum does she cite any credible examples of how the “vulnerability and immaturity of young persons” played any tangible role in her decision to have an affair and sexual relationship with a then 15-year-old student, engage in a murder plot to avoid the financial consequences of a divorce, and commit perjury. Accordingly, based on its express terms and the facts of this case, the Petitioner is not entitled to a sentence reduction based on holding in the *Miller* case.

**D. Claim that the judicial proceedings “were rife with errors.”**

In section VI of her Memorandum, the Petitioner claims that “many prejudicial rulings and unfair proceedings in her trial” should be considered as factors weighing in favor of her commutation request, despite the fact that she may have raised those issues in the past and been denied or precluded. While it is true that the Governor and Council are not precluded from considering the Petitioner’s prior claims or new claims about her trial, the context of those claims is important. In sum, none of the Petitioner’s claims change the evidence adduced at trial that overwhelmingly proved her guilt. As for her claims of errors at trial, the Constitution does not guarantee a perfect trial, it guarantees a fair trial. *See United States v. Travillion*, 759 F.3d 281, 291 (3<sup>rd</sup> Cir. 2014). To the extent there were any actual errors committed during the Petitioner’s trial, the Petitioner still received a fair trial.

Any errors were minor and in light of the overwhelming evidence of the Petitioner's guilt, those errors did not affect the outcome of her case.

**1. The claim regarding the media's role in her trial.**

In section VI(A) of her Memorandum, the Petitioner makes a variety of claims regarding the "media's role" in her trial. None of her claims constitute legal error and none cast any serious doubt on the fairness or outcome of her trial. It is also important to note that this is not the first time the Petitioner has raised these issues. She did so during her trial and on her direct appeal, where claims about the media and her jurors were scrutinized and rejected. In sum, none of the Petitioner's claims prove that she did not get a fair trial and none justify a reduction in her sentence.

The starting point for any consideration of the Petitioner's claims about the role of the media and publicity during her trial must be with the New Hampshire Supreme Court's decision regarding that issue, which the Petitioner raised in her direct appeal after her conviction. In *State v. Smart*, 136 N.H. 639 (1993), the New Hampshire Supreme Court addressed the Petitioner's claims regarding the effect of media coverage and publicity on her ability to obtain a fair trial. *Id.* at 646-47. The Court closely examined the Petitioner's claims by reviewing the media coverage about the case and examining "the massive amount of pretrial media material submitted by the defendant [Petitioner], comprising a several-inch thick volume of newspaper accounts and videotaped television news stories." *Id.* at 649. After its review, the Court determined that "the overwhelming bulk of the material submitted consists of straightforward, unemotional factual accounts of events and of the progress of the investigations." *Id.* (citation and quotation marks omitted). The Court also noted that of the sixty-five prospective jurors who were individually examined, only three were excused for

cause relating to pretrial publicity or prejudice against the Petitioner. *Id.* at 650. The rest of the jurors who were excused for cause “were excused for reasons other than publicity....” *Id.* Based on that and other records from jury selection, the Court rejected the Petitioner’s claim that she could not get a fair trial in Rockingham County due to media coverage. *Id.* at 653.

When the Court examined the Petitioner’s claims about media coverage, it also noted the following about the records regarding the media coverage: “Several of these items, appearing immediately after the murder, **were generated by the defendant [Petitioner] herself**, who granted extended interviews with the press.” *Id.* at 649 (emphasis added). Therefore as the Court noted, the Petitioner took affirmative steps to speak with the news media, thereby adding to the news coverage that she now complains was prejudicial. The Petitioner’s decision to talk to the news media diminishes the weight that should be accorded her complaints about publicity. *See Welch v. United States*, 466 A.2d 829, 837 (D.C. 1983) (“While we find that the *voir dire*, in itself, adequately protected appellant’s rights in this case, several other facts buttress our holding. First, we note that, as the trial court found, appellant had ‘sought widespread media coverage, as evidenced by his interview with a magazine of national circulation.’ **He cannot now ‘complain that the very fact of the publicity [he] wanted interfered with [his] right to a fair trial.’**” (quoting *Khaalis v. United States*, 408 A.2d 313, 334 (D.C. 1979)) (emphasis added).

On page twenty-eight of her Memorandum, the Petitioner lists four bulleted items that she claims illustrate the unfairness of her trial. The first three items reference media coverage in the case. As stated previously, the New Hampshire Supreme Court conducted an exhaustive examination of the media coverage surrounding the Petitioner’s trial and found

that it did not interfere with the Petitioner's right to a fair trial. The New Hampshire Supreme Court also examined the records of jury selection and noted that while some prospective jurors were familiar with the case, a surprising number were not, likely due to other major news stories of the day. *See Smart*, 136 N.H. at 650-51. In fact, the third bulleted item that the Petitioner cites, the showing of a program before the trial called "Anatomy of a Murder," was only seen by one potential jury, and that juror was excused. *See Smart*, 136 N.H. at 650.<sup>9</sup>

In addition, it is impossible for prospective jurors to avoid media coverage about criminal cases since all defendants are entitled to a public trial and the media's right to access the pre-trial proceedings and the trial are protected by the First Amendment. Accordingly, no juror is required to be ignorant about a case or have not formed an opinion about the case in order to be qualified to sit as a juror. *Id.* at 647. Instead, a qualified juror is one that, despite having been exposed to media coverage and having formed an opinion about a case, can set aside that opinion and decide the case based only on the evidence in the courtroom. *See State v. Laaman*, 114 N.H. 794, 800 (1974). Based on the applicable law and its extensive review of the record of media coverage in this case, the New Hampshire Supreme Court was confident that the case was decided fairly, irrespective of media coverage and the Petitioner's claims. Especially since it found "that most of the items [in the news about the case] appeared after the jury had been selected and had been continuously instructed by the trial court not to read or watch anything connected to the case." *See Smart*, 136 N.H. at 650.

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<sup>9</sup> This one juror was never challenged for cause by the defense and was only removed because the State exercised a peremptory challenge and removed him. So clearly the defense was not concerned about the ability of the juror to be fair and impartial despite having seen the TV program.

The Petitioner's fourth bulleted item concerns a reader poll taken by the Boston Herald midway during the trial. According to this reference by the Petitioner, 80% of the readers from "New Hampshire and elsewhere" thought the Petitioner was guilty at that point. Pet's Memorandum, pg. 28. It is unclear what inferences we are expected to draw from this poll except that the public apparently saw what the jury ultimately saw as well, the strength of the State's case against the Petitioner. The Petitioner makes much of the fact that the poll reflects results "before she had even put on her defense." Pet's Memorandum, pg. 28. However, that statement is somewhat misleading. First, the Petitioner did put on a defense during the State's case through its cross-examination of the State's witnesses. And second, the public is free to form opinions before they have heard all the evidence. There is no proof that the jury did the same.

On page twenty-nine of her Memorandum, the Petitioner lists two bulleted items in further support of her claim that she did not get a fair trial. The first bulleted item contains two statements. The first statement is that the Petitioner's trial was the first to be televised "gavel-to-gavel." That, however, does not mean that there was any "injustice" done to the Petitioner as she claims. Now, trials are not only televised, they are live-streamed on the Internet for the public to watch on their computers, tablets, and smartphones, wherever and whenever they want. Despite that, qualified jurors are selected and fair trials occur. Consequently, the Petitioner cannot demonstrate that televising her trial had any detrimental effect on its fairness.

Likewise, the second statement in the first bulleted item on page twenty-nine is of no import. That item apparently quotes an off-hand remark by the trial judge that appears to have been an attempt at humor. There is nothing inappropriate about that remark or anything

indicative of prejudice to the Petitioner's right to a fair trial, and the Petitioner has provided no credible proof of any such prejudice by the judge or detrimental impact on her trial.

The next bulleted item on page twenty-nine refers to photographs of the Petitioner wearing a bikini that were admitted at trial. The Petitioner claims that those photographs were part of the "sensationalism" of the trial coverage and were repeatedly used during the trial to portray the Petitioner in a "bad light." First, it is simply not credible that in the midst of a murder trial where the Petitioner convinced a 15/16 year old boy to have sex with her and then murder her husband for money, that a few photographs of the Petitioner in a bikini would endanger her right to a fair trial; that is patently absurd. Second, the Petitioner's claim that it was suggested at trial that the photos "were posed to allure Mr. Flynn" is false, the prosecution never suggested that at trial. What the prosecutor actually said during his closing argument was that the photos were never "taken specifically for Bill Flynn," T 1914, but were given to him after they were taken by the Petitioner with the intent that he look at them as part "of the enticement process." T 1914. A small distinction, but important since it is another example where the Petitioner stretches the facts and misstates the record to try and put her claims in a more favorable light.

Last, page twenty-nine of the Petitioner's Memorandum contains several paragraphs from the Petitioner's friend, Tracy Paris. Paris relays information, most of which she incorrectly claims was never brought out at trial. For example, contrary to what Paris claims the jury did hear that: the Petitioner was upset after her husband was murdered; that the Petitioner's co-conspirators did not immediately implicate her; and that they had committed other crimes prior to the murder. The jury heard all that information and took it into account, contrary to what Paris incorrectly claims in the Petitioner's Memorandum.

On page thirty of her Memorandum, the Petitioner lists two bulleted statements in support of her claim that she did not get a fair trial. There, she states that “[t]he jury was admittedly affected by the unprecedented media coverage....” Pet’s Memorandum, pg. 30. That claim is an exaggeration.

The Petitioner asserts that during jury selection, “most of the jurors acknowledged that they had been exposed to pre-trial publicity and had learned the facts of the case from the media.” First, that statement is contrary to what the New Hampshire Supreme Court found on appeal after it examined the records of jury selection. The Court noted that while some prospective jurors were familiar with the case, a surprising number were not, most likely due to other major news stories of the day. *See Smart*, 136 N.H. at 650-51. And second, as previously stated, prospective jurors are not required to be ignorant of the facts of a case in order to be qualified as a juror. Accordingly, there was nothing “unfair” or “prejudicial” about seating jurors who knew about the Petitioner’s case in advance.

The second bulleted item on page thirty of the Petitioner’s Memorandum references a 2006 article from a college newspaper that purports to quote a “potential juror” who said that there had been a general consensus amongst the potential jurors that the Petitioner was guilty. The accuracy and veracity of that alleged statement in an article written twelve years ago about a trial fifteen years earlier is unknown, as is how one person who never served as a juror on the case would have been able to discern the mindset and opinions of dozens of other people. Regardless, as previously stated the law does not preclude jurors from sitting on a case because they have preconceived notions about a case, even as to guilt or innocence. Instead, the law requires that a juror be able to set aside their opinions and decide the case based on the evidence they hear in the courtroom. There is no evidence here that the jurors

in the Petitioner's case decided her case any other way. Further, the New Hampshire Supreme Court found that "the record shows that no one who sat on the defendant's [Petitioner's] jury possessed a preconceived opinion of her guilt." *Smart*, 136 N.H. at 652. In addition, the actual record from the Petitioner's trial shows that great care was taken to ensure a fair jury. For example, "[w]hen on the afternoon of the third day [of jury selection], it was learned that other prospective jurors were discussing the media while waiting in the jury room, the court summarily excused the remainder of the day's venire [group of potential jurors]." *Smart*, 136 N.H. at 651. Accordingly, there is no proof that all the jurors were "admittedly affected" by media coverage as the Petitioner claims.

On page thirty-one of her Memorandum, the Petitioner lists two bulleted statements in support of her claim that she did not get a fair trial. The first statement references a "sworn affidavit by a potential juror, Robert Erosa, [who] indicated that the jury panel had been exposed to publicity and found the attention glamorous, recalling discussions over 'what part am I going to get in the movie?'" Pet's Memorandum, pg. 31. A close reading of Mr. Erosa's affidavit reveals that it is at odds with what the Petitioner has stated in her Memorandum. First, no juror ever said that they found "the attention glamorous." Instead, Mr. Erosa stated in his affidavit that he had told other people about being called for jury duty and that those "[p]eople thought it was glamorous." Pet's Memorandum, E2. Second, nowhere in Mr. Erosa's affidavit is it stated that the entire "jury panel had been exposed to publicity." Pet's Memorandum, E2-3. Mr. Erosa's affidavit merely states that he saw "some jurors" reading magazines and newspapers. Pet's Memorandum, E2-3. Further, there is nothing in the affidavit that suggests that potential jurors were reading about the Petitioner's case. Last, as for discussions about who would play who in a movie, Mr. Erosa recalled

three people making such statements. The fact that three people apparently made those statements does not mean that they or the entire “jury panel” could not be fair jurors.

The second bulleted item on page thirty of the Memorandum references a claim regarding a juror’s alleged statement about cameras being present, and saying that “the rest of the world would be second-guessing the jury’s decision.” Pet’s Memorandum, pg. 31. It is unknown if the alleged statement is true or not, but regardless, it does not have any bearing on whether the Petitioner received a fair trial. In any high profile case, any juror might think that their verdict would be second-guessed, regardless of the presence of cameras or media attention. That does not mean that the juror did not follow the Court’s instructions and decide the case based on the facts and the law. *See State v. Eschenbrenner*, 164 N.H. 532, 544 (2013) (jurors are presumed to follow jury instructions). In addition, at the close of the case when the jury was instructed on the law, the trial court cautioned the jury “that the presence of the press did not make the case any more important than any other criminal case.” *Smart*, 136 N.H. at 656-57 (internal quotation marks omitted). The trial court also commented on the jury’s ability to concentrate on the task at hand, despite the media attention, and said to the jurors: “[Y]ou’ve been, I must say, magnificent in your ability to ignore the fact that there are many press and many people in the courtroom.” *Smart*, 136 N.H. at 657. Therefore, there is no credible evidence that any outside influences contaminated the jury or impacted its ability to fairly decide the Petitioner’s case. In fact, as discussed later in this letter, there is direct evidence from a juror to the contrary.<sup>10</sup>

## **2. The claim regarding juror and judicial misconduct.**

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<sup>10</sup> In section V of this letter, the State discusses a letter written by Alec Beckett, a juror in the case. A copy of Beckett’s letter is attached as Exhibit 3.

In section VI(B) on page thirty-one of her Memorandum, the Petitioner lists five bulleted statements as support for her argument that her “trial suffered from prejudicial juror and judicial misconduct.” Pet’s Memorandum, pg. 31. As further support for those claims, she also provided a statement from Caroline George Douglas, J.D. In her statement, Douglas makes critical statements about the Petitioner’s trial judge (Judge Gray), apparently in support of the Petitioner’s claim of “judicial misconduct.” Pet’s Memorandum, pg. 32. The Petitioner and Caroline Douglas’s claims are without merit.<sup>11</sup>

The State will first address the five bulleted claims made on page thirty-one of the Petitioner’s Memorandum. The first two bulleted claims allege that Judge Gray committed “judicial misconduct” by failing to sequester the jury, and then doing so on the second day of deliberations “after repeated defense protestations.” Pet’s Memorandum, pg. 31. The Petitioner’s claims regarding this issue were fully vetted, addressed and rejected during her direct appeal, and they should be rejected again.

As to the issue of sequestration, the trial court made the proper decision not to sequester the jury during the trial. Sequestering a jury “is an extreme measure, one of the most burdensome tools of the many available to assure a fair trial.” *Smart*, 136 N.H. at 657 (citation and quotation marks omitted). Sequestration is also “not required simply because of media attention.” *Id.* In the Petitioner’s case, there was no justification to sequester the jury for the trial. In fact, the defense failed “to point to any specific prejudicial news items observed by any juror....” *Id.* at 658. The trial court did acknowledge that there was publicity and media attention attendant to the case, so the Court took steps to address that by “shielding the jury from reporters and photographers, instructing the media to keep its

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<sup>11</sup> The State will address issues pertinent to Ms. Douglas’s credibility later in this response.

distance from the jury, and regularly instructing the jurors to avoid press accounts.” *Id.* The New Hampshire Supreme Court found those steps to have been “adequate.” *Id.*

Later in the trial, the Court did order sequestration “when a change in the circumstances appeared to warrant that action....” *Id.* at 659. At the end of the first day of the jury deliberations, defense counsel told the Court that in his opinion, things had changed with respect to the media. *Id.* at 658. Defense counsel explained to the Court that, “the flavor of this thing’s changed a little bit with regard to the media.” *Id.* (internal quotation marks omitted). Part of that change seemed to stem from the fact that there was “a completely different crew...there [from the media].” *Id.* With that new information and without objection from defense counsel, the Court decided to sequester the jury at the end of the next day so as to be reasonable to the jurors once they were told about sequestration. *Id.* at 658-59. There was nothing improper about the trial court’s actions, which were done without objection from defense counsel and after input from defense counsel about how best to proceed with respect to notifying the jurors about sequestration. *Id.* at 659 (“Defense counsel did not object to this procedure, and in fact had suggested to the court that it should be very careful with regard to instituting sequestration at this point in time so it would be somewhat reasonable to these folks.”).

The fact that the trial court then spoke to the jurors without counsel present to tell them about the looming sequestration was also done with the “full knowledge of and consent by [Petitioner’s] counsel.” *Pamela Smart v. Paul Brodeur, Commissioner*, No. 97-E-157, pg. 3 (Rockingham Cty. Super. Ct. June 13, 1997). The trial court took that step of speaking to the jurors privately versus in the courtroom “to avoid informing the jury of its pending sequestration in the presence of the media and thus exacerbate the very problem

sequestration was designed to avoid.” *Id.* at 2-3. Accordingly, there was nothing improper with the trial court’s actions, especially since they were taken with the knowledge and consent of the Petitioner’s lawyers and were designed to protect her rights.

In the third bulleted statement on page thirty-one of her Memorandum, the Petitioner states that juror Karen Sicard recorded her recollections every night at home after trial. In addition, the Petitioner claims that her prior legal counsel “received an offer to sell him copies of those tapes after the trial verdict.” Pet’s Memorandum, pg. 31. That claim is not accurate.

The Petitioner’s claim that juror Karen Sicard engaged in “misconduct” was examined and litigated after the Petitioner’s trial and found to be false. First, the evidence showed that Sicard recorded her recollections about the trial “for her own personal use.” *Smart*, 136 N.H. at 660. The recordings were not made for financial gain and the Petitioner’s attorney conceded “that he had no evidence that the juror formed an intent to sell the tapes at any time during her service as a juror....” *Id.* As to the Petitioner’s claim about Sicard offering to sell her tapes to the Petitioner’s prior legal counsel, that is misleading. Sicard was not offering to sell her recordings for commercial purposes. Instead, the evidence showed that “the recordings became the subject of a possible sale only after offers by the defendant’s [Petitioner’s] attorneys to buy them.” *Id.* Therefore, it is clear that there was no misconduct on Sicard’s part since it was the Petitioner’s former attorneys who proposed the idea of Sicard selling them her recollections of the trial, not Sicard. Further, the only credible instance of misconduct in this regard was on the part of the Petitioner’s former legal team when one of their investigators “slipped” a \$100 bill to Dyan Ham in an apparent effort to

curry favor with her and gain her cooperation and/or statement in an affidavit regarding juror Sicard.<sup>12</sup>

In the fourth bulleted statement on page thirty-one of her Memorandum, the Petitioner states that “Juror Charlotte Jefts prejudiced the jury with her preconceived notion of Pamela Smart’s guilt.” Pet’s Memorandum, pg. 31. The Petitioner claims that Jefts said, “I hope she hangs.” *Id.* The Petitioner cites an affidavit at page E3 in her Memorandum as the source for this information. A review of that affidavit reveals that while the claimed statement is referenced, the affidavit does not reflect who made the alleged statement. Neither does the affidavit detail how many prospective jurors actually heard the alleged statement. Therefore, despite the Petitioner’s claim, there is no proof that any juror who sat on her case, never mind the entire “jury,” actually overheard and was “prejudiced” by the alleged statement. Regardless, potential jurors are not required to be ignorant about a case or even have not formed an opinion about a case in order to be qualified to sit as jurors. *Smart*, 136 N.H. at 647. Instead, a qualified juror is one that despite having been exposed to media coverage or even having an opinion about a case, can set aside that opinion and decide the case based on only what they hear in the courtroom. *Laaman*, 114 N.H. at 800. Therefore, contrary to what the Petitioner has claimed, there is no evidence that the jury was prejudiced by some other person’s preconceived notion of her guilt.

In the fifth bulleted statement on page thirty-one of her Memorandum, the Petitioner states that a juror discussed the case with patrons in a bar and that the Court investigated the claim and determined it was “not true.” Pet’s Memorandum, pg. 31. The Petitioner cites this

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<sup>12</sup> A copy of page 5 of Ham’s affidavit is attached as Exhibit #4. In it, Ham recounts how the Petitioner’s defense investigator gave her money during a meeting.

claim as if the alleged incident was a fact. However, the juror himself contradicted the claim that he discussed the case. Further, the only evidence that the incident had occurred was supposedly from anonymous sources, something that was lacking in credibility and could not be confirmed. Therefore, there is no credible proof that the juror engaged in any misconduct and that any such misconduct affected the fairness of the trial.

**3. The claim that the trial court decided not to sequester the Petitioner's accusers.**

The Petitioner claims that the trial court erred when it "failed to demand that the witnesses be sequestered from one another." Pet's Memorandum, pg. 32. The Petitioner points to nine bulleted items on pages 32 and 33 of her Memorandum as support for this claim. In fact, only the first three of the bulleted items are arguably relevant to a sequestration issue. The State will address those three claims first.

The first bulleted claim is that three witnesses were able "to watch each other's court testimony in the court's holding pen." Pet's Memorandum, pg. 32. The Petitioner cites documents in her Appendix as proof of this claim. A review of those documents, however, shows that they do not exactly support what the Petitioner claims. According to the cited documents, one witness, not all three as the Petitioner stated, watched another witness testify. Also, that witness was not in the "court's holding pen" when that occurred as the Petitioner claims. Instead, according to the documents the Petitioner cited, the witness was in jail and saw the testimony on a TV outside of his cell. Those clarifications are important because they are another example of how the Petitioner makes assertions that are not entirely accurate. The State will now address the substance of the sequestration claims.

In her first bulleted statement, the Petitioner claims that three witnesses were able to watch each other's courtroom testimony on TV. In her second bulleted statement, the Petitioner claims that Lattime and Flynn "were cellmates in jail the entire time before and during the trial, with unfettered opportunities to align their stories." Pet's Memorandum, pg. 33. In her third bulleted statement, the Petitioner notes that Randall negotiated his plea deal while Lattime and his lawyer were present, and that "all three individuals read newspaper articles about the trial and Mr. Lattime's testimony, and discussed the articles together." Pet's Memorandum, pg. 33. It is important to understand what "sequestration" really is in connection with these claims.

New Hampshire Rule of Evidence 615 (Excluding Witnesses) authorizes the trial court to exclude witnesses from the courtroom and prohibit a witness from discussing the testimony they have given in the courtroom with any other witness who is subject to sequestration and has not yet testified. The rule does not, as the Petitioner claims, allow the trial court to limit what people do outside the courtroom before trial, prevent witnesses from being cellmates, or prevent witnesses from discussing the case before the trial. Therefore, the trial court here did not err in some way by failing to "demand that the witnesses be sequestered from one another."

As to the substance of the Petitioner's claims regarding the opportunity for witnesses to see each other's testimony or to discuss the case, the Petitioner has failed to cite any actual prejudice she incurred from those alleged occurrences. Further, the Petitioner did not raise these so-called sequestration issues on appeal after her convictions. That supports the conclusion that the complaints the Petitioner voices now about "sequestration" and argues are of such great importance, were in fact, not significant at the time of trial, immediately

afterwards, or now. In fact, other than claiming that the witnesses had “unfettered opportunities to align their stories,” the Petitioner has provided no evidence that any alignment of stories by witnesses actually occurred. That lack of evidence is notable since the Petitioner and her attorneys would have been able to easily detect any alignment of the witnesses’ testimony since the Petitioner and her attorneys had copies of the witnesses’ statements in advance of trial. In addition, since the Petitioner and her attorneys knew that the witnesses at issue were housed together and some had seen the other’s testimony, her trial attorneys took full advantage of those facts and effectively used them to cross-examine and impeach those witnesses. The length to which defense counsel was able to turn those facts to their advantage is evident from the trial transcripts, including the excerpts provided by the Petitioner.

In sum, the Petitioner has not shown that the “sequestration” issues she has raised here prejudiced her. That is apparent from the lack of evidence of the witnesses’ aligning their stories, the cross-examination that took place at trial where the Petitioner’s attorneys exploited the very circumstances she complains of now, and her failure to raise any of her current complaints about the “sequestration” issue on appeal. Accordingly, the record does not support the Petitioner’s claim that the trial court committed an error that actually prejudiced the Petitioner.

In bulleted claims four and five, the Petitioner argues that it was error for Judge Gray not to have allowed the defense to recall Bill Flynn and Vance Lattime, Jr., to testify again after they had already testified and been cross-examined. This issue was fully litigated and addressed at trial and on appeal, and was rejected. It should also be rejected here.

The substance of the Petitioner's claim is that she should have been allowed to conduct further cross-examination of two witnesses using some letters, after those witnesses had already testified and been fully cross-examined. Judge Gray denied that request, and the New Hampshire Supreme Court upheld his decision on appeal. *See Smart*, 136 N.H. at 668 (“We hold that the trial judge acted within his discretion in refusing to allow the witnesses to be recalled for further cross-examination on this thoroughly trodden ground.”).

In its decision, the New Hampshire Supreme Court noted that even though the Petitioner's attorney had argued that the letters contained new information, her attorney acknowledged: “Are there new issues that we want to talk about with these gentlemen? I think not. It goes to issues they talked about.” *Id.* In other words, the Petitioner's attorney wanted to cross-examine the witnesses more about issues that had already been covered at trial. Judges have the discretion to limit cross-examination, especially when the issues have already been covered in depth with the witness, which is what occurred in this case. As the New Hampshire Supreme Court noted, “[t]he record here shows that the defendant [Petitioner] was not prohibited from cross-examining Flynn and Lattime in areas relevant to impeach their credibility through exposing their motives for testifying.” *Id.* Therefore, the Petitioner was never denied a full opportunity to cross-examine Flynn and Lattime at trial about issues surrounding their credibility. Accordingly, Judge Gray made the correct decision to preclude recalling those witnesses and the New Hampshire Supreme Court agreed.

In addition to appealing Judge Gray's decision on this issue to the New Hampshire Supreme Court, the Petitioner also appealed his decision to the Federal District Court by filing a habeas corpus petition. The Federal District Court rejected the Petitioner's claims

and found that Judge Gray and the New Hampshire Supreme Court had not erred. *See Smart v. Goord*, 2002 U.S. Dist. LEXIS 20733 (DNH 2002).

It should also be noted that the Petitioner has not provided any proof that she suffered actual prejudice as a result of Judge Gray's ruling or explained how the additional cross-examination she was appropriately denied would have changed the outcome of her case in light of the significant evidence of her guilt. Accordingly, the Petitioner has failed to demonstrate that Judge Gray committed an error that weighs in favor of the Petitioner's commutation request.

In bulleted claims six through nine, the Petitioner makes several assertions about Raymond Fowler. Fowler was one of the co-conspirators in the murder case. Essentially, the Petitioner claims that Fowler did not testify at trial because his story contradicted the State's case. Besides failing to argue why that is prejudicial to her and how that would have changed the outcome of the case, the Petitioner's claim is incorrect.

Raymond Fowler was not called as a witness by the State at the Petitioner's trial because at the time, he had criminal charges pending that had not been resolved and had not reached a plea agreement with the State. However, that would not have prevented the Petitioner's lawyers from calling Fowler as a witness if they truly believed that he could be helpful to her case. In the alternative, the Petitioner's lawyers could have impeached prosecution witnesses with Fowler's statements to the police, thereby using that information to their advantage if they believed Fowler really had anything helpful to say in their case. That likely did not happen because Fowler's information was of no significance to the Petitioner's case.

Further proof that Fowler's testimony would not have been helpful to the Petitioner is evident from the fact that Fowler eventually admitted his role in Greg Smart's murder and the conspiracy to kill him. On April 14, 1992, Fowler pled guilty to Conspiracy to Commit Murder of Greg Smart and Attempted Burglary of Greg Smart's home. Fowler was sentenced on May 28, 1992, to seven and one-half to fifteen to years in prison, consecutive on both charges.

Finally, whether some of Fowler's statements about the murder were entirely consistent with other witnesses' statements is irrelevant and does not weigh in favor of commuting the Petitioner's sentence. Whenever several people are involved with a crime or any other major event, it is to be expected that their statements about the crime/event may contain some inconsistencies. That makes common sense and to be sure, if their statements perfectly matched up then the Petitioner would be claiming that the witnesses got together and aligned their statements. In other words, the Petitioner would likely complain about the witnesses whether their statements matched up or not. However, her complaints do not change the facts and the significant evidence that proved her guilt.

**4. The Petitioner's claim of new evidence that Mr. Flynn testified falsely.**

In section VI(D) on page thirty-four of her Memorandum, the Petitioner lists six bulleted statements that she claims constitute "[n]ew evidence that Mr. Flynn testified falsely." According to the Petitioner, the cited bullet points constitute "contradictory information" that supports her claim for a reduced sentence. A full consideration of the bulleted statements shows otherwise.

In the first bulleted statement, the Petitioner recounts information provided by Derek Stead in a letter he wrote to the Petitioner's mother in October 1996. The Petitioner quotes

portions of Stead's letter where he claims that Bill Flynn told him that he killed Greg Smart because he was jealous of him and essentially was going to blame everything on the Petitioner.

First, Stead's letter cannot be characterized as "new evidence," since it was sent over two decades ago. Second, a review of the letter reveals that it actually does not contain any information that Flynn actually "testified falsely." In his letter, Stead alleges that Flynn told him that he was going to "blame everything" on the Petitioner and that Flynn killed Greg Smart because he was jealous of Greg. However, at trial, Flynn did not "blame everything" on the Petitioner. Instead, Flynn admitted that he recruited others to carry out the Petitioner's plan to kill Greg Smart. T 759-60. Flynn also acknowledged that he was the one who shot and killed Greg Smart because he wanted to be with the Petitioner for the rest of his life. T 935. Therefore, far from what Stead claimed in his letter, Flynn's trial testimony confirms that he did not "blame everything" on the Petitioner.

Last, context is important in assessing the credibility of Derek Stead's claims. Stead's letter was sent more than five years after the trial and the supposed conversation he had with Bill Flynn. That delay raises concerns about the credibility of Stead's claims, as does Stead's criminal record. He gave false information to law enforcement authorities in the past and as a result, was convicted of "False Reports to Law Enforcement." That conviction alone casts significant doubt on Stead's credibility and his claims, regardless of all the other reasons to reject his claims.

In her second bulleted statement, the Petitioner recounts information supposedly provided by a corrections officer to his daughter, which was later reported to the Petitioner's mother. The alleged information was that the night before he testified, Bill Flynn said that he

would cry on the witness stand to make himself look remorseful. It is unclear if this is actually “new evidence” since the Petitioner did not provide a copy of this multi-level hearsay statement nor provide the date when the information was obtained by her. Regardless, an examination of the trial transcript of Flynn’s testimony reveals few instances of him actually crying. Further, the Petitioner’s attorney cross-examined Flynn about his crying in and out of the courtroom, and his demeanor. T 918-23. That permitted the jury to assess Flynn’s true remorse or lack thereof. Accordingly, there is nothing about the Petitioner’s second bulleted statement regarding Bill Flynn that is “contradictory” or weighs in favor of a commutation.

In her third bulleted statement, the Petitioner cites an HBO television show and claims that after Flynn testified, he “asked his fellow murderers, How did I do? Did I cry hard enough?” As with the claim in the second bulleted statement, the Petitioner did not provide a copy of this statement nor provide the date when she obtained the information. Regardless, as already stated, an examination of the trial transcript of Flynn’s testimony reveals few instances of him actually crying. Further, the Petitioner’s attorney cross-examined Flynn about his crying and when he did or did not cry. That permitted the jury to assess Flynn’s demeanor, including his remorse or lack thereof. Accordingly, there is nothing about the Petitioner’s third bulleted statement that is “contradictory” or weighs in favor of a commutation.

The last three bulleted statements on page thirty-four of the Petitioner’s Memorandum recount information provided by Ricky A. Davis, Sr. The Petitioner claims that Davis wrote

her Mother in March of 2015 and provided a so-called “affidavit” in 2009. Pet’s Memorandum, pg. 34.<sup>13</sup>

Davis said in his 2015 letter that Bill Flynn had told him that he committed the “prefect crime” and that Pete Randall had shot Greg Smart, not Flynn. In the 2009 “affidavit,” the Petitioner notes that Davis claims that Flynn and Randall used drugs in jail before they testified and that Flynn said that he was going to do what he had to because he was not “taking down” his friends for the rest of their lives. Davis’s statements are not “new evidence.” Instead, they are contradictory and are not credible.

First, Davis’s information cannot be characterized as “new evidence.” The “affidavit” from Davis is dated February 20, 2009, about eighteen years after the supposed events Davis references in the “affidavit.” The other source of information is a March 2015 letter from Davis to the Petitioner’s mother. That letter is over three years old and discusses events over two decades ago. Clearly then, none of Davis’s claims can be characterized as “new evidence.”

Next, like Davis himself, his claims are unreliable. For example, the significant delay between the supposed events Davis recounts and his reporting of those events calls into question the veracity of those claims. In his 2009 “affidavit,” Davis admits that he is unsure about some of the things he said in the “affidavit” because of the passage of time. David also confessed to not only smuggling drugs into jail, but also using drugs at the time, casting further doubt about his ability to accurately recall and relate events from years earlier.

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<sup>13</sup> The document the Petitioner refers to as an “affidavit” is, in fact, not an affidavit. Under New Hampshire law, an affidavit must be “sworn to or affirmed by the person making it before a person who has authority to administer an oath or affirmation.” *Manchenton v. Auto Leasing Corp.*, 135 N.H. 298, 301 (1992) (citation omitted). Davis’s document does not meet these requirements.

Additional doubt about Davis's credibility comes from Davis himself, who acknowledged that he has a "disorder" that affects his mind. *See* Pet's Memorandum, pg. E72 ("I also have a Lifelong Illness That has been, to say the least, troublesome to me over the years. This Disorder seriously Hindered My Decisions making Process and Full Understanding."). Finally, Davis is a convicted felon with a long criminal record, including multiple instances of crimes of dishonesty and false statements. Those crimes include four convictions for Witness Tampering, two convictions for False Reports to Law Enforcement, and one conviction for Falsifying Physical Evidence. Those convictions alone cast significant doubt on Davis' credibility and his claims, regardless of all the other reasons to reject his claims.

As to the substance of Davis' claims, they are likewise unpersuasive. The Petitioner cites Davis' statements in his letter from 1996 where Bill Flynn allegedly told him that he committed the "perfect crime" and that Pete Randall shot Greg Smart, not Flynn. Clearly since Flynn got caught for his crime, pled guilty to it, and was sent to prison, he did not commit the "perfect crime." As to Flynn's alleged claim that he did not shoot Greg Smart, that is nonsensical in light of all the other evidence in the case that Flynn was the killer, including Flynn's relationship with the Petitioner and his admitted motive to kill Greg Smart. Further, there is no reason why Flynn would have admitted to being the shooter and accept the longest prison sentence of his group of friends if he was not actually the killer. That makes no sense because it is not true.

The Petitioner cites Davis's 2015 "affidavit" as proof that Flynn used drugs in jail before he testified at trial and that somehow made him more emotional when he testified. The jury, the judge, and the attorneys who were actually in the courtroom certainly would have been aware if Flynn had been under the influence of drugs during his time on the

witness stand. No one raised any concerns about that possibility. However, even if Flynn had been using drugs that does not change what he said on the witness stand, which was consistent with what he said before the trial and with other evidence presented in the case.

The Petitioner also cites statements Bill Flynn allegedly made about doing what he had to do, and not taking his “boys” down for the rest of their lives. Assuming those statements were actually made, they do not constitute “contradictory information” that is helpful for the Petitioner. Flynn testified in detail at trial about his plea agreement with the State and why he entered into that agreement, which confirmed he did that to try to help himself. T 855-61. Flynn also testified that he entered into the plea agreement because he wanted to help his friends (“boys”), because he felt that he had “got them into” the situation, *i.e.*, the murder plot. T 860. Accordingly, even if Flynn had made the alleged statements to Davis, they are not “contradictory,” they are actually consistent with what Flynn said on the witness stand at trial. Therefore, neither this claim nor any of Davis’s other claims support the Petitioner’s request for a commutation.

**5. The Petitioner’s claim that there is new evidence that the prosecution’s tapes were inaccurate and unreliable.**

During the trial, the jury heard three tape recordings of conversations between the Petitioner and her friend, Cecelia Pierce. During those conversations, which the Petitioner did not know were being recorded, she made several statements and admissions that confirmed her involvement in her husband’s murder and bolstered the inculpatory testimony of other witnesses at trial. Now the Petitioner claims that she has “new evidence that the prosecution’s tapes were inaccurate and unreliable.” Pet’s Memorandum, pg. 35. Those claims are detailed in four bulleted statements on page thirty-five in section VI(E) of her

Memorandum. Before I address those specific claims though, there are some important points to keep in mind about the tapes that refute the Petitioner's new claims about them.

First, contrary to what the Petitioner claims in her Memorandum, there is no "new evidence" about the tapes. Every piece of "evidence" she points to is decades old and far from "new." For example, the report she relies on in her Memorandum is from 1994. The rest of the "new evidence" that the Petitioner references in her Memorandum consists of excerpts from the 1991 trial testimony. Like the 1994 report, that is not "new evidence."

What is "new" is the Petitioner's current claim that the tape recordings "were inaccurate and unreliable." The Petitioner never claimed that in her 2004 pardon petition; in fact she never raised any issue about the tapes or transcripts and never contested their accuracy, reliability or content in that petition. Likewise, when the Petitioner testified under oath at her trial in 1991, she never claimed that the tapes "were inaccurate and unreliable." However, even if she had, that claim would have failed just as it must fail now because the Petitioner has overlooked an important fact; the tapes themselves were not the evidence that mattered, it was their content that mattered.

Regardless of the attacks the Petitioner might have made on the tapes back in 1991, the content of those tapes would have still been admitted at trial and heard by the jury. For example, Cecelia Pierce testified at trial about her conversations with the Petitioner and the incriminating statements the Petitioner made about the murder; her testimony was not dependent on the tapes. Likewise, the detectives who listened to the tape-recorded conversations between the Petitioner and Pierce could have testified as to the contents of those conversations, irrespective of the admissibility of the tapes themselves. Therefore, despite the Petitioner's new claims about the tapes, back in 1991 the jury would still have

heard what was said between the Petitioner and Pierce, thereby providing the jury with ample evidence of the Petitioner's guilt.

It is also important to note that at the 1991 trial, the Petitioner never contested that the other voice on the tapes with Cecelia Pierce was hers, and that she was the one making the incriminating statements about Greg Smart's murder and trying to get Pierce to lie and not speak to the police. T 1495-1770. The Petitioner also never contested the accuracy or authenticity of the recordings or the transcripts when she was on the witness stand. T 1495-1770. Further, while the Petitioner and her attorneys had tried to suppress the tapes and exclude them before trial on constitutional and other grounds, they did not object to the admission of the tapes as evidence during the trial itself. T 1216-17. Instead, during the trial the Petitioner adopted and embraced what she had said on the recordings and what was reflected in the transcripts, but tried to explain it all away as a "game" that she had employed "[t]o get information" by acting like she knew about the murder. T 1583. The Petitioner claimed that she had implicated herself in the murder because she had been doing her "own little investigation." T 1649. When confronted on cross-examination with what she had said on the recordings, the Petitioner contradicted herself and switched her explanation for why she made those admissions, claiming for the first time that she had been acting irrationally and had been "confused." T 1649, 1672.

The jury rightfully rejected the Petitioner's lies about why she admitted her role in the murder and tried to get Cecelia Pierce to lie on the tapes. Now though, having seen that her original lies at trial did not work she has switched gears and is trying something new. This context is important in evaluating the Petitioner's current claims about the tapes. Over time, she has made shifting arguments about the tapes, depending on her audience. In front of the

Court and before trial, she argued that the tapes had been unconstitutionally and unlawfully obtained. Then, after losing that argument and when in front of the jury, she embraced the tapes, never contested their admission at trial, and never testified that the tapes and transcripts were “inaccurate and unreliable.”

Now in front of a new audience, the Petitioner had advanced a new argument and attacked the tapes as inaccurate, unreliable and tainted. The Petitioner’s new argument is inconsistent with her sworn testimony at trial where she embraced what she had said on those tapes and what was reflected in the transcripts. Accordingly, the Petitioner’s latest attempt to dilute the inculpatory admissions that she made on the tapes should be rejected now, just as the jury did in 1991.

The State will now address the specific claims raised in the five bulleted statements on page thirty-five in section VI(E) of her Memorandum.

In her first bulleted statement, the Petitioner claims that the tapes and transcripts “were never authenticated,” and were not “accurate representations of Pamela Smart’s complete conversations recorded with Ms. Pierce.” Pet’s Memorandum, pg. 35. These claims are without merit.

First, the tapes were, in fact, “authenticated” at trial pursuant to the New Hampshire Rules of Evidence before they were admitted as evidence and the jury was allowed to hear them. Detective Pelletier testified that the tapes were fair and accurate representations of the conversations he heard between the Petitioner and Cecelia Pierce on June 19, July 12, and July 13, 1990. T 1206, 1225, 1232. Detective Pelletier also confirmed that he was present when the tapes were enhanced and listened to the enhanced tapes after the audio expert completed his work. T 1206, 1234-35. Cecelia Pierce likewise testified that the tapes were

fair and accurate representations of the conversations between her and the Petitioner. T 1368. In addition, the defense never once questioned Pierce, T 1389-1438, or Detective Pelletier, T 1245-1278, about the accuracy of the tapes or the transcripts. Instead, the State and the defense used the transcripts and referred to them several times during the trial. T 1653-54, 1670-74, 1677, 1680-83, 1725-54, 1767. Further, during the Petitioner's testimony while she was under oath, she never claimed that the tapes or the transcripts were "inaccurate and unreliable" when she was being questioned about their contents. The Petitioner also never claimed what she is claiming now, that the tapes or the transcripts were not "accurate representations of ... [her] complete conversations recorded with Ms. Pierce." Pet's Memorandum, pg. 35. On the contrary, as previously stated the Petitioner and her attorneys embraced what she had said on the tapes with Pierce and what was reflected on the transcripts and tried to explain it all away. Therefore, her new claims that the tapes or the transcripts were not accurate or complete are disingenuous and contrary to the evidence and testimony at trial, including hers.

Last, when the transcripts of the tape-recorded conversations were given to the jury, the judge told them that if they noticed any differences between the tapes and transcripts, they were to "use what you hear and not what you read." T 1244. Therefore, to the extent there were any differences between the tapes and the transcripts, they were minor differences and the jury was advised how to resolve those differences by listening to the tapes.

In her second bulleted statement, the Petitioner cites an excerpt from Detective Daniel Pelletier's testimony where he explained the process used by the police to secretly record the Petitioner's conversations with Cecelia Pierce. Detective Pelletier testified that during the recording process, there was some background noise and humming on the tapes. Pet's

Memorandum, pg. 35. It is important to note that this portion of Detective Pelletier's testimony refers to just one of the recorded conversations he overheard between the Petitioner and Cecelia Pierce, not all of them. And as to that one recorded conversation Detective Pelletier discussed, he made it clear that the recording system never went "dead," and at no time was communication ever lost. Pet's Memorandum, pg. E63. In other words, the system effectively recorded the Petitioner's conversations with Cecelia.

We know that the tape recordings and transcripts of the conversations between the Petitioner and Cecelia Pierce were accurately and completely recorded because if they had not been, the Petitioner, her attorneys, or Cecelia Pierce would have pointed that out at trial, something that did not happen. It is also important to note that despite the passage of twenty-seven years, the Petitioner has not specified in her Memorandum what if any portions of her conversations with Cecelia Pierce were allegedly incompletely recorded or inaccurately reflected in the transcripts. That failure is more proof that her claims about the tapes and the transcripts are inconsequential and do not detract from the evidence of her guilt that they provided at trial.

In her third bulleted statement, the Petitioner cites an excerpt from audio expert Bob Halvorsen's testimony where he explained the process he used to "get as much intelligibility off" of one of the tape-recordings as possible. T 1116-17. Halvorsen described that the process included physically manipulating the "playback head" of the machine he used and resulted in the loss of a few words or phrases from just this one recording. T 1116-17. The recording was from a telephone call between the Petitioner and Pierce, not one of the in-person recordings that are referenced and quoted in the State's objection to the Petitioner's commutation request. T 1112.

Whatever words or phrases that were lost on this one tape recording must have been inconsequential because if they had not been, the Petitioner, her attorneys, or Cecelia Pierce would have pointed that out at trial, something that did not happen. It is also important to note that despite the passage of twenty-seven years, the Petitioner has not specified in her Memorandum what if any words or phrases were supposedly lost from that one recorded conversation with Cecelia Pierce. Accordingly, the Petitioner's claimed issues with this one tape-recording are inconsequential and do not detract from the inculpatory evidence it provided at trial.

In her fourth bulleted point, the Petitioner makes two claims. First, she cites a 1994 report from a purported expert who inspected copies of her tape-recorded conversations with Cecelia Pierce. Pet's Memorandum, pg. 35. Second, she alleges that because of "financial limitations," she "could not afford to call an expert at trial to impugn the tapes at trial." Pet's Memorandum, pg. 35. Neither of her points raises credible doubts about the evidence or her guilt.

In her first claim, the Petitioner summarizes a 1994 report from a purported expert as proof that there were "documented anomalies" on the tape recordings he reviewed. Pet's Memorandum, pg. 35. While the Petitioner summarized that 1994 report in her Memorandum, she left out the significant limitations about that report expressed by the author. For example, the author noted: "[I]t is essential for the original tapes and recording equipment to be released for inspection and analysis before my definitive judgments can be reached concerning authenticity issues." Pet's Memorandum, D2 (emphasis in the original). As is clear from the report, the author examined copies of unknown quality several years after the trial, not the originals that the State's expert, Bob Halvorsen, worked with and was

able to enhance. Therefore, the Petitioner's 1994 report does not support her claim that the tapes "were inaccurate and unreliable." Especially since she never once claimed at trial that the tapes "were inaccurate and unreliable" and has waited twenty-seven years to make this claim.

The second part of the Petitioner's claim in bulleted-statement four on page thirty-five of her Memorandum is her allegation that because of "financial limitations," she "could not afford to call an expert at trial to impugn the tapes at trial." Pet's Memorandum, pg. 35. This claim is unavailing because if the Petitioner had really wanted to use an expert to contest the tapes, she could have asked the Court for funds to hire an expert. *See* RSA 604-A. However, even if the Petitioner had hired an expert that would have been futile. The testimony was uncontradicted that the tapes were not altered in any way, except to enhance the audioability. The Petitioner also never disputed the content of the tapes, just the motivation behind what she had said on them. And most importantly, tapes or not, the jury would have still heard the substance of the conversations between the Petitioner and Cecelia Pierce through the trial testimony of Pierce and the detectives who overheard the conversations. For these reasons, the Petitioner's new claim about the tapes is unavailing.

In her last bulleted claim on page thirty-five of her Memorandum, the Petitioner complains that the transcripts that were given to the jury "were not in evidence." Far from the "new evidence" the Petitioner claims, this is the same claim that she raised at trial in 1991 that was rejected, and then was rejected again on appeal in 1993. For the reasons that follow, this claim should be rejected again.

As with many of the Petitioner's claims, context is important when evaluating what she now says is error. Prior to trial the Petitioner and her lawyers never filed any objections

contesting the accuracy of the transcripts of the tapes. In fact, at the pretrial motion to suppress hearing, the State asked to play the tapes with the transcripts, but the Petitioner's lawyers requested it be done another time so as to determine "whether or not there's any problems." T 1239. That did in fact occur and prior to trial, the State and the Petitioner's attorneys met with the trial court and listened to the tapes and read along with the transcripts. T 1239, 1285, 1289. The trial court found the tapes to be sufficiently audible to be helpful for the jury and the Petitioner, and her attorneys raised no objection to them at that time. T 1289. It was not until mid-trial when the transcripts were about to be handed to the jurors that the Petitioner's attorneys suddenly made a limited objection and argued that there were some "doubling" issues with the transcripts, *i.e.*, instances where two speakers talked over each other. T 1238. Despite that objection, the Petitioner and her attorneys failed to identify where the alleged "doubling" had occurred on the transcripts. In fact, even during her own testimony and on cross-examination when the transcripts were used, the Petitioner never testified that the transcripts were inaccurate due to "doubling" or any other issue, and never contested what she had said on the tapes or in the transcripts. Even on appeal, the Petitioner never made "any particularized showing of inaccuracies in the transcripts relative to the recordings or how she may have been prejudiced thereby." *Smart*, 136 N.H. at 666. Even now, twenty-seven years later, the Petitioner has failed to detail any inaccuracies between the tapes and the transcripts and to the extent they exist, "how she may have been prejudiced thereby." *Id.* However, even if there had been some small discrepancies between the tapes and the transcripts, the trial court accounted for those by instructing the jury that if they noted any discrepancies, they were to consider what they heard on the tapes as evidence and to "use what you hear and not what you read." *Id.* There is no reason to believe, or any

proof that the jury did otherwise. Therefore, there was no legal issue with the jury's use of the transcripts or the tapes at trial. Therefore, this claim, like the other claims about the tapes and transcripts, does not support the Petitioner's commutation request.

**6. The Petitioner's claim that there is new information regarding the "Sexual Innocence" of Mr. Flynn.**

In section VI(F) on page thirty-six of her Memorandum, the Petitioner claims that there is "new information" regarding the "sexual innocence" of Bill Flynn. The Petitioner asserts that this new information is important because the State "emphasized Mr. Flynn's virginity" at trial and "in the trial's most important moments." Pet's Memorandum, pg. 36. The Petitioner is mistaken.

The Petitioner claims that she obtained new information more than two decades after the trial, which calls into question whether Bill Flynn was a virgin when she engaged in an affair with him. The Petitioner does not cite the source of this claimed "new information." That fact and the staleness of the "new information" calls into question its credibility. Regardless, the Petitioner does not specify how this "new information" would have changed the outcome of her case in light of all the other evidence of her guilt.

At trial, the jury heard limited mention and testimony about the fact that Bill Flynn was a virgin before he met the Petitioner. As the Petitioner pointed out in her Memorandum, the prosecution only mentioned it once during their opening statement, once in their closing statement, and once during Flynn's direct examination. There was one other mention of Flynn's virginity during the trial, but that was elicited by the Petitioner's lawyers during their cross-examination of Flynn. T 928. As the Petitioner has often repeated in her Memorandum, her trial was lengthy (about 3 weeks), with many witnesses (about 33), that

filled over two thousand pages of trial transcripts. Therefore, the few times that Flynn's virginity was mentioned at trial contradicts the Petitioner's claim that Flynn's virginity was "emphasized in the trial's most important moments." Pet's Memorandum, pg. 36. Further, to the extent that Flynn's virginity was mentioned by the prosecutors versus Flynn himself, what the lawyers say in court is not evidence and the jury was instructed that was the case during this trial. T 1969 ("The statements by the lawyers are not evidence."). Therefore, in light of that admonition to the jury and the few times that Flynn's virginity was actually mentioned during the trial, the "virginity" evidence was insignificant and did not affect the trial's outcome.

Further diluting the Petitioner's claim about the significance of the virginity evidence is the fact that Bill Flynn admitted at trial that he had lied to the Petitioner when he told her that she was not his first sexual experience. T 738. Therefore, the idea that a 15/16 year old boy might not have been truthful about his sexual experience would likely not have been surprising to anyone at the time, let alone the jury in this case. Accordingly, had the "new information" about Flynn's virginity been true and known at the time of trial, it would not have been persuasive evidence that could have affected the outcome of the trial.

Last, the Petitioner has overstated the importance of Bill Flynn's status as a virgin in comparison to the more significant fact that the Petitioner pursued Flynn and had an intimate relationship with him. It is undisputed that the Petitioner and Flynn had an affair when he was 15/16 years old. The Petitioner, an adult with authority over a 15 year old boy in high school, used an intimate, sexual relationship to entice that boy to do her bidding. Whether Flynn was a virgin or not, does not change those facts or the other evidence that proved the

Petitioner's guilt. Therefore, the Petitioner's claim that "new information" about Flynn's sexual experience would somehow have affected the outcome of the trial is without merit.

**IV. THE PETITIONER'S RELIANCE ON SUPPORTERS FOR HER COMMUTATION REQUEST**

The Petitioner has included letters and petitions from a variety of people who support her request for a commutation of her sentence. The letters and petitions are of no legal significance and the Governor and Executive Council are free to give them whatever weight they deem fit. However, there are some aspects of the letters and the petitions that should be weighed against whatever persuasive value the Petitioner ascribes to them, including:

Many of the letters' authors and many of the petition's signators are out-of-state residents. Their lack of a connection to New Hampshire diminishes the value, if any, of their opinions since crimes committed in New Hampshire do not directly affect them;

Some letter-writers appear to be the Petitioner's friends and relatives. Therefore, it is not surprising that they would provide favorable opinions of her and support her; and

A significant number of letter-writers have little actual knowledge about the facts of the Petitioner's case. Others are clearly misinformed about the facts, the trial, and the law.

In addition, the State conducted some limited research on the background of a few of the Petitioner's supporters. The results of that research call into question the weight that should be afforded those supporters' opinions.

**A. Supporter Caroline G. Douglas, J.D.**

On page thirty-two of her Memorandum, the Petitioner included a lengthy statement from Caroline G. Douglas, J.D. In her statement, Douglas criticizes the Petitioner's trial,

New Hampshire's justice system, and Judge Gray specifically.<sup>14</sup> Douglas also offers her "legal opinion" on the Petitioner's case. Pet's Memorandum, pg. A58. However, significant information about Douglas's background and obvious bias was left out of the Memorandum, which provides the full context necessary to assess the credibility of Douglas's claims and opinion. Therefore, the State will provide the context necessary to help assess Douglas's claims.

First, Douglas's statement omits the fact that she has been a litigant in New Hampshire after her then-husband initiated divorce proceedings against her. *See Douglas v. Douglas*, 143 N.H. 419 (1999). Those proceedings were apparently contentious, being described as involving "many months of often fierce litigation." *Id.* at 421. Given the "fierce litigation" in her divorce case, it is not surprising that Douglas might have a negative opinion about the New Hampshire justice system. But there is more.

Douglas and the Petitioner failed to mention Douglas's professional misconduct as a lawyer in New Hampshire. In 2002, that misconduct resulted in Douglas's suspension from the practice of law for six months. *See Douglas' Case*, 147 N.H. 538 (2002). Of additional note, and also omitted by Douglas and the Petitioner, is the fact that Judge Gray was involved in Douglas's 2002 professional misconduct case. In fact, Judge Gray acted as the Judicial Referee who heard Douglas's disciplinary petition. *Id.* at 539 ("The petition was referred to a Judicial Referee (*Gray, J.*) for hearing and recommendation."). The fact that Judge Gray was involved in Douglas's 2002 professional misconduct case and made findings

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<sup>14</sup> Judge Gray has passed away, so he is unable to respond to the attacks leveled on him by the Petitioner, Caroline Douglas, and others.

detrimental to her raises means that Douglas is likely biased against Judge Gray, something that puts Douglas's opinions in full context. But there is more.

In 2007, Douglas was disbarred due to several professional misconduct violations, including Rule 8.4(c). *See Douglas' Case*, 156 N.H. 613 (2007). Rule 8.4(c) sanctions professional misconduct that involves "dishonesty, fraud, deceit or misrepresentation." *Id.* at 620. Again, neither Douglas nor the Petitioner mentioned that fact. However, these facts about Douglas's background should be considered when deciding what weight, if any, to give to her opinions about the Petitioner's case.

**B. Supporter Lorraine Brooks**

Lorraine Brooks is listed as a "supporter" in the Petitioner's Memorandum. In the 2015 letter that was included in the Memorandum, Brooks claimed that she was aware "that miscarriages of justice do occur in New Hampshire." Pet's Memorandum, pg. A27. Again, context is important when considering the value of Brooks' opinions in this matter.

The New Hampshire criminal justice system is well acquainted with certain members of the Brooks family. In 2011, the conspiracy to commit murder conviction of Lorraine Brooks's son, Jesse Brooks, was affirmed by the New Hampshire Supreme Court. *See State v. Brooks*, 162 N.H. 570 (2011). Jesse Brooks had been part of a conspiracy that led to the murder of Jack Reid. *Id.* at 573-74. Lorraine Brooks's husband, John Brooks, who is also Jesse Brooks' father, was also part of the criminal conspiracy. *Id.* John Brooks was later convicted of capital murder, first-degree murder, and conspiracy to commit murder. *State v. Brooks*, 164 N.H. 272, 275-76 (2012).

Lorraine Brooks was mentioned in some of the events that made up the factual narrative of the murder case. *Id.* at 276. That included disposing of a handgun that John

Brooks had with him on the day of the murder. Lorraine Brooks admitted that “she had thrown a handgun that belonged to her husband into the river.”<sup>15</sup> Lorraine Brooks also “admitted that she had discussed doing th[at] with her husband.”<sup>16</sup> These facts about Brooks’s background should be considered when deciding what weight, if any, to give to her opinions about the Petitioner’s case.

**C. Supporter Attorney Chauncey M. Depew**

Another “supporter” who wrote on behalf of the Petitioner is Attorney Chauncey M. Depew. In his letter, Depew offered opinions about the legal system, including that the Petitioner did not receive a fair trial. Pet’s Memorandum, pg. A49. Depew also noted his background, including that he is “a criminal defense attorney, and a former prosecutor and judge.” Pet’s Memorandum, pg. A49. However, there is much about Depew that was left out of his letter and the Petitioner’s Memorandum that bears on his credibility.

Depew was suspended from the practice of law in 2010. *See In re Depew*, 237 P.3d 24 (Kan. 2010). That suspension stemmed from Depew’s work as a municipal court judge a few times a month in 2007 and 2008. *Id.* at 25. During that time, Depew engaged in multiple instances of inappropriate conduct, including sexual harassment, with five separate female court employees. *Id.* at 25-26. Depew’s conduct involved improper comments and written notes, exposing his genitals to a court administrative assistant, and sending a photo of his penis to another court administrative assistant. *Id.* As a result, Depew was charged with violating the Kansas Rules of Professional Conduct. *Id.* at 24-25. Depew admitted the violations, but attributed his repeated violations to low testosterone and depression. *Id.* at

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<sup>15</sup> This is reflected in the State’s brief on appeal.

<sup>16</sup> This is reflected in the State’s brief on appeal.

27-28. However, the Supreme Court of Kansas concluded that Depew “intentionally and knowingly engaged in misconduct toward court personnel.” *Id.* at 39. The Court also found that Depew “attempted to minimize the seriousness of his misconduct.” *Id.* Accordingly, the Court ordered Depew suspended from the practice of law for one year. *Id.* at 40. Depew was not reinstated until August of 2012. *See In re Depew*, 284 P.3d 279 (Kan. 2012). However, that reinstatement did not last.

In April 2015, Depew was temporarily suspended from the practice of law. *In re Depew*, 2015 Kan. LEXIS 228 (2015). That temporary suspension was later upgraded to disbarment in August of 2015. *See In re Depew*, 359 P.3d 33 (Kan. 2015). The disbarment was agreed to by Depew for violations of the professional conduct rules pertaining to conflict of interest and misconduct. *Id.* Those facts about Depew’s background should be considered when deciding what weight, if any, to give to his opinions about the Petitioner’s case.

To summarize, many of the Petitioner’s supporters are from out-of-state and have little to no actual knowledge about the facts of her case or the applicable law. In addition, the background of a few of her supporters is questionable, as are their opinions of the Petitioner’s case. Accordingly, little weight should be given those opinions. Instead, the emphasis is best placed on the facts and the law, as well as what an actual juror reported about the trial and deliberative process.

V. **JUROR ALEC BECKETT'S LETTER HELPS REBUT THE PETITIONER'S CLAIMS THAT HER CONVICTIONS WERE BASED ON JUROR MISCONDUCT AND THE IMPACT OF THE NEWS MEDIA**

The State has attached a copy of an article from the Boston Globe, dated March 27, 1991.<sup>17</sup> Alec Beckett, one of the jurors from the Petitioner's case, wrote that article. Beckett's letter should be considered as rebuttal evidence to the Petitioner's claims of juror misconduct and improper media influence.

In the article, Alec Beckett described his experience as a juror and the deliberative process the jurors engaged in to reach their verdicts. Beckett's article contains no evidence of juror misconduct and no evidence that the media played a role in the outcome of the trial. On the contrary, Beckett explained that the guilty verdicts were the result of an examination of evidence presented in the courtroom, and nothing else.

Proof of the jurors' independence is apparent from Beckett's report that the jurors were split in their opinions of the Petitioner's guilt by the end of the trial. Had the jurors been prejudiced by the news media against the Petitioner or engaged in some other misconduct as she claims, the jurors would have been unanimous in their opinion of her guilt by the end of the trial. Instead, the jurors were not unanimous and spent three days methodically reviewing and questioning the evidence before finally reaching their verdicts. That and other information from Beckett confirms that there was no rush to judgment in this case, no improper media influence, and no judge or juror misconduct that influenced the guilty verdicts.

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<sup>17</sup> This letter was also contained in the Appendix to the State's Brief in the appeal the Petitioner filed after her conviction.

Finally, it is important to note that Alec Beckett wrote his letter from the perspective of an actual juror who had completed his jury service only a week earlier, not someone speaking years or decades after the trial when memories may have faded or been otherwise influenced. Beckett is also not some anonymous person, or someone aligned with the Prosecution, the Petitioner, or one of her friends or family members. He is an independent person who provided actual proof that refutes the Petitioner's claims that she did not receive a fair trial.

**VI. VICTIM IMPACT WEIGHS AGAINST GRANTING THE COMMUTATION REQUEST**

In her Petition, the Petitioner makes much of the “adversity she has faced while in prison.” Pet’s Memorandum, pg. 14. Absent from that discussion is the impact of the Petitioner’s actions that directly led to the murder of her husband.

Victim impact is often a factor in criminal cases, but never more so than in a homicide case. In a homicide case such as this, there can be no full measure of justice for Gregory Smart, his family, or friends, because Greg is dead and gone forever. Every holiday and special event has been and will be a reminder of Greg, the person who is not been there. A person who is absent not because of sickness, old age or an accident, but because the Petitioner chose to bring about his death. That kind of loss is different than any other kind of loss and must carry significant weight in sentencing. To do otherwise demeans the value of Greg’s life and diminishes the suffering he and his family have endured because of the Petitioner.

Two people who endured the pain of Greg’s murder were his parents, William and Judith Smart. They bore the full and real consequences of the Petitioner’s selfish actions.

Even though William and Judith have passed away, their pain endures in Greg's brother Dean, who objects to any reduction in the Petitioner's sentence.<sup>18</sup>

In the balance, Greg's loss of life and the impact on his family and friends far outweigh whatever adversity the Petitioner has faced in prison and weighs against commuting the Petitioner's sentence.

## VII. CONCLUSION

Pardons and commutations are "an act of executive grace," *see Doe v. State*, 114 N.H. 714, 718 (1974), and should be reserved for those very rare cases where the circumstances are exceptional and justice absolutely requires such a result, such as when there has been a clear miscarriage of justice. This case is not one of those.

The Petitioner had the assistance of able and experienced attorneys who, along with the Court, ensured she received a fair trial and far more justice and due process than she provided her victim. Further, the evidence of the Petitioner's guilt was overwhelming. While in a position of authority over minors, she engaged in a sexual relationship with a teenage boy (Bill Flynn), and then orchestrated a murder by manipulating that teenage boy to kill her husband. After the murder, the Petitioner attempted to convince a teenage girl (Cecelia Pierce) and an acquaintance (George Moses) to lie to help cover up the Petitioner's role in the murder.

Despite the overwhelming evidence of her guilt, the Petitioner has repeatedly denied involvement in her husband's murder and attempted to evade the terms of her sentences. Further, she has never accepted full responsibility for her criminal actions. Instead, the

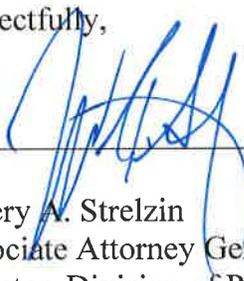
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<sup>18</sup> The trial judge in this case, Judge Gray, has passed away. However, the Chief Justice of the Superior Court advised the State that she does not support the Petitioner's request.

Petitioner has blamed her convictions on the news media, the witnesses, the trial judge, the jury, and the prosecutors. However, the evidence and the law are clear; the blame falls squarely on the Petitioner, something she is loath to admit. The Petitioner's refusal to accept full responsibility and her attempts to blame others for her incarceration are a reflection of not only her guilt, but her inability to be rehabilitated.

The public's interest in the administration of justice, particularly in cases involving premeditated domestic-violence murders, mandates that persons convicted of first-degree murder suffer the full consequences of their actions and choices. That is only fair given the finality of the sentence the Petitioner imposed on Greg Smart and the suffering Greg's family has had to endure as a consequence of the Petitioner's actions and choices. Accordingly, the Petitioner's request to commute her sentence should be denied.

Respectfully,



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# **EXHIBIT 1**



WIRE TAP - July 12, 1990

MR: Today's date is the 12th of July, 1990 Detective Raymond of the Derry Police Department along with Detective Sergeant Byron, Detective Charewicz and Detective Pelletier at the Derry Police Department. We are going to conduct an audio surveillance of one Pamela Smart using a confidential informant and the recording will be done by Detective Charowitz and will done in the town of Hampton, New Hampshire. The one party intercept has been authorized by Assistant Attorney General William Lyons of the Criminal Division.

1259 Hours Cecelia is entering the building.

PS: Hi! How are you?

CP: Good. Oh its kinda damp out.

(Inaudible)

CP: It's not a beach day.

PS: I was just gonna call you. What happened on that interview with the cops?

CP: Why? Why were you gonna call me?

PS: Because I saw Billy.

CP: Billy?

PS: Your old boyfriend.

CP: Yeah?

PS: He told me you that you're going around telling everyone that I killed Greg.

CP: He did?

PS: Yeah I've been like fucking I almost got hospitalized last night.

CP: Why?

COPY

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PS: I couldn't believe it that you would say that that I that I actually killed him that I shot him Billy told me that.

CP: I did not say that.

PS: I thought Billy had the story fucked up.

CP: He did. He told me that you came looking for me and that you said that you were leaving for Florida this was like a month ago.

PS: For Florida?

CP: He said that, where's Patti?

PS: She's out today.

CP: Oh good but anyways right he um

PS: I was just talking about you?

CP: Were you?

PS: I was just saying I hadn't...hug me, I haven't seen you in so long. I missed you. Yeah. This was that night I went to Ceal's Clam Stand yesterday.

CP: Yeah. Michael told me you went there with Tracey.

PS: Yeah.

CP: Yeah and um Billy told me he said that you came looking for me and that you had a knife.

PS: What?

CP: No, no shit. I don't even know what they're talking about. He must...they saw me on the news so he's picking up from there he saw me with Bill Spencer.

PS: Okay, cause he came up and goes like, he said that you killed, he goes, I go, I go is Cecelia around (inaudible) so he goes, he goes um you know, he goes well she was here last night. This was yesterday.

CP: Yeah.

PS: And I go, I go, oh well um, I said um, so what's up you know, I mean, nothing how are you doing, how's life, and um he said, so how you been doing, I said just work and stuff, you know he was kind of like, stand offish you know, you know.

CP: He's such a liar.

PS: (Inaudible)

CP: He got fired.

PS: Oh really.

CP: Yeah.

PS: He was working on some bartending.

CP: Yeah, he lied.

PS: Oh, okay.

CP: Okay, go ahead.

PS: So I go, I go um, so I was with Tracey, so I go, my friend Tracey (inaudible) so what's going on here I go well what do you mean, he goes oh um, he goes Cecelia said you killed some guy and I knew he didn't know the story cuz he said some guy, he would have said your husband.

CP: You know, no he didn't.

PS: No, um he goes some guy, I go what do you mean, he goes she's going around telling everybody that you murdered some guy. He didn't say anything about Bill or anything else so I figured he must have gotten the story fucked up, and I figured that you might have said something because...well Cecelia just went down and she was giving it to the police, she said that you murdered Greg and now she has to go testify, and needless to say, I'm like (heavy breathing sound) I'd get out of there, I called you right...

CP: Yeah.

PS: (Inaudible)

CP: My mother told me you were pissed and she said that, wait a minute

PS: Wait a minute, I didn't, Cecelia I didn't...

CP: Wait a second, you weren't on the phone you were on the phone with my mother you were on the phone with Trisha.

PS: Yeah. Yeah.

CP: Trisha is an asshole. Three people called for me yesterday and told them I wasn't there, a reporter called me, you called me and I don't know who the other person was yet.

PS: I never talked to your mother.

CP: You didn't talk to her?

PS: No.

CP: Alright.

PS: Cuz Trisha answered and I go is Cecelia there, and she goes uh hold on and then she goes um well um who's this? I go Pam, then I'm like oh, fuck me now she's not there.

CP: Oh

PS: You..she's not there, I'm like, I'm like oh my God Cecelia I'm like...fucking totally against me I'm like I don't know why you would, I'm like why would you even say that I murdered Greg and Tracey heard the whole thing, and Tracey's like why would Cecelia do that, she's like Cecelia wouldn't do that, well I'm like what the fucking hell is going on.

CP: (Laugh)..Mean while you're thinking yeah, she knows everything, like..

PS: Oh, no but I didn't want to go tell, tell Tracey that, you know? So I'm like oh God, because I'm like what the fuck. All I can say is I'm so glad that you're here because I want to talk to you but I was thinking totally the, the police, not the police but my lawyer told me that someday that they're probably gonna bug you and that you'd come down and talk to me.

CP: I haven't even talked to the police.

PS: Okay, that's all I have to say.

CP: But, I saw Bill's brother yesterday on the beach.

PS: Really?

CP: Yeah. I went swimming...

PS: Which one?

CP: Jimmy.

PS: Oh yeah,

CP: And he walked by and he goes, Cecelia, like that and he's all happy and I mean, huh, it really doesn't affect them that Bill's in prison?

PS: What's, what is going on is all I have to say because Ralph uh....

CP: Ralph is telling the whole town everything.

PS: Yeah. But Ralph doesn't know anything, that's what I mean.

CP: Ralph knows what he heard.

PS: Right and Ralph heard, uh, cuz, cuz Ralph the reporter told me Ralph said that he heard that I was having an affair with Bill but its not enough to arrest me because Ralph heard.

CP: Right.

PS: And for all anybody knows Bill could have been totally in love with me and told the whole Winnacunnet that he was having an affair with me.

CP: I know.

PS: And that Bill um Ralph telling the truth that he did hear that but that doesn't mean it is the truth if the police believed that, I'd be arrested right now, so obviously they don't believe it.

CP: Obviously they don't think you'd kill Greg.

PS: Right. No shit.

CP: (Laugh)

PS: But what they're waiting for is for Ralph I mean J.R. or Bill or Pete to say that I had something to do with it?

CP: Right, and you know they said they won't tell. Bill, Bill would not tell on you.

PS: I know. Even if they did say that, right, then they're not going to have any evidence cuz there is no evidence.

CP: Uhuh

PS: Well, the only, the only thing that could ever, ever and ya know what the reporter told me yesterday?

CP: Yeah?

PS: Franci Richardson, she goes well she goes was Cecelia Pierce over at your house the week before Greg got killed I go I'm not....

CP: Does she have a white jeep?

PS: I don't know. No.

CP: She's come to my house.

PS: I go, I go

CP: She works for the Derry News?

PS: Yeah.

CP: She's come to my house like three times and I won't talk to her.

PS: I go I go I'm not commenting on that even though it's no big deal that you slept over.

CP: Right. Yeap.

PS: But its not even going to have that in the papers you know, and um I go I'm not commenting she goes what we gotta do what would you do if I told you Cecelia told me that Bill slept over everynight that week. I'm like that's not even true, I go, I don't ya know.

CP: No kidding.

PS: I'm like I don't know why she would say that cuz thats not true.

CP: Every night?

PS: Yeah. I'm like ya know Cecelia wouldn't do that.

CP: No. (laugh)

PS: But see that's how they try and trap you.

CP: Yeah. She's like she's like well Ralph told me this and I don't know if I can believe Ralph but he thinks you're innocent. She told me she thinks you're innocent so don't worry about her.

PS: Oh I'm not worried about her. I'm not worried about anything except the police. I think Ralph, I mean if Pete or J.R. or Bill says that I did it.

CP: Right.

PS: Right, then they can arrest me?

CP: Yeah.

PS: Then I want you to know that if I'm in jail there's no way in hell I'm ever going to say anything about you, ever.

CP: Alright.

PS: Cuz why would I?

CP: Right.

PS: You didn't have anything to do with anything, and even if they have, a phone, ah like one phone, phone conversation or something...

CP: Yeah.

PS: ...with me and Bill, then I'd have to admit that yes I was having an affair with Bill; I am never going to admit it the fact that I asked that I told him that I hired them cuz I never paid them money, I never hired them.

CP: They probably...I know you didn't, but huh.

PS: That's the thing I never fuckin' paid em. Someone told me I gave J.R. a stereo and stuff, that's not true.

CP: That's from Greg's truck.

PS: I (Inaudible)

CP: I know I was at you have that?

PS: Yeah.

CP: You have that?

PS: Yeah.

CP: Oh.

PS: That's the thing its not even true. Ya know what I mean? I..I know but all I can say is Raymond is such a fuckin' liar its not even funny.

CP: I know he's sayin he didn't know anything and that he got out, I guess he didn't get out at the store because I was told that the lady said that he was there for about a half an hour and she thought that he was gonna rob the place, that's why she remembers because he was sittin' there all that time. I don't know, I guess he got out at the store.

PS: No. See I heard that (inaudible)

CP: I guess he told the police that he didn't know anything about it that they thought he thought that they were robbing the place. He knew about it didn't he? As far as I know Bill told him.

PS: I don't know, I don't know.

CP: Huh. That's ridiculous

PS: I know, all I know is that I'm not even, really gonna talk about it ever again because I think my phone is probably tapped or something but, ya know, but the thing is that but Ralph, Ralph doesn't I don't know what Ralph knows because I don't know what they told him.

CP: Or what he heard...

PS: Right. But, but, does the whole fuckin' Seabrook hate me...pretty much?

CP: Well, if I was you I wouldn't drive through there.

PS: I drove through there yesterday.

CP: Did ya?

PS: Yeah.

CP: Cuz, cuz like the minute I went in the store Michael's like Pam ate here with that Tracey girl. He's like she pulled up and I saw...

PS: Tell me how the town feels like, like what do, what do they think, did they think like Pam's a bitch because...

CP: They just can't believe that you had Greg killed. Like, pretty much they they established that ya you had Greg killed (laugh).

PS: Why though? Like ya know um

CP: Because they can't think'of any other reason why Bill and them would do it.

PS: Yeah, but even if I asked somebody to kill somebody you'd have to be fucking deranged to say okay I will, ya know what I mean, whether someone asked you to or not.

CP: As far as I can see it Bill did it because he loved you, I mean you didn't pay him right?

PS: Yeah right, no I didn't pay anybody.

CP: Did you pay him?

PS: No, that's the thing but I mean why would the other people do it, ya know, what I mean it's not gonna make sense in a court of law is what I'm sayin?

CP: Yeah.

PS: Because people are gonna be like, they are not going to find any money because there is none cuz because there was no paid ya know

CP: Uhuh.

PS: They're gonna be like...is the gun they found the gun?

CP: I don't know if they've even found one.

PS: Yeah. They found a gun but I don't know where.

CP: I've heard that they've found one.

PS: Where?

CP: I don't know if it was THE gun. Rachel said that they found a gun near her house.

PS: Why near her house?

CP: I don't understand why either.

PS: Someone told me they... somebody else told me that it was on South Main Street.

CP: South Main Street well that's where Pete lives, South Main Street.

PS: I didn't know where Pete lives, all I can say is one thing um have you talked with Frank or anyone?

CP: No but a reporter called my house and asked if I knew Frank Daly and if I knew um Kristin and I'm like uh I mean Frank knew about it but he didn't do anything, ya know, I don't want to get him involved, like the last day of school I was leavin and he looked at me like he wanted to say something.

PS: Yeah.

CP: and I just said Hi Frank and walked off (laugh) because I didn't want to talk about it, there were all kinds of people standin' there.

PS: Does your mother think that I had anything to do with it?

CP: She she just doesn't want me havin anything to do with you she hasn't she hasn't told me.

PS: Why because she thinks like I am a murderer?

CP: She, she just doesn't, she doesn't want the police to keep harrasing me.

PS: I think that's right Cecelia, ya know, I think that when school starts again you can start, you know working here if you want.

CP: Yeah.

PS: I don't know if you mother will let you or not, but uh when everything blows over you know...but I just want you to know...

CP: Are you gonna teach your course?

PS: No.

CP: No your'e not. Alright. I just want to know cuz I want to call and change it to Physiology and Anatomy.

PS: Alright, I'm not going to now I may have, it matters what happens.

CP: Yeah.

PS: You know, if they got certified as juveniles, then no one will ever know anything, and they'll all be out in a year, you know, when they turn 18. I don't know, you know. If they get certified as adults it matters but right now none, I know none of them have confessed, none of them have, my lawyer talked to Bill's lawyer yesterday.

CP: Uh-huh.

PS: And none of them have confessed, but, it matters if they have..

CP: You talked to Bill's lawyer?

PS: Yeah.

CP: How did you get to talk to Bill's lawyer?

PS: Yeah. My lawyer talked to Bill's lawyer.

CP: Oh, oh how did you get to do that?

PS: He called him up.

CP: Really and they talked about the case?

PS: They wouldn't really talk about it but they just said that that Bill, none of the kids have confessed. So if they are going to maintain their innocence, look...I don't know if they have fingerprints or the gun, or I don't know.

CP: I don't know what they have.

PS: I have no idea if they found stolen items in Bill's house or something or Pete's, or JR's, I don't know, ya know but all I have to say is like do most people like friggin' like Rachel and Caddie and everybody think that I'm like a bitch.

CP: They don't think you're a bitch that I know of..I don't know I really haven't seen any of them we went to Rachel's Rachel's in Maine right now.

PS: I'm just trying, what does Rachel think?

CP: Well...

PS: Is she going with Ralph?

CP: Well she always had, she assumed that you guys were having an affair the whole time right remember she was always asking questions so she knew that you were having an affair but I don't know what she thinks now. I think that she thinks Bill did it because, I mean, ya know, you guys were having an affair and obviously she figured that out for herself.

PS: Because I just wonder, like, because I was fuckin' wonderin' what the hell you were doing. I thought Billy was totally fucked up, but I'm like...

CP: He's such a liar I have haven't been to the beach in weeks.

PS: He goes, Cecelia told me that the police are out looking for you and they can't find you there's a warrant out for your arrest.

CP: That's so stupid.

PS: Why can't they find me I'm at my house?

CP: Right so you should have known not to believe him.

PS: I did.

CP: It was like months ago when, how do you do you think I felt when I see you coming into work (laugh) and meanwhile I've been told you've been lookin for me with a knife.

PS: (Laugh) I know, see that's so stupid but I just want, want you to know, that even if I do get arrested, that even if they tell you something, I never said anything cause why would I even, you know. Why would I bother? Trust me.

CP: Uhuh...

PS: You know, why would I and even if like Ralph said that you knew, or Bill said that you knew, I know Bill won't, but, Pete said that you knew or whatever, all you can say is that I didn't fucking know cause if Pete says Rachel knew what is Rachel gonna say, I didn't fucking know, cause Rachel didn't fucking know.

CP: Right.

PS: You know, and that's just it (laugh) that's the thing and um, because if you, if you put um, you know put me on top, on top of Bill uh, then the reporters and the police have asked Ralph Welch what do you mean Pam was having an affair with Bill did you ever see her with him? And he says well, yeah when she came to pick him up for the video..that doesn't mean anything you know...

CP: Right.

PS: ..I mean did you ever see them on top of each other, you know?

CP: (Laughter)

PS: (Whisper) But the problem is my heart is like fucking having a heart attack, like I can't even fucking believe this because why would they have told Ralph, if they never would have told Ralph, you know.

CP: Did you, when you brought, you brought Frank's girlfriend to family planning, right?

PS: No.

CP: You didn't?

PS: Um Uh

CP: You never brought her?

PS: No.

CP: Oh..well was she pregnant, she turned out to be not pregnant?

PS: I guess not.

CP: Oh, because like they called me and I'm like, I'm like well that's, they were asking about his girlfriend and everything and I'm like no, I don't know, I don't know, I don't know. The only thing that I confirmed was that Frank's a sophomore and the guy seemed to think that was pretty interesting (laugh)

PS: Why, why would, they want to ask about Frank, just because he was friends with Bill? I saw Chris Morelli the other day.

CP: Did he wave to you?

PS: No, but I'm like well I didn't wave to him, but I'm like friggin hi what the hell you know I'm like I don't know what to do because I, I wonder if everybody hates me at Winnacunnet or if they just feel sorry for me like could be everyone thinks I'm guilty.

CP: I don't think anybody knows what to think.

PS: Because like has, does anybody feel sorry for me, like is anybody like how could they have killed her husband or everybody thinks I had something to do with it? Everybody thinks I had something to do with it.

CP: Yeah (laugh)

PS: Well, see that's okay, you know, I mean I'd rather know the truth, you know, I mean like, there's nothing I can do but I guess people, cause people keep thinking that I'm getting arrested people will come...

CP: I've been told five times already that you were that you were arrested.

PS: I, so have I, my work was told the other day that I was arrested but obviously I'm not, you know. The police haven't even questioned me.

CP: The lady upstairs, the secretary... you know how she never says anything to me? I come in and she's like hi, how are you, how's the weather, I'm like Jesus Christ can you shut up (heavy breathing).

PS: ...but I'm just like, what the hell, I've already got best lawyers friggin' anywhere.

CP: You do?

PS: Yeah, but they're fucking wicked expensive but, what could I do?

CP: Obviously you can afford it.

PS: No, goddamn fucking; didn't I need them you know?

CP: Yeah.

PS: ..but right now they don't have to do anything unless I'm arrested, and if I get arrested then they have to do shit, but if I get arrested the only way I would ever confess to um the affair would be if they had a note from Sarah, and if that...

CP: Do you know where that note went?

PS: No, I, Bill has it, I coulda sworn Bill said he ripped it up.

CP: Bill ripped it up?

PS: Yeah, but ah, but I don't know that um, Sarah probably came forward and said she found a note and they told you try and make you come forward...

CP: Well they did.

PS: ...or confess, but that's okay, that's hearsay.

CP: Yeah.

PS: and, it wasn't signed, by Pam cuz when Sarah found it and Bill told me that she went to Frank and she said who's that from, that girl Pam and Frank goes I don't know.

CP: Oh, so she was just guessing it was from you?

PS: Yeah, yeah.

CP: So she probably won't go forward.

PS: Well she obviously has.

CP: She did?

PS: Well, I guess...

CP: Well listen to this...the Attorney General called my mother and I have to meet with him tomorrow.

PS: You do?

CP: Yeah. The Attorney General, Bill?

PS: Lyons?

CP: Yeah. That's it, but

PS: When are you going to see him?

CP: I don't know but my mother's making me go, and they did mention the note, they mentioned that they had a note

from you.

PS: Again?

CP: To Bill.

PS: They mentioned it?

CP: Yeah. I don't know what to do that's why I came over here because I told my mother I was coming to get the video. You do have my video right?

PS: No.

CP: You don't have it, where did it go?

PS: The police took it.

CP: The police took it?

PS: Yeah.

CP: All of them?

PS: Well, they took, I have one at my house but I, I don't... Why?

CP: Because I just wanted my video.

PS: Well you can't have it now.

CP: Cause, another (inaudible) alright

PS: So you can have it some other time.

CP: Alright.

PS: But especially because of all of the shit I really don't want it to get in any way (inaudible)

CP: Yeah, I just wanted to show, cause my Aunt Kathy and my Uncle Mike came out from Missouri, my cousin Tracey's waiting out in the car (laugh). I forgot.

PS: All I can say is one other thing, that um...the um Attorney General, first of all I want you to know this and never forget this okay?

CP: Yeah.

PS: In New Hampshire you're not an accessory to murder if you know after the fact, you're only an accessory if you know before the fact.

CP: Right.

PS: ..and you're part of the planning and execution, okay?

CP: Right.

PS: Okay so that's why when Raymond ended up saying he didn't know anything before.

CP: Because he wasn't part of the planning.

PS: Right. He would be arrested right now.

CP: Right.

PS: So if you know after the fact you're not an accessory. If they try and tell you that if you confess you know before the fact and all that...

CP: Yeah.

PS: Don't, (sigh) confess, okay?

CP: Alright.

PS: That's not true they will fuckin' arrest you and you will be an accessory.

CP: Uh huh

PS: You will. No matter what plea bargaining bullshit they tell you.

CP: (Laugh)

PS: I'm serious, okay, don't forget that because my lawyer told me that and that's the thing. If J.R. comes forward and says, says if I'm going down Raymond so are you and that Raymond knew, then Raymond's gonna be arrested, even though he already turned State's evidence, he will be arrested as an accessory.

CP: I hope he is.

PS: You know

CP: I hope that if they do get arrest...I hope that if they are found guilty or anything I hope Raymond does go down with them - he deserves it.

PS: No shit (sigh) but I didn't know Ralph and Raymond were cousins.

CP: They are?

PS: Yeah.

CP: I didn't know that either.

PS: They're gonna get torn...

CP: They're built just exactly...

PS: They're gonna get torn apart on the fuckin' witness stand so bad its not even funny. Did you know Raymond just got out of jail?

CP: Yeah, I knew that.

PS: For what?

CP: Remember, Bill said that...

PS: For what, why?

CP: That he just got out of jail, when he was looking for a gun

PS: What for?

CP: He thought that Raymond could get it for him.

PS: What for?

CP; I don't know.

PS: Because, uh, all I can say is that no matter what they try and make you talk about, (sigh) if I were you I didn't know a damn thing.

CP: Well, all I know is that I had to come and talk to you because I, I mean I don't know what to do I have to go talk to the Attorney General, I'm just sick of lying, you know.

PS: Well, you know, I'm just telling you that if you tell the truth, you're gonna be an accessory to murder.

CP: Right.

PS: So that's your choice. And not only that but what is your family going to think. They're gonna be like Cecelia, you knew about this, you know?

CP: Yeah.

PS: Everybody in town is gonna be like fucking you know, Cecelia so if I were you...once you say no they leave you alone.

CP: Uh-huh.

PS: Once you say yes they never leave you alone, you know?

CP: Yeah.

PS: and that's the thing, it's too, I know, its too late now though, you know.

CP: Did you now, seeing what had happened, wouldn't you rather have had just divorced Greg?

PS: Well, I don't know, you know. Nothing was going wrong until fucking they told Ralph.

CP: (Sigh) No shit.

PS: It's their stupid-ass faults (sigh)..that they told Ralph, you know.

CP: I can't even believe that they told, now they're in jail and like every time I hear Motley Crue I think of Bill.

PS: Yeah, so do I, tell me about it.

CP: I, how can you go out clubbing?

PS: I don't go out clubbing, what the hell, I went out fucking once, cause everyone's trying to get me to go out fucking, give me a break, I, I haven't got done a goddamn thing. I sit fucking home and I'm like totally like (sigh) I don't know what to do, you know what I mean, I feel like shit. But, its not my...fault.

CP: Billy is an asshole, I can't even believe that he said that.

PS: Yeah, I know that fucking asshole. He told me that you just went down there and make a fucking statement, and that you...

CP: I haven't even been down there, that's probably why he stopped.

PS: That's what I said to Tracey. I said I just saw Cecelia at Papa Gino's the other day and she said she hasn't even been questioned by the police (sigh) but, who gives a shit he's obviously a dick, you know. He told me he had a job.

CP: Told me, told me you had a Rambo knife.

PS: (Laugh) that's so queer, why would I show him, you know what I mean, that's so, come on obviously you know I would never kill you.

CP: He is the biggest liar.

PS: Well, could I be a fucking bigger wimp, do you think I'd kill you? Um, but that's the thing, you know..but now its just like

CP: I'll just go out and buy a parrot and walk around with it on my shoulder.

PS: If they ask you to take a lie detector test though, try to deal with the questions.

CP: Well, I'll just do what you said and change the questions around.

PS: I wouldn't even take it if I were you.

CP: I know but with my mother there I, I really have no choice, my mother's like if you're innocent (sigh)

PS: Yeah but if you ask any lawyer in America the lawyer would tell you not to take it whether...

CP: Right.

PS: you're innocent or not

CP: Right

PS: That's the thing, I mean you know, I don't, I don't know anything about lie detector tests but I know every lawyer I talked to told me no matter fucking what don't ever in your whole entire life take a lie detector test because they can't even be introduced as evidence, they can only be used against you for further questioning. Like if you show up as you're lying they're gonna fucking bludgeon you to death before...you know they're gonna question you for ninety hours.

CP: I know, I'll have a nervous break-down.

PS: Right, exactly like Anthony Barnaby did in his fucking trial the other day. They questioned him for murder for seventeen hours straight and at the end he fucking confessed.

CP: The guy that just had three trials?

PS: Yeah.

CP: I can't believe he had three trials.

PS: And got off...my lawyers represented him.

CP: They did, and he's off?

PS: Yeap.

CP: After confessing he's off?

PS: Yeap. They really got shit together.

CP: Jesus Christ.

PS: I know. Good lawyer, huh?

CP: Well maybe if you confess you'll get off anyways.

PS: Yeah. But you see what I'm saying about accessory before the fact?

CP: Yeah.

PS: If they bludgeon you to death for three fucking million hours and they say to you well listen if you tell the truth...

CP: Well, first of all they already questioned me twice and the second time remember I told you that man said that he would have me brought with whatever its called, hindering evidence, he would...

PS: Harboring, or whatever.

CP: ..whatever it is, he said that he would get, I would be in big trouble if, he said this is your last chance so now I mean I don't know what to do (sigh) but I mean I have to go there tomorrow.

PS: And not only that but, if you confessed right now, they'd rip you apart on the witness stand anyways because they'd be like well Cecelia before this happened you said you didn't know anything now all of a sudden you know something. You're better off just to stick with same fucking story and not know anything because they they'd finally leave you alone. The only reason they think you know something is because of that stupid asshole that called up and said fucking oh Cecelia, you know, and Pam whatever, that's the only reason.

CP: Yeah.

PS: Who was that?

CP: Whose out there? I don't know but um. J.R.'s lawyer - uh investigator guy came to my house. He's good looking but I didn't talk to him. He went to Cindy's house, he went.

PS: (Inaudible)

CP: ...some girl, he's going, they're going everywhere.

PS: Yeah. So that's okay so he's just trying to find out good things about J.R.. They're just doing an investigation, I mean, of course, they're going to.

CP: Well, he's trying to imply that we're lesbians for one thing

PS: Me and you?

CP: (Laugh) Yeah.

PS: (Laughing) Na ah.

CP: I was laughing so bad, yes he goes don't you think its funny, you spent the whole week there and the age difference and crap like that.

PS: All we did is watch T.V.

CP: I'm like no buddy, we're not lesbians I was sitting down stairs while she was upstairs bopping Bill.

PS: All I can.

CP: Is there someone in here?

PS: All I can remember is um, all's I remember that um, I don't know how much (inaudible) but he's like I don't always thought you know I've always thought that I was a good friend to you and I let you drive my car and I paid for you and I took you out and that was okay, because I like being your friend, you know, and even when this is all over we can still be friends again and everything else and I like to think that I've done alot for you too in that you have nothing, you know I've done nothing for you in my entire life, when I think I've been a very good friend to you and that's the thing, even if you send me to the fucking slammer or you don't, and if anybody sends me, it's gonna be you, and that's the big thing, and that's what it comes down to. That's the big thing. That's what it comes down to.

CP: (Inaudible)

PS: But what good is it gonna do if you send me to the fucking slammer. Because if you think that's going to be the end of your problems...

CP: I'll be out a pair of sneakers on my next birthday (laugh)

- PS: Don't think its the end of your problems if you confess, no, because its gonna be your whole family's gonna be like, fucking well, you knew about a murder how could you have lived like that and the newspapers are going to be all over you how could you have known about that you know, all your friends are gonna be like what the fuck, you know and you're gonna be on the witness stand a million times you know, now you know you're gonna be on the witness stand, like he's gonna put you on there then he'll say "did you know" and you'll say no. Did Pam know? Did Bill, whatever, I don't know whatever. They're gonna ask you did you work for Pam, did you stay at her house? What you guys do, we watched a movie.
- CP: You know what I think is funny my Uncle Buddy, you know he did not do what he was accused of doing right.
- PS: Yeah.
- CP: He just got sentenced to 9-1/2 to 19 years. Alright, my cousin Tracey that's out in the car her uncle was killed to death he was hit with a log until his brain came out of his head and the guy is not even in jail, can I have a piece?
- PS: Yeah.
- CP: And, and here's you, I mean you had your husband killed and you're not even in jail, but my Uncle Buddy who is innocent is sentenced to 9-1/2 to 19 years.
- PS: Yeah, but wait a minute, but see you can't even true, unless your lying, answer questions about the note, cause you didn't see the note.
- CP: I never did. Did you get rid of that note that you got from Bill? That you stuck in that file that I said get rid of?
- PS: Yes.
- CP: Alright (sigh)
- PS: (Inaudible)
- CP: My poor cousin Tracy is out there in the car.

PS: Well, the only thing that I think is gonna happen is that sooner or later J.R. is gonna turn on everybody too.

CP: J.R.?

PS: Yeah.

CP: I feel bad for him because he really didn't do anything.

PS: You have to remember through this whole thing that he did...they're fucking old enough, you're old enough to make your own decisions.

CP: Yeah.

PS: They did this all, I did not force anybody to do anything they made their own decisions.

CP: At least you didn't pay em'.

PS: Yes. No, I didn't pay them, they made their own decisions, you know, remember that throughout the whole thing don't, don't feel bad even though I do too, I know it's hard not to but remember they made up their own minds and they would...I don't even know what happened in my house, I don't know who was there or who was waiting in the car.

CP: That's good though.

PS: I really don't know like whatever happens did the police have...they have evidence or they don't, you know, there's nothing I can do to stop what's gonna happen.

CP: Um hum.

PS: There's nothing I can do, you know and that's just it and if they have a note from me to Bill, obviously I'm gonna have to say...

CP: Your best bet is just to confess that you did have an affair but you didn't kill Greg.

PS: Well I'm not going to now I don't know if they have the note.

CP: I'm just saying if they do find the note.

PS: ...I'm not going...

CP: ...I know but if they do find the note.

PS: Right, but I'm gonna say, I'm gonna say I didn't, I didn't, nobody else knew about it.

CP: Right.

PS: I'm not gonna say, I'm not gonna say that he stayed over my house, I'm just gonna say that, that I did after school I went out with him or something, and then I went over his house and fucked him you know. I'm not gonna say that.

CP: Well once you moved down here you were always with Bill and I never knew anyways.

PS: No, but I never, I never slept over or anything like that I would never, I mean its...

CP: But didn't he sleep over that Saturday night?

PS: No.

CP: The Saturday before he was arrested he didn't?

PS: No, no, I had people sleeping over my house every single night since I've been here. The only night I didn't is the night you were there.

CP: Oh, I thought he spent the night the day before.

PS: Uh, uh, he was over but he didn't spend the night.

CP: Oh.

PS: Every single night, every single night I'd have somebody sleep over my house..

CP: Uh-huh

PS: You know that the police were going to ask me and every friend I have will say they slept over.

CP: I hope they ain't watching me or you...

PS: I doubt it. I know they think that you know more than you know but,

CP: I know they think that too but I already sat through the questions that I didn't so.

PS: I'm sure you did and I'm sure you didn't fucking ever know. Just remember that you don't, that, remember what I told you the police will try and be your fucking best friend and then they'll turn right against you and they'll fucking say okay we want to explain to you what harboring a crime is and if you'll do this and do that, well you'll go oh, okay, sign this. Oh, okay great, ya know, then they'll say you have the fucking right to remain silent, ya know?

CP: Uh-huh.

PS: (Inaudible) They can't arrest you for not knowing anything, put it that way

CP: Yeap.

PS: But if the police do the lie detector, if you do do it...and it show's that you're lying.

CP: It can't stand up in court, you already told me that.

PS: ...if you are lying tell them I'm fucking 15 years old, I'm fucking nervous what the hell, man, all my friends are arrested for murder, my fucking, and my whole town's like what the fuck man everything, you know. I'm fucking nervous. You know. My lawyer said all that, all they measure when you do a lie detector is blood pressure and um an increase in like blood pressure and heart rate and all that so if you go in there and you are nervous its gonna be going fast and shit like that.

CP: Yeah.

PS: You know? And that's the thing.

CP: Well, I wish I could have my cousin Tracy come in and meet you but she's seen pictures of you at the house so..I mean obviously, my mother doesn't want me around you so if she finds out I took her car here to see you she's gonna rip.

PS: (Inaudible)

CP: Pretty good, I thought I lost the keys, I'm like..

PS: Alright, the most important thing is that if I'm even arrested.

CP: Uh-huh, that you won't say anything.

PS: If they come forward then and then say they've got a gun, under no circumstances would I ever have fucking said that okay, don't forget that.

CP: Uh-huh

PS: Even if I'm arrested and in the slammer, I never would have said that. And number two remember the accessory, and remember that even if you do, if you confess that, that you gonna have more problems then you ever had. You know right now your problems are just inside you like the way you feel about everything and how you wish you fucking didn't know anything (inaudible) there's nothing you can do about that you know you're probably gonna be and you think the newspaper bothers you now.

CP: (Laugh) No kidding

PS: No shit. If you think people bother you now with questions, you know its never gonna fucking end I mean just let it end with the fact that you don't know anything.

CP: I know.

PS: You know cause once, you do think the Attorney General gonna leave you alone if you say something?

CP: No.

PS: Right now you're a witness just like anybody else, they're gonna want to know, Tracy, anyone, Rachel that did the video. Pam, did Bill act like he liked Pam when he did the video and Tracey...

CP: Now is Tracy mad at me?

PS: No.

CP: Alright.

PS: She's not, Tracey's gonna say the same thing as you say, Bill acted nice to me, he acted nice to Cecelia, he acted nice to Rachel, he acted nice to...

CP: Well, I didn't know if she was mad because of what Bill said, Billy.

PS: No, she was totally defending you she was like Cecelia would never do that to you or anything but I'm just, like fucking I hope she wouldn't.

CP: But, but then Tracey, yeah and but then Tracey must think anyway you are innocent you know.

PS: Right.

CP: Meanwhile you're thinking to yourself oh-ooh.

PS: Right, right.

CP: And you had no-one to talk to

PS: And I couldn't, no shit, like tell me about it through this whole thing I've had no-one to fucking talk to. I'm like, uh

CP: Somebody cut all the phone lines in Seabrook. Did you hear about that?

PS: I know, yeah.

CP: My first thought was Bill and them, but they're in jail.

PS: They're not in jail, they're in YDC.

CP: Oh.

PS: Do you know if anybody's gonna go visit them, like any of their friends?

CP: I don't know because I didn't really ask any...I didn't ask his brother or anything I just hi to him.

PS: Why is Ralph walking around the whole streets spreading shit like fucking (inaudible), I guess.

CP: Because he's an asshole? You know he never liked you to begin with so,

PS: He didn't?

CP: You said he didn't..

PS: No, Pete didn't.

CP: Oh, oh I thought Ralph didn't.

PS: Bill told me Pete didn't like me too much. So that's wonderful.

CP: Oh, that's good Pete hated you and meanwhile

PS: I know, I keep that in mind, my lawyer already said that if the kids say that, I heard I fucked with all of them.

CP: Oh, gang-bang queen of American

PS: And then I heard I was having an affair with you told me someone Bobby and the other day I heard someone named Dean. The other day I heard Patti was getting arrested because she drove the car.

CP: Patti

PS: Yeah

CP: Your secretary?

PS: Yeah.

CP: (Sigh) well now we're lesbians so

PS: No, I know, see a fucking new one.

CP: See you later, ha-ha.

PS: That's so queer

CP: Like midnight tonight I'll sneak into your bedroom and molest you.

PS: I know its just so queer that people think that because I was staying by myself and what the hell I work here and you need to get to school so I can drop you off.

CP: I know, its ridiculous anyways. Who were you on the phone with when I came in?

PS: I was trying to call you (inaudible) all week.

CP: I come in and your like slam the phone down and you're like aaah on the phone like...

PS: Well, try and come and talk to me or something.

CP: I thought you, I thought you saw Greg standing behind me or something I'm like what the hell.

PS: Try to come talk to me, because I have to go, I have to go to my psychiatrist.

CP: Are you going to a psychiatrist?

PS: C'mere, try and come talk to me after you get out of the Attorney General's Office and tell me what happened.

CP: Alright, if my mother will let me come take the car.

PS: Alright.

CP: She's such a witch.

PS: I'll see you later.

CP: Alright

PS: Bye.

CP: Bye, where are you going?

PS: To the uh, psychiatrist.

CP: Oh, okay see ya.

PS: Bye.

CP: Bye.

Secty: Bye. Bye!

DP: 1331 Hours, Cecelia exits the building. Ending the tape.

# **EXHIBIT 2**



July 13, 1990 - Cecelia Pierce  
and Pamela Smart at the Winnicunnet Highschool  
in Hampton, New Hampshire

## COPY

MS: Today's date is July 13, 1990 this is a conversation recorded between Cecelia Pierce and Pamela Smart at the Winnicunnet Highschool in Hampton, New Hampshire. This conversation that's being recorded was with the consent of Senior Assistant Attorney General Bill Lyons.

DP: 12:50 Hours arriving at the parking lot of Winnicunnet. Cecelia is waiting in the car.

DP: 12:59 Hours Cecelia goes into the building SAU 21, speaks with a women inside, is advised that Pamela was in and went out for lunch and hasn't returned yet.

DP: 1:03 Cecelia comes out of the building and returns to her vehicle to wait.

DP: 1:04

CP: Hi - where's Pam?

Secty: She should be coming back from lunch.

CP: She is?

Secty: We didn't get out till a late lunch.

CP: Oh you didn't? What time will she be back?

Secty: She should be here any minute.

CP: Alright.

Secty: How you doing?

CP: Pretty good.

Secty: Yeah.

CP: I thought I'd come and visit her.

Secty: Yeah.

CP: See what she's up to, so. . .

CP: Well, I left the keys in the car and I'm just gonna sit and wait for her and if she doesn't hurry up and come I'm gonna get going, cuz I don't. . . my mother doesn't let me keep the car for too long.

Secty: So you're driving..got your license?

CP: Yeah.

Secty: Good.

CP: Finally.

Secty: Yeah (laugh). You working alot?

CP: Well, I'm gonna get inside.

Secty: Are you working alot?

CP: Not really.

Secty: No?

CP: I went in on Sunday and they sent me home they said I had the chicken pox. Then Sunday night I went in there to eat and they kicked me out because I had the chicken pox.

Secty: Did you have them?

CP: I don't think I have em. I have something all over me though. I have to go to the Doctor?

Secty: Yeah you should.

CP: Probably like poison souix mack. I don't know what it is.

Secty: Huh

CP: But, it itches.

Secty: Go. (laugh)

CP: Yeah. Thank you, from Michael.

Secty: (laugh) Still going out with Michael?

CP: No

Secty: No?

CP: I haven't gone out with Michael, we're just friends.

Secty: Do you want to come in?

CP: I was in there for a few minutes

Secty: Oh were you? She should be back because we both said we'd get back around 1:00 and now she's ten minutes late already so. . .

CP: You beat her?

Secty: Yeah.

CP: (laugh)

DP: That was Pamela's secretary arriving back from lunch. Cecelia returned to her vehicle at 1:06 and I'll stop the tape at this point. 1:09 - Target vehicle pulls up.

CP: What's up?

PS: Hello I was going to call you but oh I figured I'd call you some other time. Your mother answers. Have you gone yet?

CP: I didn't go.

PS: Why?

CP: Because Captain Jackson called and he wants me to meet with him at 3:30. I'm not going to the Attorney General's today.

PS: Do you know why because I talked to my lawyer and I told him they asked you cause because they are doing an investigation.

CP: Oh are they?

PS: They are like calling like everybody now. They have to go to like Grand Jury to see if they have any evidence.

CP: They're gonna subpoena me, Pam I know they are.

PS: They are. They're gonna subpoena everyone else too and any friends I have (inaudible).

CP: They are?

PS: Yeah, like everybody is going at different times Liked all Bill's, and J.R.'s and Pete's teachers have to go and (inaudible) um like everyone. They would subpoena me but I'm not going because it's a conflict of interest cause its my husband.

CP: Oh

PS: But they wouldn't subpoena me really (inaudible)

CP: I hate this. What happens if I lie on the stand and they find out?

PS: How would they find out?

CP: Later on.

PS: How would they find out?

CP: If they, I mean if somebody says that I did know I don't know.

PS: Well, who would know, who would say that?

CP: Does J.R. know what I know?

PS: Even if he did know that, it's his word against yours and they can't prove it.

CP: Well if they, if J.R. and everyone says I know about it.

PS: (Inaudible)

CP: I don't know, why are they still questioning me then?

PS: Because they questioned everybody, I don't know. Tracey, everyone (inaudible). Tell her she's not the only one. Is he coming to see you or are you going to see him?

CP: I'm supposed to go there.

PS: How are you going to get there?

CP: My mother's gonna bring me she's gotta work til two.

PS: Where are you going, the Derry Police?

CP: Yeah. But what I was saying is if I'm I mean obviously I knew about it before hand and if I get up there and lie and if then they find out about it after, I'm gonna get in trouble.

PS: Well if you didn't know about it before hand and you say you knew aout it before hand, you're gonna be in trouble.

CP: Well I did know about it before hand

PS: Yeah but if you say that you're gonna get in trouble anyways.

CP: Umhum.

PS: So you are better off just just lying. There is no way. They wouldn't in order to arrest you and convict you for accessory to murder, that which means you knew before it happened, they would need to have evidence that you knew, somebody saying someing like that is hearsay, like these guys are never gonna get convicted for murder unless they have fingerprints and hair and shit and everything, you know what I mean, like they're never just gonna get convicted because Ralph said; they're not you know and right now they could give two flying shits about about anything regarding anybody else except for they're gonna; if they truly have a letter from Sarah like they're gonna want to know, they're gonna want to prove in court that I was having an affair with Bill.

CP: Sure

PS: But I told you even if I got arrested tomorrow and they said here's the letter from Sarah and its signed "I love you Bill, "Be mine forever" or whatever, I don't know I can't even remember then, uh, then its I'm gonna have to say, ok yea, I was, but I'm not going say I'll just say that nobody knew about it except me and Bill whoever Bill might have told.

CP: What did they do with the stuff they stole?

PS: I don't know. I have no idea.

CP: Did they really steal stuff?

PS: Uh yea.

CP: They did.

PS: Yeah things were stolen from my house but I don't know I would assume they threw it out.

CP: They threw it away?

PS: (Inaudible) I don't know.

CP: I should hope so. Hope it isn't laying in Bill's bedroom or something.

PS: (laugh) I don't know I doubt it. I highly doubt it, but I don't know.

CP: They were pretty stupid

PS: Right

CP: They forgot the directions to your house that night.

PS: Well if they, if they um. If they have stolen things from my house and Bill tells then Bill's bumming, you know.

CP: Yeah.

PS: There's nothing I can do about it. I doubt if they have that cause that would be really stupid of them, right?

CP: Right.

PS: ...but the worst thing I'm worried about is..um..is first of all another reason you're getting questioned is cuz you're the one who spent the whole week with me. Unfortunately it happened the week after that, ya know. If that wouldn't have happened they wouldn't be really concerned about you, but you're like the last person who was with me.

CP: You know what. Remember that time you let Bill use your car to go up there?

PS: Where?

CP: Up to your house?

PS: Yeah.

CP: Well, that time, if he hadn't have forgotten directions he could have killed Greg then and then...

PS: I know, I really...

CP: ...I wouldn't have even have spent the next week with you. I know but if ...

PS: I know but it's history now, cause ya know, we can't talk about shit that should have happened. (Inaudible) should have happened though, ya know. Um, the only thing is that...oh yeah, remember, I don't know if my phone's been tapped, but if it was there was a time when I was talking to you on the phone and you said to me, "Uh, you should have just got divorced."

CP: Yeah.

PS: ...something like that and hopefully my phone wasn't tapped when you said that cause I coulda shit when you said that. But if anyone, if my phone is tapped and anyone asks about that I'll I'll just say that you meant like why, why if, you couldn't understand why I would have killed Greg cuz I would have just got divorced, ya know, like if I wanted Greg dead I shoulda just got divorced, ya know, and so why would I have, why would I have killed him, I would have just gotten divorced, ya know, cuz I hope my phone's not tapped, cuz I'm like ... I'm like... but that's the thing. I don't know about this letter from Sarah. I wish like someone would fuckin' grab Sarah on the street and find out whether she turned in a letter or not, ya know, a note, cuz if they don't have that they don't have shit proving that .

CP: I don't know about that cuz Sarah's happy go lucky. I've seen her only once but she beeped and waved.

PS: That would mean that Sarah would have had to have had to hold that note all the way from the winter til May, til June. Why would she have done that?

CP: I don't know. I just threw out my notes from two years ago.

PS: Well when she borrowed Bill's jacket, wouldn't she have just put the note back in the jacket after she read it? It doesn't make sense that she put it in her pocket and took it home, okay?

CP: Probably. She probably did but hopefully he didn't bring it home and set it on the counter or something.

PS: You know, you can't believe the story they told you they told me. They said that Sarah gave them a note.

CP: Yeah right.

PS: But that has nothing to do with you, you know what I mean?

CP: Right.

PS: Like go ask Sarah, ya know, that's the thing. I mean friggin', that's what I keep saying. Everyone asks me, like the reporters, well, so Ralph said this, so I'm like fuckin' ask Ralph, I guess, you know. Don't ask me ask Ralph. I don't know, ya know. I don't know what to tell you lady, just ask fuckin' Ralph. Um, but, ya know, they might tell you a detail, like well, we've talked to Bill and he told me, Bill said, okay that's bullshit, cuz those kids have not talked to a fucking soul since they've been arrested besides their lawyers, ya know, and that's it. And even if, if Pete if they say well Pete said that that Bill told him that you knew, then all you have to say is well Bill told Pete the wrong thing. Then if Bill's the murderer, he's obviously a liar so, ya know, what the hell, that's just it, I mean they're not going to believe Bill and Pete on the witness stand against you, I mean come on, they're friggin'...

CP: Yeah.

PS: ...they're on trial for murder, ya know, they're not gonna be believing you and them. All they want to know is, is there anybody else that knew about this before it happened because if there is then they can really bag 'em, ya know, but that's the thing so I don't know ya know I mean I wish this wasn't circumstances, ya know. I hate the fact that you have to be interviewed; I hate the fact that you are scared; I hate the fact that you're probably going to have to take a lie detector test, but I don't know what to tell you. If I thought if you told the truth it's going to do you any good, that's one thing, but it's not. If you tell the truth - you cannot change what you know, you know, you can't and if you tell the fuckin' truth you are probably going to be arrested and and even if you're not arrested you're gonna have to go and you're gonna have to send Bill, you're gonna have to send Pete, you're gonna have to send J.R. and you're gonna have to send me to the fuckin' slammer for the rest of our entire life and unfortunately that's the situation you're in. And not only that but your parents are going to be like fucking..Cecelia ya know, what the hell. I mean I think your parents will get over the fact that you decided you didn't want to take a lie detector test but I don't think they will get over the fact that for the next two years you're gonna be going to trial sending everybody up (inaudible) ya know (inaudible) ya know I'm just sayin I know, tell me about it.

CP: What the hell are they doing?

PS: That's the thing, they're gonna I mean (laugh) I don't know, but all I have to say is I feel like totally feeling you cuz I'm afraid one day you're gonna come in here and you're gonna be wired by the fucking police and I'm gonna be busted.

CP: All I can say is if Raymond hadn't have run his mouth off

PS: I know. Give me some signal that if you ever come down to me and you're wired that you are going to give me.

CP: I'll just wink.

PS: Alright, ya know, go like this, or...

CP: All I have to say is (laugh) - I thought my watch said quarter past two, I was like great - Um if Raymond hadn't run his friggin' mouth off this would have been the perfect murder...

PS: Right.

CP: ...because they set everything up...

PS: No shit...

CP: to look like a burglary just like you said...

PS: No shit...so it's not my fault. I fuckin' Raymond...

CP: Had not run his mouth off everything was set up perfect.

PS: No shit. But the thing is that, that you have to realize that no matter what, Bill's not going to drag you into it...

CP: Uh huh

PS: Cuz it is just going to make it even worse for him.

CP: Right.

PS: and what what good is it going to do to drag to Pete and J.R. to drag you into it.

CP: Yeah.

PS: Nothing. it's nothing, ya know. Plus, Pete and J.R. never talked to you about the murder right? They never said oh Cecelia you know right?

CP: No.

PS: So as far as they know Bill told them you knew. That doesn't really mean you knew, you know I, that's the thing, . . .

CP: Right.

PS: So no one's ever-don't worry about them fuckin, don't worry about anyone, pretend like no one is ever going to say you're lying in 20 years or 2 days down the road cuz no one is ever gonna catch you in a lie because it's impossible to catch you in a lie, cuz people are gonna try and catch you in a lie if anyone, it's gonna be Pete and J.R. and it's just gonna be their word, their convicted criminal, arrested for murder word against yours, ya know. . .

CP: Yeah.

PS: ...and I mean any fuckin' jury in the world is gonna, they can't even arrest you on criminal word. I mean, they know they're gonna say anything they have to get to get ya know off and that's the whole thing. So you have to go there and just fucking say the same god damn fuckin' story, you know, and don't change it and that's it. And the only thing is I don't know what they are going to ask you. I would totally shit if they said to you well Bob Smith that lives next door to Pam said she saw Bill walking into the house on the night of Greg's murder but I'd be like the stupid bitch she waited three fucking months to say what she saw, you know what I mean?

CP: How many days did Bill spend there anyway?

PS: Only one night.

CP: Only one night? Cause I was going to say even if they asked me that again I can honestly say I don't that he didn't cause in my mind I don't know, ya know

PS: Yeah right.

CP: cuz I can't remember how many days he stayed.

PS: Right, and that's it ya know his mother is going to think he wasn't spending any nights.

CP: Where did he tell his ma he was anyway?

PS: I don't know to tell you the truth.

CP: Well his mother must be awfully stupid.

PS: But, um, that's the thing, I don't know what the hell's goin on. All I know is that uh that pretty soon J.R. is probably gonna roll. He was supposedly only in the car, I don't know, I have no idea, and pretty soon he is gonna be like fuck Pete and Bill I'm not going to jail for the rest of my god damn fuckin' life, so he is going to turn against them and he is gonna blame me.

CP: Right.

PS: I know he is, and that's when I am going to be in trouble, that's when I am going to get arrested but I can probably get out of it because they are not going to have any proof, ya know, but that's when I am gonna be arrested cuz J.R. - I never said the words, I never said any words like J.R., I will pay you to kill Greg. I never said anything. J.R. never talked to me about the murder or anything, ya know. So as far as him-Bill coulda told them all I'd pay them. I don't know, what Bill told them to get them to go, and then that was just a lie, you know, but that's a lie. They're not going to have any proof, no money they're saying, ya know, there's no - you know what I'm saying? Like, that, cause that's not true, so they can't convict me cuz of fucking J.R. 16-year old's word in the slammer facing the rest of his life.

CP: Well first of all you didn't offer to pay him right?

PS: No.

CP: So he's not gonna say you offered to pay him, he's going to say you knew about it before it happened which is the truth.

PS: Right - well so then I'll have to say no I didn't and then they're gonna believe me or they are gonna believe J.R. 16 years old in the slammer. And then who me with a professional reputation and a course that I teach, that's the thing.

CP: Alright.

PS: They are going to believe me.

CP: Alright, well I'll call you, I went in your office and waited for you.

PS: Do you want me to come over later?

CP: Later?

PS: Yeah. No one's home.

CP: Alright, well I'll call you if I get the car.

PS: Well, I don't have a phone.

CP: You don't have a phone at your house?

PS: It's unlisted. I changed my number, and um...

CP: (Inaudible)

PS: Um just come over, I'll be home all night.

CP: Alright, well I'll have the car anyways (inaudible)

PS: Alright, and if you come over pick me up and we'll go somewhere.

CP: Alright, yeah okay

PS: Alright, what time do you think it will be like five or six or something?

CP: (Vehicle door chime) Well, I have to go up there at three thirty. It takes 45 minutes to get back. I'd say I'm not gonna stay more than an hour.

PS: (door chime stops) All I know is, all I know is that I'd better see you again or the next time I see Billy (inaudible)

CP: Well...

PS: You'd better be there or I'll come after you with my Rambo knife.

CP: Bye

PS: (Inaudible)

CP: You'd better shut up before I run you over...you'd better shut up before I run you over, yeow.

DP: 1323 Hours Pamela Smart returns to her office. The CI is leaving the area.

# **EXHIBIT 3**

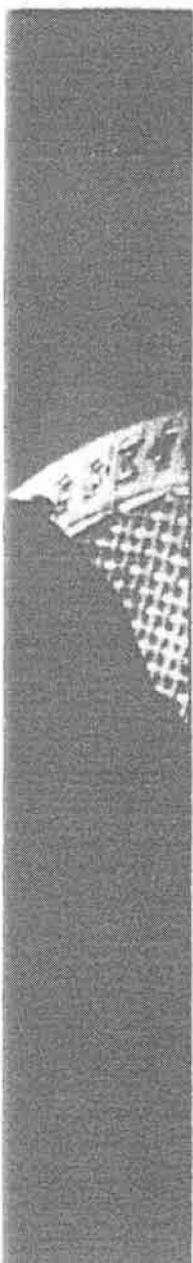


PHOTO / JUSTINE ELLEMENT  
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## useless

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# Why I voted to convict Pamela Smart

A juror talks about the evidence  
that led to the verdict of 'guilty'

By Alec Beckett  
SPECIAL TO THE GLOBE

**F**or three weeks we were the only people in New England, and perhaps the country, not talking about the Pamela Smart murder case. But we were the only ones whose opinions really mattered. We were the members of the jury.

There were 15 of us originally selected to serve on the jury out of a pool of about 300. All we had in common was that Judge Douglas R. Gray, the prosecution and the defense attorneys agreed that somehow or other we had all managed to miss the media barrage that had been building around this crime.

I had just returned from traveling around the world for eight months after graduating from college when I received the innocuous-looking letter from the Rockingham County Clerk of Courts summoning me to jury duty. I filled out the form and went where they told me to go. In my initial interview before the court, the fact that I had been on another continent when the murder took place put me on the short list of potential jurors who knew absolutely nothing about Pamela Smart.

We met as a group for the first time on March 1 when the trial began. Never have I felt so much like a dog. We were told when to stand, when to sit; we waited for our food to be brought to us, and the bailiffs took us for walks. Over the next three weeks we came to learn a lot about each other and acquired the peculiar ability to talk about everything in the world - except the often disturbing, emotional and occasionally baffling story that unfolded before us.

So last Wednesday, after the closing statements were delivered and the judge had given us our charge and the three alternates were sent home, the seven women and five men who remained were brought back to the deliberation room, where we sat amid a strange silence. Someone complimented the muffins someone had brought in that morning. Another juror said something about how tough it was to find a parking space because of all the press and TV trucks that had crushed into the lot that morning. And for the first time, Bucky, our



GLOBE STAFF PHOTO / MICHELE MCDONALD

**Alec Beckett, a juror in the Pamela Smart case.**

bailiff, knocked on the door before bringing us fresh coffee. More silence.

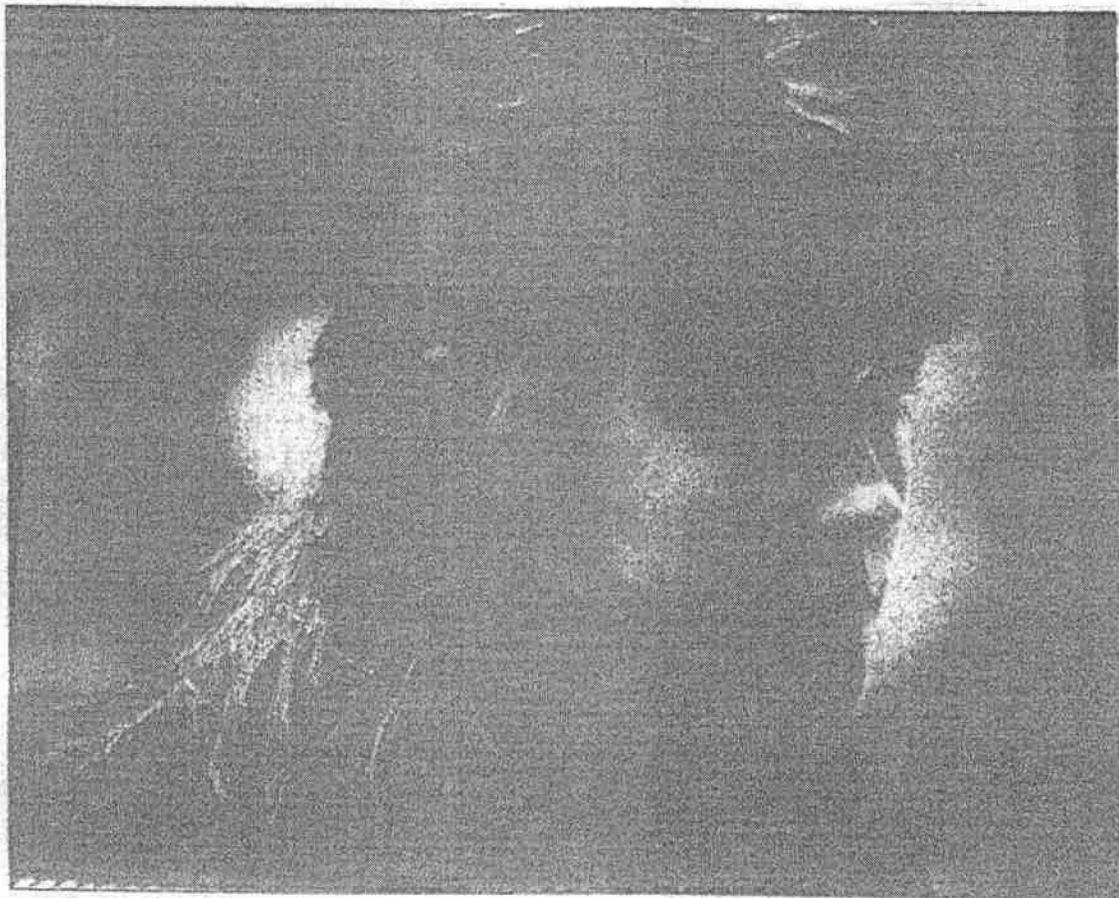
Finally, one female juror in her mid-40s with dyed black hair and an astonishing collection of big, gold jewelry, said, "I don't see why Pam would have left work in the middle of the day to give the boys a ride to Haverhill if she had just broken up with Bill Flynn two days earlier." The cork was out, and the room exploded with questions, comments and theories.

Someone would bring up a topic, and we would all latch on. It felt so good to finally be able to compare impressions, doubts and opinions about all that we had seen and heard in the courtroom. A few attempts were made by our reluctant forewoman to channel this enthusiasm in a productive direction, but too many of us had too many things we had to get off our chests before we could settle down to a logical, organized system of discussion. So we wandered off happily on every tangent we could think of: Had the candlestick been used during the murder even though the boys denied it? Did Pam really love Bill? Did Pam have a legitimate reason to be at the meeting the night of the crime? Could Bill really have known the value of the life insurance policies before he killed Gregg?

There has been a lot of criticism that we jurors had had our minds made up for us by the media before we had even started deliberating. Not only is that wrong, but frankly, I find it insulting. Each of us promised the court that we would not watch TV or read any newspaper articles about the case, nor would we discuss it with anyone. So to say that we had been tainted by outside influences is to assume that

JUROR, Page 38

# Why I voted to convict Pamela Smart



GLOBE STAFF PHOTO / SUZANNE KREITER

Pamela Smart during her trial on charges that she conspired to murder her husband, Gregory Smart.

## ■ JUROR

Continued from Page 33

we either lied to the court or were too stupid to turn off the TV when the news came on or to not read the newspapers.

I got the distinct feeling that I was not alone in treating our legal responsibilities seriously. One juror told us how his wife would intercept the morning paper and cut out every article relating to the case - often leaving him with little more than the sports and classifieds. Another juror who was taking a night class in English at UNH said he asked his classmates to avoid the case as a subject for papers or discussion.

Although no juror really took a stand during that first day of deliberations, I had a sense nonetheless of where everyone was at, right from the start. There were three who were convinced of Pam's guilt: a young woman who made her position known early and often, a well-educated elderly man who patiently let the rest of us air out doubts while he simply said it was clear to him there was only one possible verdict, and a bearded 30-year-old whose accent revealed him to be a product of the same town and schools as the three juvenile killers we had heard testify, though he obviously ended up light-years beyond them in intelligence and morality.

On the other hand, there were three other jurors who came right out and said that they had far too many doubts to even contemplate a "guilty" vote: a young computer programmer who approached every issue with a sharp mind and was always ready to step into the devil's advocate role, our forewoman who wanted to be stampeded by evidence before she could let herself believe such preposterous accusations, and a woman in her 30s who thought the defense had suggested plausible explanations for almost everything that had happened.

Personally, I really didn't know which way I would go. My general impression was that Pam was somehow involved, but my doubts were more than reasonable enough to merit a thorough review of the evidence.

That was where we stood at 5 p.m. last Wednesday when the judge came in and told us that we would be sequestered the next night if we hadn't come to a verdict. He also told us that we could continue on as late as we wanted, but we knew that the next day would be a long one, so we decided to break for the day.

We returned the next morning at 9 a.m., and several of us reported that sleep had not come easily the night before. For every piece of evidence there was doubt, for every witness there was a question of motive and credibility. In fact, for several of the jurors, the testimony of the three boys who did the actual killing and were the state's "star" witnesses was all but discounted because they so disliked them and what they had done. Even Bill Flynn - Pam's lover and the one who had admitted pulling the trigger - who was so emotional and, for many, so believable on the witness stand, was found so distasteful by at least four of the jurors that they would not consider anything he said as credible evidence against her. But one of the older male jurors said that his mind had essentially been made up when he heard Bill testify that Pam had told him not to kill Gregg in front of the dog because "it would traumatize her." That, he said, has "the ring of truth to it."

Since the defense attorney in his closing statement had basically confessed for Pam to witness tampering, and the evidence on the tape was clearly undeniable, we decided to take a vote on that charge so we would start to feel like we were making progress. The vote was unani-

mous, but there was clearly no such agreement on the other two charges - of conspiracy to commit murder and accomplice to first-degree murder.

The dynamics of our small democracy were fascinating. In attempting to reach a consensus, there was a fine line between talking too little and talking too much. One woman who was clearly trying to steer us toward a guilty verdict made intelligent and insightful comments, but found herself talking to no one because she wouldn't give up the floor. A couple of other jurors remained steadfastly silent in front of the whole group, but would heat up as soon as some diversion split us into smaller groups of two or three. One of the men took to disagreeing with everything, apparently under the impression that that was what would make it a fair trial. One thing we all agreed on was that the tapes deserved our complete attention.

These tapes were of the conversations between Pam and her friend Cecelia Pierce. The most damaging ones were the two in July when Cecelia was wearing a body wire. Some of the exchanges were inane (Cecelia talking about her Uncle Buddy who had been "killed to death" when a log hit him in the head "until his brains came out"), and Pam's language was atrocious, leading one of us to comment: "I think we have no choice but to find her [expletive] guilty."

That morning, we went through every second of those tapes several times. When asked about the tapes, Pam had testified that she had been trying to extract information from Cecelia about what had happened to her husband while trying to prevent her from going to the police so that her affair with Bill would remain secret. This defense, which sounded conceivable in a vacuum, could hold no water when we started to com-

pare that claim with what we heard on the tapes.

We looked hard to find examples - and we gave her every benefit of the doubt - but they simply were not there. Slowly, the doubts that several jurors had as a result of the inconsistencies and alternatives that the defense had pointed out in the tapes were simply overwhelmed by the sound of the defendant subtly, and not so subtly, incriminating herself. We could find only one honest explanation for statements like, "If you tell the [expletive] truth ... you'll send me to the slammer for the rest of my [expletive] life" and "if it comes to that, I'll admit to the affair, but I'll never admit to having anything to do with the murder. Then it will just be J.R.'s [Vance Lattime Jr.] 16-year-old, in-the-slammer-for-life word against mine. No jury will convict me on that."

After this, I asked, "Is there anyone here who thinks Pam didn't know about the murder of her husband before it happened?"

In the silence that followed, we looked around the room at each other and knew that we had just taken the first and most difficult step to finding Pamela Smart guilty.

Around noon the bailiffs brought our lunch in, and we were all thankful that we wouldn't be at the mercy of the same sub shop for much longer. Afterward, they took us for a few laps around the building, and it was here that we started to feel the pressure of the world awaiting us. The parking lot looked like NASA ground control, bristling with satellite dishes and microwave trucks. There were cameras set up all over, and reporters scurrying around trying to find someone who wasn't a reporter to interview.

Back in our stale room, we started repeating to ourselves that were still nagging some of us. Someone wanted to know if Bill had been lying

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about getting money from Pam to buy the bullets, and if so, why? Another juror didn't know what to make of Gregg's friend Brian corroborating some of Pam's explanation of her incriminating behavior on the tapes. And one juror wondered if the testimony of the woman to whom Cecelia had mentioned that she "had a friend named Pam who wanted to have her husband killed" was by itself enough to find Pam guilty.

Everyone needed to be convinced at his or her own level and speed. Once while listening to the tapes, we reached a point where Cecelia said something like, "and you had your husband killed," and Pam responded, "Yeah, well everything would have been fine if Ralph hadn't not told." We stopped the tape there, and let the implications of the statement sink in. Then one of the older women, who I had noticed did not always seem to follow what was going on, picked up on our pregnant pause and said darkly, "Ah . . . that was a double negative!" In the end, she came to the same conclusion the rest of us did.

By 3 p.m. on that second day of deliberations, I knew that a consensus had essentially been reached. But two of the women and one of the men would not commit to anything until they had "slept on it." To those for whom the decision had been cut and dried, this seemed self-indulgent, since it would cost the taxpayers several thousand dollars to feed and house us while we were sequestered just so that a few of us would feel a little better about our verdict. But one of the women had been waiting for someone to mutter just such a protest, and when it happened, she snapped self-righteously, "Do you have anything better to do?"

So we were herded into a police van and whisked off to a motel on Route 1 in Hampton where we each got our own room with a TV and a telephone - both of which had been disconnected. To compensate for the fact that we were essentially being held prisoner, we took advantage of our expense account status and made dinner a veritable feast. Word was passed on to us by one of the sheriffs that the judge had OK'd two drinks per juror, though the state wouldn't pick up the tab for alcohol.

The novelty of the situation made dinner a festive affair, but the tension and concentration expended that day took its toll - and by 10 p.m. there were only two of us still awake watching television under the supervision of the sheriff.

That night the evidence kept playing through my dreams as if it were on an endless loop of film.

We met again for breakfast, but our conversation was more muted and appetites less enthusiastic than the night before as we anticipated the verdict. The van returned us to the courthouse, and we silently followed the familiar maze back to our deliberation room. Some instinct led us all back to the exact seats we'd been in the last two days, but there was a new feeling in the room. Those who had "slept on it" were ready to take the step they had been dreading, while those who had made up their minds already saw that the end was in sight.

There were still a few doubts people wanted addressed. Though we had yet to take a vote on either the conspiracy or the accomplice

charge, we all knew where we were going, and each of us wanted to be reassured that we were doing the right thing. We all stalled. We decided to wait until lunch, though only one of us was able to eat. Then several of us wanted to take a walk.

Finally, there was nothing left to do but vote. First was "conspiracy to commit first-degree murder." There was no talking as our forewoman tallied the votes, nor was there any surprise when she said, "Twelve votes guilty." The result was the same on the first ballot on "accomplice to first-degree murder."

The juror who had said the least during deliberations suddenly spoke up and asked if everyone could live with their vote. We all said, "Yes." He asked if we needed more time, and everyone shook their heads no.

So the forewoman walked to the buzzer that called the sheriff and pushed it. When he arrived, she handed him the note with our verdict on it. He opened it and said, "Don't say anything more to me than a simple 'Yes' or 'No.' Were these unanimous decisions on all three counts?" When she said, "Yes," he told us that there would be a 15- to 20-minute wait as they tried to move the mob outside into the courtroom with minimal casualties.

Once the verdict was on its way to the judge, I had a horribly helpless feeling that there was no turning back now. At the same time, you could feel the relief from everyone that it was over. While we waited, we talked about how unfair it was that the three boys, who in my opinion are vicious, amoral monsters, got to cut a sweet deal with the attorney general, and that Cecelia Pierce not only got off scot-free, but stands to make \$100,000 when they make this sordid affair into a movie.

But we had done all that we could do to bring justice out of this tragedy, and I said, "Should I ever find myself on trial, I hope I get us as a jury." Everyone agreed, except someone who said, "Well, you won't because I'm never doing this again."

We filed back into the courtroom as we had dozens of times before, but now all eyes were on us, and there was a charge in the air unlike any I have felt before. Before we were told to be seated, I glanced over at Pam. Her face was set tensely, as it had been for most of the trial, with only her eyes, and her hands skittering over the table, betraying her nervousness.

With a virtual tidal wave of press looming behind her, her entire town despising her, the state having humiliated her for the world to see, and the Smart family waiting with sadistic anticipation for a guilty verdict, it practically broke my heart to see that in Pam's eyes, we were the only ones left who had not turned against her. Seconds later, the verdict was read and she was all alone.

Our justice system is based on the principle that 12 people can take on a responsibility that truly and finally rests only in God's hands. Even when divided 12 ways, that is a heavy burden to bear. When we returned to the deliberation room, several of the women were crying, everyone who smoked was smoking, one woman was struggling to get the cap off her aspirin bottle, one of the men was staring at the floor and pacing, and I was trying to convince my hands to stop shaking.

A bailiff asked us to wait because Judge Gray wanted to talk to us. Even without his black robes on, he was an intimidating man - tall, stern, with a perpetual frown on his face. He closed the door behind him, and said, "Juries always asked me how I would have decided a case, but I'm not going to tell you. Suffice it to say, I thank you for your diligence and attention, I think you did an outstanding job, and I think justice was served. You can all sleep well tonight."

He told us to expect a press blitz, and that if we felt we were being harassed we should feel free to call the sheriff's office. He obviously found the media's feeding frenzy distasteful, but as he left, he couldn't help cracking, "I hope Clint Eastwood plays me in the movie."

That night, for the first time in a long while, I slept well.

# **EXHIBIT 4**

Amaral agreed and again, without being asked said, they would pay money for the tapes.

13. Amaral and I agreed to meet the next day to turn over the tapes at the Harbor House Restaurant. I never raised the issue of money for the tapes with the investigators. They always raised the issue first. They told me that when they gave me the money, I could give Karen as much as I wanted or keep as much as I wanted.

14. Prior to the scheduled meeting to give Amaral the tapes, I spoke with a friend who informed me that since money was to be involved, that I should stay out of it and if it is going to be done, it should be done by Karen and her attorney. I decided then that when investigators showed up, I would not given them the tapes, which I had in my possession, but instead would tell them Karen had changed her mind. I was nervous in having to do this because I was intimidated by the investigators.

15. When Amaral and the other investigator I knew as "Chip" arrived, I told them Karen had changed her mind, which was not true. They left for ten minutes, returned, and asked me to sign a <sup>DX</sup> statement which said Karen had changed her mind. Prior to signing the statement, Amaral shook my hand and in the palm of his hand was a \$100 bill which he slipped to me.

16. I told him if Karen changed her mind, I would have her attorney contact him. Amaral then asked the name of Karen's attorney, but I did not think it was his business and I would