

*Application to the Georgia
Board of Pardons and Parole
on Behalf of
J.W. "Boy" LEDFORD, Jr.*

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BEFORE THE
BOARD OF PARDONS AND PAROLES
STATE OF GEORGIA

APPLICATION OF J.W. LEDFORD, JR.,
FOR A STAY OF EXECUTION
AND FOR A COMMUTATION OF HIS SENTENCE OF DEATH

Undersigned counsel applies to the Board of Pardons and Paroles, pursuant to Article IV, Section II, Par. II(a) and (d) of the Georgia Constitution of 1983, O.C.G.A. sections 42-9-20, 42-9-42(a), for consideration of this application on behalf of J.W. Ledford, Jr., for commutation of the sentence of death, imposed by the Superior Court of Walker County on November 13, 1992. Undersigned counsel request the opportunity to have a full and fair hearing before the full Board, allowing her to present witnesses in support of commutation at the conclusion of which she will seek commutation of Mr. Ledford's death sentence.

Pursuant to Chapter 475.3.10(2)(b), Mr. Ledford bases his Application on the following compelling grounds: (1) J.W. Ledford's age at the time of the crime coupled with his intellectual disability warrant a sentence of life without parole; (2) Mr. Ledford's deep and profound remorse for the crime; (3) Mr. Ledford has

provided great support to others outside of the prison while he has been in prison; and (4) five of the trial jurors support a sentence of life without parole.

I. Introduction

Long ago, the Chief Justice of the United States Supreme Court, John Marshall, described clemency as “an act of grace . . . which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed.” *United States v. Wilson*, 32 U.S. 150 (1883). It is “the power of doing good without a rule” *Mercy, Clemency and Capital Punishment, Two Accounts*, 3 Ohio St. J. Crim. L. 273, 275 (2005), and is a process enacted “to help ensure that justice is tempered by mercy.” *Cavazos v. Smith*, 132 S.Ct. 2, 8 (2011). In Georgia, the “Board has the sole constitutional authority to commute, or reduce, a death sentence to life without parole.” <http://www.pap.state.ga.us>. As the following will show, the Board should exercise its authority and commute Mr. Ledford’s death sentence.

II. Facts Regarding the Crime

Everyone involved in the arrest and trial of Boy Ledford agrees that the murder of Dr. Johnston was a senseless, random act that ended in the tragic death of Dr. Johnston. There is no contention that Mr. Ledford bore any ill will against Dr. Johnston, or that he ever had any plan to kill the doctor when he went to Dr.

Johnston's home. But he did and in one fell swoop he shocked the conscience of their small community and forever altered the lives of two families.

The evidence at trial showed the following. Boy Ledford and Dr. Johnston were neighbors in a small town in a rural area of north Georgia. Boy Ledford came to the Johnston home on January 31, 1992. Dr. Johnston's wife, Antoinette, answered the door and Boy said "I'm J.W. Ledford, Mattie Ledford's son."¹ Boy asked if the doctor was home and when Antoinette Johnston said no, he left. He returned a few minutes later and again asked if the doctor was home. Ms. Johnston again said no and Boy asked her to have her husband come to his home that evening and then left. Approximately ten minutes after the second visit, Boy returned to the Johnston home. This time he had a knife, and according to Ms. Johnston, he threatened to kill her, and demanded money and guns. She gave him the money from her purse and she proceeded around the house at knifepoint gathering up a shotgun, rifle, and two pistols. Boy told her to lie on the bed on her stomach so he could tie her up and then tied her up by her wrists, leaving a little slack between her wrists. When Ms. Johnston heard the door close, she got up from the bed in time to see Boy Ledford driving away in her husband's truck. She was able to take off the rope and telephone the sheriff's office.

¹Mattie Ledford had previously cleaned house for the Johnstons.

Boy was arrested later that afternoon. Law enforcement discovered Dr. Johnston's body near a small building located on the Johnston property. According to the pathologist who performed the autopsy, Dr. Johnston had suffered either "one continuous or two slices to the neck," which destroyed virtually all the muscle and tissue on the left side of his neck.

Mr. Ledford presented substantial evidence at the trial that he was intoxicated on alcohol and drugs at the time of the killing. *E.g.*, T. 670 (Mr. Ledford told police he had six beers to drink and smoked a couple of joints), T. 682 (police smelled alcohol on Boy when they arrested him), T. 770-83 (Boy drank three or four beers and drank several joints in the hours before the killing).

The day after his arrest Boy sent word to officers that he wished to make a statement and at that time, he confessed to the killing of Dr. Johnston. Boy told the officers that after he killed the doctor, he dragged his body to the building where Dr. Johnston was found and covered it up. It was after the doctor was killed that he knocked on the door of the house, introduced himself to Antionette Johnston as "J.W. Ledford, Mattie's son", and robbed Ms. Johnston. He then drove the doctor's truck into town and pawned the shotgun and rifle at a local pawnshop.

III. Boy Ledford's Family Life and Background

The Ledford family circumstance was a sad state of affairs. The father, J.W. Sr., drank all the time. He barely worked and he stayed drunk. His reputation as a bad drunk was unfortunately well known. I have seen him stumbling around, falling and yelling obscenities. It was a disgrace. (Wilson, App. 11).

The story of Boy Ledford's chaotic tumultuous life with an abusive alcoholic father coupled with his intellectual deficits provides a meaningful explanation for how Boy Ledford ended up committing this crime that resulted in his death sentence. The background is not an excuse for what Boy Ledford has done, and it is not offered for that purpose.² Instead it is offered to allow the Board some insight into how a young man barely 20 years old with no history of violence ended up killing a man who was his neighbor. Much of this information was not presented at Mr. Ledford's trial and jurors in the case heard only a partial story, a story that could and would have been a poignant case in mitigation of the death sentence.

Boy Ledford's childhood was marked by two significant factors: one, his father, J.W. Ledford, Sr., was an abusive alcoholic and drug addict who provided little to no support for Boy, and two, Boy was given alcohol and drugs at an

²Indeed, as the Board saw during Mr. Ledford's interview with the Board, he is adamant that the fact that Mr. Johnston is dead is his fault and solely his fault.

abnormally young age, even for men who ultimately end up on death row.³ *I honestly feel that Boy was cheated out of his childhood. He never really had a chance because of alcohol and drugs being introduced to him at such a young age.* (Shugart letter, App. 1).

J.W., Jr. was the seventh child born to his parents and because he was the first boy in the family, he was given the nickname of Boy which he is still called to this day. His father was an alcoholic long before he was born and was known to those in their small town of Tennega, Georgia, as a mean drunk. Drunk and out of control was not uncommon for J.W. Ledford, Sr., and those who knew him knew to stay out of his way when he was on a tear. Not long after Boy was born, his father began what was to be a life long addiction to drugs, adding marijuana and pills to his repertoire. Thus the family life into which Boy was born was chaotic and tumultuous and provided no sanctuary for a young child.

When sober, J.W. Sr. was a strict disciplinarian and would require the children to sit for hours at a time without talking or making any noises or sound. If they moved he would lose his temper and they would be whipped and the

³The history of Boy Ledford's childhood, which is summarized herein, is laid out in detail in the letters to this Board, and in the affidavits and testimony of friends and family presented in his state and federal court proceedings, which are contained in the Appendix to this Application.

youngest often were at the brunt of his anger because they were simply too young to sit still for long periods of time. Relatives quit letting their children come play when J.W. Sr. was around because of the way he treated the children. Some nights J.W. Sr. would scream and yell at the children and tell them they were worthless, and some nights he would tell them he was going to kill them. J.W. Sr. did not drink every day but when he started on a binge, he would drink for weeks on end without getting sober. It was then that the family had to fear him most as he would threaten to kill them and sometimes chased them with guns or knives. Boy's sister Tammy recalls laying in bed as a young girl and praying "Oh Lord, please don't let tonight be the night daddy kills us." There was no way to know when a binge was coming, so the family was on pins and needles even when he was sober. When J.W. Sr. was on one of his binges, the family would often have to leave and go stay with one of Mattie's sisters or her mother. "J.W., Sr., would go off on these bad drunks and would be a real terror to live with. When he would go on one of these binges he was real mean to Mattie and she and the kids would have to leave the house and go live with some other family members. This happened frequently when Boy was growing up." (Headrick letter, App. 36).

When J.W. Sr. would whip the children he would leave welts on their bodies. J.W. got many of the whippings when he was young. To get the proper

momentum, J.W. Sr. would swing his arm around and around before he hit the children with the switch.

J.W. Sr. tried to kill himself more than once when Boy was young, usually when he was drunk. In one memorable event he was hit by a train and his arm was broken in six places. His arm never healed right and he was left with a deformed arm and an increased use of pain medication which exacerbated the already existing problems in the home.

In large part because of his alcoholism and drug addiction, Boy's father rarely worked an honest day's work after he married Boy's mother, Mattie, thus leaving the task of providing food for the seven children to her. Mattie worked long hours in minimum wage positions in an effort to make sure the basic needs of the family were met, requiring her to be gone from the home twelve hours a day, six days a week. They still often did not have money to eat and had to get money from their grandmother. The result was that Boy was left to fend for himself and roam the town unaccompanied with no parental supervision. His sisters did much of the rearing but as they were children themselves, they did not always exercise good discretion in what they allowed him to do. At about the age of seven or eight, one of his older sisters and two of his cousins started giving Boy alcohol to watch him get drunk. He would ride around with the teenagers each weekend and they

would feed him moonshine or other alcohol until he was drunk, sometimes to the point of throwing up. An older boy who was friends with Boy's sister, talks about riding around with him in the car when they were teenagers: " We would give him moonshine and weed. We thought it was funny to watch a child get high and drunk." (Cooper letter, App. 10). At that point Boy was too young to legally be left at home alone, but he was being given enough alcohol to make him drunk. Not too many years after that, when he was around 10 years old, his older relatives started giving him drugs.

In the early part of the 1900s, the north Georgia mountains where Boy was raised were famous for moonshine, but by the time Boy was born that trade was dying out and a new, more insidious trade, was taking over. Drugs had become a major part of the landscape in Tenna, Georgia, and there were several dealers who claimed the title of Kingpin and with whom Boy's father had started doing business. George Watson and his family moved next to the Ledford's home when Boy was young. George sold everything from marijuana to pills and not long after they moved in, Boy started spending more time at their house with George's son, Everett. According to Boy's former boss, George Watson kept a jar of pills at his house. The first handful was free and then you had to pay. (Wilson letter, App. 12). Boy's father had decided the way he was going to make money was to grow

marijuana so now not only was he using drugs, but he was growing them and supplying them. Randall Cooper, who was in prison with J.W. Sr. for awhile talked about the fact that Mr. Ledford started having his kids, including Boy, selling dope for him. (Cooper letter, App. 10). Gene Smith was a local man who was known to law enforcement as a key part of the drug trade in the Tennega area. Gene would “hire” young boys in the town to commit robberies for him and in return, he would give them drugs. A third man, Dave Stroud, sold marijuana, cocaine and LSD, and Boy became good friends with him and his wife, Christy, when he was about 14 years old. By the time Boy met Dave, his drug use was already pretty heavy. He would take anything he could get, and since drugs were in pretty great supply in his town, he stayed messed up. His father alternately got him stoned and drunk and then threatened to kill him for allegedly stealing drugs from him. Their relationship had gone from bad to worse and there was virtually no parental oversight of Boy.

J.W. Sr. was in and out of prison when Boy was a child, from charges ranging from public drunkenness to drug charges. He ultimately got caught in a big drug sting with Gene Smith and was sentenced to several years in the federal penitentiary.

Despite all of his drug and alcohol use, Boy’s reputation in town was of a

kind, sweet, funny boy. When you speak with people who knew Boy growing up and knew the life that he had lived prior to this crime, two themes recur: "he never had a chance" and "I couldn't believe it when I heard he had been arrested for murder." Despite the abuse and deprivations he suffered at the hands of his father, and despite the drugs and alcohol he was given from a very young age, folks who knew Boy consistently report that he was a kind, sweet, funny kid who they never thought would commit a violent act. The people in Boy's town had seen the damage drugs can do to a community and many of them at least knew of some of the troublemakers in the town, but even though Boy used drugs with some of those troublemakers, he was not considered to be one of them. From people who knew him when he was a child, to teachers and employers, or to people who did drugs with him or knew him during that period of his life, the refrain heard over and over was "I never saw anything in his behavior to make me think he could do a crime like this."

He got the same response from teachers:

"He was a sweet, quiet, skinny boy with the biggest grin in the building...I don't ever remember him as mean-spirited or even close to aggressive." (Klippert letter, App. 24).

and,

"When I taught J.W., you couldn't have asked for a better kid. He had

a great attitude. I never saw him mad or aggressive." (Samples letter, App. 26);

and,

He was never violent but rather, "a playful kid, a clown, a screwball." (Kimbrough affidavit, App. 44);

former employees,

"He always had that grin on his face, happy-go-lucky and smiling... Boy had as big a heart as anyone out there. He really was a caring person." (Fowler letter, App. 11);

and friends,

"I never saw a side of him that would make me think he could get violent or be violent and that wasn't the reputation he had in town." (Lynn letter, App. 6).

One classmate tells a story about Boy and another child hitting each other in a game to see what one would pull out first. The other child apparently got mad and pulled a knife, but Boy remained calm and did not try to do anything in retaliation, even when the other child cut Boy's hand. (Green letter, App. 20).

As a result of this reputation and Boy's kindness in general, virtually everyone who knew Boy reports being shocked when they saw he had committed such a crime, even his former bosses. "I was never more shocked in my life when I heard Boy Ledford was arrested for murdering somebody.....I wouldn't have guessed Boy would have done something like this in a million years." (Fowler

letter, App. 11). Mr. Jimmy Petty knew both Boy and his mother, and had also employed Boy at his farm.

I was shocked when I heard what had happened. I never would have thought Boy could have done such a thing. He was always pleasant and friendly when I saw him working or up at the house eating lunch and never showed signs of a temper or violence. I knew the doctor because my dairy is not far from where he lives and I had been to him as a patient. I was shocked that Boy had been charged with killing this doctor. I certainly never saw any behavior when he was working with me that made me think he could do it. It was out of character for the kid that I knew. (Petty, App. 18)

Mr. Kimbrough, a teacher of Boy's, has a similar reaction. Boy had not been a trouble maker in school and was not the type of child to pick fights or find trouble. (Kimbrough affidavit, App. 44). Another teacher, Ms. Ellis, agreed saying "[b]ut J.W.'s arrest was truly a shock, I could not believe that polite, smiling boy could do this crime." (Ellis letter, App. 23). *See also* Green letter, App. 20 (couldn't believe it because not a violent person and I've seen him avoid violence); Stroud letter, App. 19 (I couldn't believe Boy had anything to do with it. He was a kindhearted kid who I had always trusted); Walker letter, App. 9 (I never could have imagined Boy being convicted of such a crime. That just didn't fit with what I knew of him.); and, Keener letter, App. 21 (couldn't believe it because he was such a sweet kid).

His former employer, Gordon Wilson, summed it up best:

I still can't believe that Boy killed the doctor because he just wasn't known to be mean kid. It's a small town and you hear things in a small town. I never heard about Boy being violent. He was more this happy, friendly kid. (Wilson letter, App. 12).

The consistency in the responses of virtually everyone when they heard about this arrest really illuminates the fact that this was not typical behavior for Boy, even with his history of drug and alcohol abuse.

IV. Boy Ledford's Intellectual Disability

Boy Ledford's intellectual disabilities have impacted his development throughout his life. Some of the earliest and best indicators of Mr. Ledford's intellectual disabilities are reflected in his educational history.

Boy struggled in school with an IQ that was at a minimum borderline intellectually disabled.⁴ With respect to Boy Ledford's academic performance, the evidence showed that he was held back in first grade and was socially promoted on his second try. He failed third grade and was socially promoted to fourth grade on the second try for the same reason. He was socially promoted out of the fifth

⁴Mr. Ledford has presented significant evidence in the courts supporting his claim that he is intellectually disabled and does not waive that argument by any papers or arguments submitted to this Board. During the federal evidentiary proceedings, the State agreed that Mr. Ledford was either borderline disabled or low functioning, so he is using the position that is not disputed for purposes of these proceedings. It is Mr. Ledford's position that he is intellectually disabled and therefore precluded from being executed but he is aware that no court has yet ruled in his favor on this argument.

and eighth grades. He tried twice to complete the ninth grade but dropped out both times because of failing grades. Even Ledford's poor grades did not fully capture his deficits, because some teachers graded on the basis of effort, rather than quality of work.⁵

I had to socially promote him because of school policy, not because he was ready to go forward. (Kimbrough letter, App. 25).

Boy's work history was consistent with his academic performance. He had jobs that required minimal skills, such as counting reels, threading materials, putting lumber in a machine, digging holes, mowing a yard, pumping gas, nailing shingles, and similar activities. The jobs did not require planning, calculating, or handling money. According to Ledford's employers, he needed repeated instruction to carry out even simple tasks, and even then he sometimes made mistakes.⁶

The citizens of the State of Georgia decided in the late 1980s, through their legislators, that it was impermissible to execute someone who was intellectually disabled, and the United States Supreme Court followed suit over a decade later in *Atkins v. Virginia*, 536 U.S. 304 (2002), finding that execution of intellectually

⁵ FHT 159, 160, 331-36; PX 26 at 3; PX 29 at 3; PX 32 at 4-5; PX 38 at 3.

⁶FHT 154, 156.

disabled individuals violated the Eighth Amendment to the United States Constitution. The change in attitude reflects the recognition that today's society views the intellectually disabled as less culpable and therefore ineligible for the death penalty.

In similar analysis, in 2004 in the case of *Roper v. Simmons*, the United States Supreme Court determined that individuals under the age of eighteen should also be precluded from the death penalty, recognizing that today our society views juveniles as categorically less culpable than the average criminal. In *Roper*, the Court outlined the similarities between its analysis of the constitutionality of executing juvenile offenders and the constitutionality of executing the intellectually disabled. In analysis on both of these cases, the Court considered the diminished culpability or blameworthiness that is present by reason of youth and immaturity.

The reasons for precluding the execution of juveniles and the intellectually disabled are clear. They are less mature and have an underdeveloped sense of responsibility and they are more vulnerable to negative influences and outside pressures. These factors were all true for Boy Ledford at the time he committed the crime, due to his relative youth and his intellectual disability.

Members of this Board are the only decisionmakers who have the

opportunity to weigh Mr. Ledford's value as a human being and the punishment he deserves on the basis of complete and accurate information, and without the procedural constraints of the legal system.

V. Assistance to Others While on Death Row

Boy Ledford has been on death row for 25 years. In those years he has had remained close with his family and friends on the outside, and he has maintained friendships with several penpals. He has used this opportunity to help people, which brings him great joy and brings his friends and family joy. Very few who interact with whom do not have a story to tell about his assistance. His sister has talked to people that Boy has met from all over the world who tell them how they have benefitted from his friendship:

I hear from friends that he has made/met over the years from all sorts of areas such as: England, Italy, Germany, Wisconsin, Texas etc... They all tend to tell me of what a blessing and a help he has been in their life. Some of them have been in such horrible situations in which he helped them to escape. (Shugart, App. 1).

His sister Kathy remembers how helpful he was with her son after a family tragedy:

He was there for my son, Brandon, after he became addicted to pain pills, which were prescribed to him after he was in a bad car accident in 2006. His cousin died in that accident so it was really hard on my son. I think the combination of being prescribed pain pills for his injuries and of his sadness over his cousin's death resulted in him

abusing the pain pills. Boy was there for Brandon when this happened. Boy knows from experience how drugs can mess up your life. He is like a mentor to my son and talks to him about not making the same mistakes he has made in life. (Ratcliff, App. 3).

One of the relationships that is most significant to him is the relationship that he has with his son, and he has worked hard to guide his son in useful ways:

He doesn't want me to make the mistakes he made and wants me to steer clear of trouble. That was his main thing - keep your nose clean. I've listened to him. I have a decent job at the Impregalon Plant coating mechanical parts and I've never been in trouble except for speeding tickets. (Willis, App.5).

He wrote to his son almost every week when his son was a teenager, and his son's mother feels that the encouragement that their son got from his father, Boy, was one of the reasons he decided to apply for the job he presently has which is a good job. (Lynn letter, App. 6).

He had a similar relationship with his nieces, who visited him often in the prison and who he also tried to help with advice and support:

We wrote letters back and forth throughout my entire childhood. His letters were always so sweet and encouraging. He made sure that I knew right from wrong. He encouraged me to always do good in school. He has always had the best advice to give me. (D. Berrow letter, App. 7).

See also Reeder letter, App. 8 ("He has really been a huge impact and has helped me with my struggles my whole life.")

His penpal Sheila McQueen gives him complete credit for encouraging her to get out of an abusive relationship and for providing her the strength to go forward after two family tragedies. McQueen letter, App. 12. The outpouring of support from people who have in some way been supported or helped by Boy over the years is overwhelming. See Hines letter, App. 13 (He's been a positive influence on my disabled niece and I credit him with helping her excel in school and progress in her development; Nichols letter, App. 14 (Boy sought prayers and financial help for this ex when her husband got sick).

This positive outlook is not lost on the corrections officers who live with Mr. Ledford day in and day out. Officer Morgan worked on death row for about eight years before he retired. His assessment of Mr. Ledford was:

"From what I saw, Ledford got along with the other inmates and staff as well during the time I worked back there....Some of the other inmates gave me trouble, but not Ledford. If I told him to do something, he would with no problem. The Ledford I knew was a pretty good inmate." (Morgan letter, App. 27).

Another Sergeant who knew Boy from working in G house for 1 ½ years had a similar feeling about him.

I thought he was a good inmate and he was no trouble to me. Ledford seemed to get along with other inmates and officers. If he got out of line, all I would have to do is tell him to get in line and calm down and he would say "Alright sergeant" and straighten up. I never had any trouble with him doing what I told him to do....Ledford was a

good inmate. The prison record does not tell the whole story. (Tingle letter, App. 28).

VI. Boy's Remorse Is Longstanding and Well Documented

Boy Ledford confessed to killing Dr. Johnston the day after he was arrested and has never denied killing him.⁷ The pain of killing the doctor is something that he lives with daily. A man who he met in the jail soon after his arrested noticed the difference in Boy's reaction to what he had done and why he was there:

Boy was put in isolation when he first got to jail. I think it was a couple of weeks later when he was moved to the cell near me. After that, I kept tabs on him. What I remember about Boy is that he was very sad. Those first weeks I saw him, he cried in his cell every day. He told me once he could not believe that he killed Dr. Johnston because he liked the Johnstons and they had always been good to him. Another time he told me that going to court was the worst part of all of it, because he saw Mrs. Johnston and was so ashamed of what he did to her family. I remember those talks because they weren't common to have in jail. Usually guys are bragging and wanting to show they don't feel a thing. Boy was very different. He was openly sad and sorry for what he did. I just think he knew he'd done something terrible in taking the doctor's life, and he was trying to figure out how to live with that. (Cooper, App. 9).

His family, who visit him frequently and have remained a close relationship with him over the years, can testify to the very real impact of this remorse and of the pain he knows he has caused the doctor's family:

⁷He gave his full name and his mother's name to the doctor's wife after he had killed the doctor.

Year after year, I have witnessed my brother's remorse for the Johnston family, and we have prayed for them. I know about the tears he has shed night after night and the haunting dreams. I just hope they know that we are so sorry and we love them. (Shugart letter, App. 1)

And:

Uncle Boy has told me several times that he badly wishes he hadn't done what he did. He feels horrible for the pain he caused the Johnston family. (Berrow letter, App. 7).

He does not try to hide away from the harm he caused and is open with anyone he knows about the pain and about his sadness for the family. His son says that when he finally asked his father if he did what they said, his father looked him straight in the eye and said yes, and that he was sorry and when you take a man's life you can never give it back. (Willis, App. 5); *see also* Buattini, App. 16 (Boy spoke about remorse and responsibility in their initial correspondence 11 years ago);

Nichols letter, App. 15 (JW always takes responsibility for what he has done in our correspondence). Boy would much rather provide comfort to others than ask them to help him.

VII. Five Jurors Support Sentences of Life Without Parole⁸

At the time of Mr. Ledford's trial, Life Without Parole was not an option. Five of the original trial jurors have spoken and support a commutation to a

⁸One of Mr. Ledford's jurors has died since trial.

sentence of life without parole, should this Board determine it is warranted. Juror CM stated that she was the last person on the jury who was holding out for a life sentence, but that she ultimately capitulated because the jury did not know if he would get out of prison if he got a life sentence. Had life without parole been an option, there is no question that she would have voted for that and she believes other jurors would have as well. App. 29. Likewise, juror A.M. stated he voted for a death sentence based on the same concerns that Boy Ledford would be released if he was given a life sentence, and that he would have voted for a life without parole sentence had that been an option. App. 30. Juror B.P. had similar concerns that Mr. Ledford would be released from prison in just a few short years had she voted for life, so she felt death was the only possible sentence. Like jurors C.M. and A.M., juror B.P. is sure that she would have voted for life without parole had it been an option. App. 31. Juror G.D. stated she initially wanted to sentence Mr. Ledford to life without parole but did not realize they did not have that option until they got in the jury room. She was told that Mr. Ledford might get out in as few as three years if they sentenced him to life, so she voted for death, but she too would have voted for life without parole had she had that opportunity. App. 32.⁹

⁹A fifth juror, K.I., did not provide a letter but authorized counsel to state she too does not object to a sentence of life without parole for Mr. Ledford.

CONCLUSION

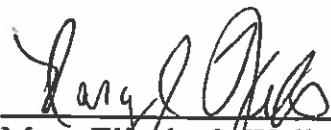
The inflexibility of the legal system sometimes leaves an otherwise deserving individual without a remedy. Inevitably there will be instances in which the fixed rules governing the legal process yield a result that does not accommodate fairness. Clemency exists for just this situation. That the judicial system has failed to remedy the error is one of several traditional bases for the exercise of executive clemency. "Among its benign if too-often ignored objects, the clemency power can correct injustices that the ordinary criminal process seems unable or unwilling to consider." *Harbison v. Bell*, 556 U.S. 180, 1992 (2009)(quoting *Dretke v. Haley*, 541 U.S. 386, 399 (2004) (Kennedy, J., dissenting)). As the United States Supreme Court noted in *Harbison*, claims that failed in court due to procedural or other purely legal reasons, "may provide the basis for a persuasive clemency application" in state court. See *Harbison*, 556 U.S. at 193-94 (Harbison's procedurally defaulted *Brady* claim could be marshaled together with his background to be presented in his clemency application). It is in those instances in which the Board is called upon to exercise mercy. This is just such a case.

We are not asking you to make a legal judgment. The citizens of this state have empowered this Board to make decisions not as judges under the law, but as

human beings, to serve as the conscience of our community. While the courts that reviewed the case found nothing in the law to change that decision, those judges, those law clerks, were constrained in the questions they were allowed to examine. Under the law, they could only review the *legal issues* posed by Mr. Ledford's case as it was framed at the moment of his sentence in 1992. They were not allowed to do what we ask you to do today.

J.W. Ledford and his loved ones recognize that the relief they request is extraordinary. But it is clearly within the power of this Board to grant this relief in exceptional circumstances.

Respectfully yours



Mary Elizabeth Wells
John D. Cline
Jeff Ertel