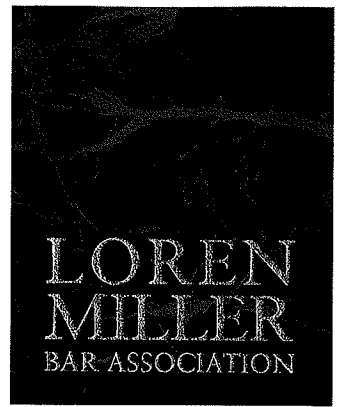


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AFFILIATE
NATIONAL BAR ASSOCIATION

March 1, 2007

The Honorable Christine Gregoire
Washington State Governor
Legislative Building
302 – 14th Avenue S.W.
Olympia, Washington 98504

Re: Clemency Petition for
Barry C. Massey, Jr.
Institution Number 942583

Dear Governor Gregoire:

The Loren Miller Bar Association¹ (“LMBA”) writes to urge you to follow the recommendation of the Washington State Clemency and Pardons Board (the “Board”) to reduce the sentence of Barry C. Massey, Jr. from life in prison without the possibility of parole to a term of twenty-five years. Barry C. Massey, Jr. was sentenced to life in prison when he was a child of only 13 years with a mental age of 9.9 years.

In deciding whether to support the recommendation of the Board, LMBA formed a committee² composed of its members (the “Committee”) to review Mr. Massey’s voluminous file. After weeks of reviewing the file and analyzing the issues, the Committee voted to recommend that LMBA’s general body support drafting a letter in support of Mr. Massey. The Committee briefed the LMBA members for over an hour on the findings and recommendations

¹ LMBA is an organization of African American lawyers and judges in the state of Washington. At its core, LMBA is a civil rights organization, committed to addressing the issues of social and economic disparities that affect the African American community. LMBA’s thirty-nine year history reflects the birth, growth and advancement of the African American legal community, and its commitment to equal justice in Washington State. LMBA’s interest in this case arises from its civil rights underpinnings.

² As President of the LMBA and Counsel to Governor Christine Gregoire, Richard E. Mitchell recused himself from all general body discussions regarding this matter. He did not participate on the Committee, which presented the recommendation to the LMBA general body. He also abstained from all votes regarding this matter.

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of the Committee. After rigorous debate, LMBA voted unanimously to submit this letter requesting that Mr. Massey's sentence be reduced consistent with the Board's recommendation given his age at the time he was convicted of the crime, the unjust and inhumane nature of sentencing a child to life imprisonment, and the racial disparity between the application of lifetime sentences to children of color as compared to similarly situated white children.

In appealing for clemency on behalf of Barry Massey, we do not, in any way, seek either to excuse the crime or to minimize the pain and suffering it caused the family and friends of Mr. Paul Wang. There is no denying that Mr. Massey took part in a serious crime. We believe, however, that it is fundamentally unfair to consider this fact in a vacuum and ignore the reality that Mr. Massey was a child of 13 years with a mental age of 9.9 years when he participated in the crime. His sentence was unusual for the time and is still unique today. Mr. Massey had no prior offenses. At the time he could not drive a car, buy cigarettes, enter into a contract, serve on a jury, vote in an election, or join or be drafted into the military. Yet, young Massey, a middle school-aged child, faced our criminal justice system alone. In the end, although he cooperated with the authorities, Massey received the harshest sentence available—life in prison without the possibility of parole. At the time, no other child in America, Massey's age or younger had received such a punishment. This sentence places Washington well to the right of several extremely conservative states, such as Texas, on the issue of punishing juvenile offenders.

Human rights organizations have recognized the injustice and cruelty which results from imprisoning children who commit serious crimes to life in prison without the possibility of parole. *See e.g., International Covenant on Civil and Political Rights: Consideration of Reports Submitted By States Parties Under Article 40 of the Covenant*, HUMAN RIGHTS COMMITTEE, Observation No. 34, at 11, U.N. Doc. CCPR/C/USA/CO/3 (2006) (acknowledging that sentencing juveniles to life without the possibility of parole is in violation of the United Nations International Covenant on Civil and Political Rights). Amnesty International and Human Rights Watch summarized it well when they concluded that children serving sentences of life imprisonment without the possibility of parole must face adult, "gangs, sexual predators, extortion, and violence" and "they also confront special hardships inherent in their sentence. Although it may take time to fully register in a child's mind, the sentence sends an unequivocal message to children that they are banished from society forever." Berger David & Alison Parker, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, Human Rights Watch, at 52 (2005).


Similarly, the United States Supreme Court recently questioned the logic of sentencing juveniles in the same manner as one sentences an adult when it issued its ruling in Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 151 L.Ed.2d 1 (2005). In reversing a death sentence given to a child offender, the Roper court acknowledged society's view that juveniles are "categorically less culpable than the average criminal." *Id.* at 567. The Roper court expressly recognized what is critical in Mr. Massey's case: that child offenders simply lack the maturity, ability to judge or understand future consequences, and the capacity to make moral judgments.


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In addition to Mr. Massey's age at the time of his sentencing, LMBA is also troubled by Mr. Massey's sentence in light of the national data, which reveals that black youth are serving life without parole sentences at the rate that is eleven times higher than similarly situated white youth. Berger David & Alison Parker, *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, Human Rights Watch, at 39-44 (2005). The number (per 10,000) of black youth serving a sentence of life without the possibility of parole is 6.6 as compared with .6 for white youth. See id. at 41. These statistics also reveal that minority youth receive harsher treatment than similarly situated white youths at "every stage of the criminal justice system, from the point of arrest to sentencing." See id. at 39. Data shows that black youth in Washington State are serving life without the possibility parole sentences at a rate that is 5.7 times higher than similarly situated white youth. See id.

Given the foregoing concerns and the extraordinary nature of this case, we strongly urge you to follow the Board's recommendation. In addition to the Board's recommendation, LMBA requests that Mr. Massey be transferred from the maximum security facility located in Walla Walla, Washington and returned to the minimum security facility in Monroe, Washington for the remaining five years of his sentence.

Very truly yours,


Diankha Linear
Immediate-Past President
Loren Miller Bar Association


James A. Andrus
Clemency Letter Committee Chair &
Past President
Loren Miller Bar Association

DL:keg