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## Washington State Senate

**Senator Adam Kline**  
37<sup>th</sup> Legislative District

Washington State  
Legislative Council  
1000 Washington  
Building  
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October 14, 2010

Dear Members of the Clemency and Pardons Board,

I am writing to recommend clemency for Barry Massey.

The sentence of life without parole was created for the worst criminal offenders: those who have knowingly committed a heinous crime and are judged to be beyond rehabilitation. Often, those who receive this sentence— such as those sentenced to Life Without Parole under our Three Strikes law— have many prior convictions.

Clearly, the murder of Paul Wang was a heinous act. His family and community are clear about the damage done by his murder. It is right and just for the participants in the act to be held accountable. Mr. Massey has some degree of culpability in Mr. Wang's murder. But like many people from whom you'll hear, I have questions about the *extent* of Mr. Massey's culpability. What was Mr. Massey's actual role in the murder? There is compelling evidence that his participation was passive and not premeditated. Did Mr. Massey have adequate counsel in his trial? Was he even competent to stand trial? Should he have been tried as an adult? Did he understand the basic concepts necessary to access to due process, such as his *Miranda* warning? Were his confessions reliable? Given several changes in statute and in case-law over the past few decades, is it likely that a 13 year old child in Mr. Massey's circumstances would receive a shorter sentence if he were tried for the same crime today?

We may never entirely know the answer to many of those questions, but there are several things of which we can be certain, and which I believe are extraordinary enough to justify clemency for Mr. Massey. First, before being convicted for the murder of Mr. Wang, Mr. Massey had no prior convictions; in fact, he had no prior contact at all with law enforcement. (Mr. Massey does acknowledge that a few weeks before the killing, his co-defendant convinced him to break into a house with him. This is how his co-defendant obtained the gun. The boys thought the house was empty, but the elderly woman who lived there was home. When they tried to flee they knocked her down; she was later taken to the hospital for observation and released.) Still, Mr. Massey had a clean record and reputation before his conviction. And records show that he was a "good kid" in other ways. For example, although he struggled academically, his school records show only two disciplinary incidents: one for "showing off" in gym, and another for "loitering at school."

The second extraordinary factor that supports his case for clemency is that Mr. Massey was only 13 years old at the time of the crime, with a mental age of 9.9 years. Our increased understanding of childhood brain development, the research showing that young people are more likely to respond to rehabilitative efforts, the extraordinary rarity of this type of sentence for such a young child, and changes in our attitudes about sentencing children to life without parole all support Mr. Massey's case for clemency.

Since the time of Mr. Massey's conviction, generally accepted developments in neuroscience have shown us that the brains of youth are anatomically different than those of adults. Young teens have not

developed adult abilities to think, to weigh consequences, to make sound decisions, to control their impulses, and to resist group pressures. Consider for a moment the 13-year-olds you know, perhaps your own children. Do they think like adults?

Children also develop at different rates. Mr. Massey's development challenges were initially noted in the first grade, which he repeated. He was also assessed as needing special education services in the fifth grade. During the court proceedings, when he was about 14, Mr. Massey was judged to have a mental age of 9.9 years, and he could not yet sort by color or shape, which most kids can do by age 8.

The United States is unique in our readiness to sentence children to life without parole: at least 2,500 of our fellow Americans are serving life without parole for crimes they were convicted of committing when they were children. In their 2008 report "The Rest of Their Lives: Life without Parole for Youth Offenders in the United States," the Human Right Watch reports that there "are *no* youth offenders serving life without parole sentences anywhere in the rest of the world. In its use of LWOP sentences for youth, the United States is an international anomaly."

Mr. Massey's case is extraordinary even when compared to other cases within the United States. Of the states that still sentence children to life without parole, the vast majority reserves the sentence for older youth. 84% of those serving this sentence as a child offender were either sixteen or seventeen years old at the time of the crime. About 13.3% were 15, and 2.2% were age 14.

At the time of his sentencing, Mr. Massey was the youngest person in the U.S. to have been sentenced to life imprisonment. He may well still hold that terrible record; since then, only a few other 13 year olds have been sentenced to life without parole. (I don't know all of the birthdates of this extraordinarily small group of people, so I don't know who is the youngest.)

In 2005, by passing legislation eliminating mandatory minimum sentences for most juveniles tried as adults, our state took a step that will result in fewer children being sentenced to life without parole. When children commit crimes, the punishment imposed should reflect their age and level of development, and their ability to rehabilitate. I believe that Mr. Massey has served more than enough time for a crime committed when he was a child.

A third extraordinary factor supporting Mr. Massey's clemency petition is his rehabilitation and the community support he has created for himself. Mr. Massey is a leader, mentor, husband, friend and community member whose life has clearly demonstrated the meaning of rehabilitation. For the last 14 years – most of his adult life – Mr. Massey has been a model prisoner and free of major infractions.

Mr. Massey has actively and successfully participated in all of the programming opportunities available to him. Mr. Massey's work supervisors say that he is a hardworking, dependable and trustworthy employee. At least 14 DOC employees have provided words of support for his clemency. Mr. Massey acts as a mentor for his fellow prisoners, and worked hard as a Tier Representative to assist prisoners and DOC personnel to maintain a calm, safe environment within the prison. Mr. Massey worked with DOC personnel and other prisoners to develop the DOC's At Risk Youth Program, through which he and other prisoners spoke to middle school students about peer pressure, responsible decision-making, and the consequences that can result from one's actions.

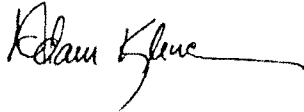
Mr. Massey has done an excellent job of maintaining a strong support system with his fellow prisoners and with friends and family outside of prison. You have heard from many, many individuals and organizations that are part of Mr. Massey's support network. This network has provided invaluable support to Mr. Massey. In turn, his supporters wholeheartedly recognize and appreciate the

contributions that Mr. Massey has made to his prison community, family, and the organizations with which he is engaged.

This extraordinary support network strengthens my confidence in Mr. Massey's ability to make the transition from prison to the outside community. He entered prison as a young child and has been incarcerated for majority of his life. He will have a lot to learn about living on the outside. Numerous family and community members have stepped forward to make commitments to assisting Mr. Massey in this process. These people are fully aware of the circumstances of his life. The fact that these many people are willing to make this investment in Mr. Massey, and the fact that a large number of supportive people – including Community Corrections officers -- will be watching out for him are compelling arguments for granting clemency.

Thank you very much for your consideration, and for your good work.

Yours truly,

A handwritten signature in black ink that reads "Adam Kline". The signature is written in a cursive style with a long horizontal line extending to the right.

Senator Adam Kline