

No. 24-_____

THE SUPREME COURT OF THE UNITED STATES

SIRHAN B. SIRHAN,
PETITIONER *in forma pauperis*,
V.
STATE OF CALIFORNIA,
RESPONDENT.

**APPENDICES D – F TO PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF CALIFORNIA**

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Petition for Writ of Habeas Corpus, In re Sirhan B. Sirhan, BH014184, filed on
September 29, 2022

APPENDIX D

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Superior Court of California
County of Los Angeles

SEP 29 2022

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SIRHAN BASHAR SIRHAN

Petitioner,

On Habcas Corpus

Case No. A233421 _____

PETITION FOR WRIT OF HABEAS
CORPUS _____

**TO: THE HONORABLE WILLIAM RYAN, JUDGE OF THE SUPERIOR COURT,
Department 56W, LOS ANGELES COUNTY:**

Petitioner, Sirhan B. Sirhan, hereby petitions this Court for a writ of habeas corpus, and
by this verified petition represents that:

INTRODUCTION

This petition challenges the Governor's reversal of a finding by his own appointees, the
Board of Parole Hearings ("Board"), that petitioner, Mr. Sirhan B. Sirhan is suitable for
parole. The purported rationale for the reversal demonstrates that the Governor, acting as an
elected official beholden to his voting constituents, acted arbitrarily and contrary to reason and
the facts as found by the independent and neutral Board, who is unaffected by the political
whims of a perceived public. The Governor's reversal falls on the judiciary to ensure that a

1 high-profile defendant, such as Mr. Sirhan, is judged by the same legal standard as other
2 defendants, even if the outcome is unpopular. That is the very essence of constitutional due
3 process.

4 More than 50 years ago at the age of 24, Mr. Sirhan was arrested, tried and convicted
5 for the shooting death of Robert Kennedy. He was originally sentenced to death, even though
6 the Los Angeles County District Attorney's Office in the midst of the trial believed a death
7 sentence was inappropriate.¹ After the United States Supreme Court declared death penalty
8 statutes such as the one used to sentence Sirhan to the gas chamber violated the Eighth
9 Amendment to the United States Constitution, Mr. Sirhan's sentence, as well as the death
10 sentence of 69 other condemned prisoners ([https://www.cdcr.ca.gov/capital-](https://www.cdcr.ca.gov/capital-punishment/history/)
11 [punishment/history/](https://www.cdcr.ca.gov/capital-punishment/history/)), was converted to life with the possibility of parole after the mandatory
12 minimum service of seven years. Fifty-three years later and after many denials, the Board of
13 Parole Hearings ("Board"), comprised of gubernatorial appointees whose members are career
14 law enforcement officials (e.g. former Deputy District Attorneys, parole and probation
15 officers, peace officers and wardens) granted Mr. Sirhan parole, finding him suitable for
16 release according to the laws and regulations of the State. But the Governor reversed the
17 decision. In so doing, the Governor's written decision of January 13, 2022 ("Indeterminate
18 Sentence Parole Release Review", hereinafter "Governor's Decision", submitted herewith as
19 Exhibit A) relies on shallow legal reasoning and a misconstrued record without providing a
20 nexus to Mr. Sirhan's current circumstances.

21 The Governor's written reversal emphasized the gravity of the offense but failed to duly
22 credit Mr. Sirhan's extensive rehabilitative programming and discipline-free prison record for
23 the last 50 years. Additionally, the Governor misconstrued the 2021 Comprehensive Risk
24 Assessment (CRA) and ignored other recent past CRAs; he cited inaccurate information
25 concerning the facts of the crime; and he failed to properly apply the youthful offender (Pen.
26

27 ¹ During the trial, the parties met off the record in chambers and thereafter, defense counsel
28 made the record and summarized the nature and content of that discussion. Defense counsel
explained that the prosecution, after receiving the full evaluation report of Dr. Pollack, agreed
that a life sentence was the appropriate punishment for Mr. Sirhan. The parties further sought
to resolve the case with an agreement that in exchange for his guilty plea to first degree
murder, Mr. Sirhan would receive a sentence of life in prison. The court rejected the
proposition, in substance believing that the case was of such public import that the jury should

1 Code §§ 3051 and 4801(c) and elderly prisoner (Pen. Code §3055) criteria. Moreover, the
2 Governor's oft-repeated affinity of the late Senator Robert Kennedy² and the Governor's
3 corresponding inability to impartially sit in judgment is apparent in his superficial reasoning
4 for his decision. The reversal and its flawed rationale proves there is nothing Mr. Sirhan can
5 do to earn parole, especially where, as here, the parole gatekeeper is an elected official tied to
6 voter approval and the crime involved a political candidate/presidential hopeful who is a
7 personal "political hero" of that gatekeeper.

8 9 PRELIMINARY REQUIREMENTS

10 1. Custody.

11 Petitioner is confined by the California Department of Corrections and Rehabilitation
12 ("CDCR") at R. J. Donovan Correctional Facility at San Diego, California, Raymond Madden,
13 Warden.

14 2. Jurisdiction and Venue.

15 Petitioner was prosecuted in Los Angeles County. This Court has original jurisdiction
16 to adjudicate the petition and issue the writ. (Cal. Const., Art. VI, § 10; Pen. Code § 1508.)

17 3. Administrative Remedy.

18 The Board provides no administrative remedy for alleged violations of law by its parole
19 hearing panels or Governor reversals of grants of parole.

20 4. Not a Successive Petition.

21 This is Petitioner's first and only filing challenging the Governor's January 13, 2022
22 reversal of the recommendation for parole.

23 24 PROCEDURAL HISTORY

25 In 1969, a jury convicted Mr. Sirhan of one count of first-degree murder and five
26 counts of assault with intent to commit murder for the injuries inflicted upon five by-standers
27 during the shooting. The trial court sentenced Mr. Sirhan to death. He had no prior criminal
28

decide the punishment. (Trial Transcripts, pp. 8860-8861.)

² E.g.: on September 14, 2021, when asked about his relief in his successful defeat of his recall from office, he stated he was "resolved in the spirit of [his] political hero Robert Kennedy".

1 convictions, nor has he committed any crimes in the intervening 53 years. His last Rules
2 Violations Write-up occurred 50 years ago.

3 In 1972, the death sentence was converted to life with the possibility of parole after
4 California's death penalty statute was repealed as a result of the U.S. Supreme Court's
5 decision in *Furman v. Georgia* (1972) 408 U.S. 238 where our highest court declared that
6 Georgia's and Texas' respective death penalty statutes, statutes similar to California's,
7 violated the Eighth Amendment to the U.S. Constitution. And in *People v. Anderson* (1972) 6
8 Cal. 3d 628, the California Supreme Court ruled that California's death penalty statute violated
9 California's Cruel and Unusual Punishment Clause.

10 Mr. Sirhan has been eligible for parole since May 30, 1975. He was denied parole
11 many times, despite receiving consistent positive (e.g. "low") risk assessments since the mid-
12 1980's. Mr. Sirhan was found suitable for release on August 27, 2021. (Transcript of August
13 27, 2021 Parole Hearing and Decision, hereinafter "Parole Hearing, attached as Exhibit B.)
14 Subsequent to the Board's recommendation for parole, the Governor made several public
15 statements indicating a preference towards reversing his Board's decision, including a
16 statement made days after the Board's decision and undoubtedly even before the transcripts of
17 the parole hearing were even prepared for the Governor's review.³ Governor Newsom
18 reversed his Board's decision on January 13, 2022. (Exhibit A.) This petition challenges the
19 Governor's reversal of parole on federal and state constitutional grounds and further
20 challenges the decision as an abuse of discretion under state law.

21 The discretion held by the Governor in assessing Mr. Sirhan's grant of parole "is not a
22 whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of
23 legal principles governing the subject of its action, and to reversal on appeal where no
24 reasonable basis for the action is shown." (*Sargon Enterprises, Inc. v. Univ. of So. Cal* (2012)
25 55 Cal.4th 747, 771, 773.) The exercise of discretion cannot be based on ancillary matters,
26 such as the Governor's personal enmity toward Sirhan, personal affinity toward the victim,
27

28 (NBC interview at [youtube.com/watch?v=0yhD2WiThQ](https://www.youtube.com/watch?v=0yhD2WiThQ).)

³ Indeed, in his October 24, 2021 interview on NBC's Meet the Press, the Governor
acknowledged that Mr. Sirhan's case had not yet been brought to him.

(<https://www.youtube.com/watch?v=IWTDHCd1Ik>.) See also
[politico.com/states/California/story/2021/09/15/Newsom-rfk-admiration-shows-where-i-](https://www.politico.com/states/California/story/2021/09/15/Newsom-rfk-admiration-shows-where-i-)

1 and/or fearing the reaction of the voting public. The Governor's discretion is subject to the
2 limitations of the legal principles governing the subject of his actions and to reversal where no
3 reasonable basis for the action is shown. (*People v. Jacobs* (2007) 156 Cal.App.4th 728, 738.)

4 5 **STATEMENT OF FACTS**

6 **A.**

7 Facts of the Commitment Offenses

8 Mr. Sirhan was convicted of shooting Senator Kennedy and five other by-standers on
9 June 5, 1968 at the Ambassador Hotel, when at the very last moment the Senator was re-routed
10 to exit the venue through the pantry/kitchen where Sirhan and others were present. The
11 senator succumbed to his injuries the next day.

12 Sirhan was determined to have possessed a loaded .22 Iverson-Johnson cadet revolver
13 that had the capacity to carry 8 bullets. The senator took four bullets, and the other five
14 victims were each struck with one⁴. None of the victims' injuries were life threatening and the
15 Los Angeles District Attorney's Office has described their wounds as "superficial" in parole
16 hearings.

17 **B.**

18 Recent Comprehensive Risk Assessments and Past Parole Hearing Officers' Findings

19 Mr. Sirhan has had consistent positive (e.g. low⁵) risk assessments for many years.
20 Additionally, his records reflect the absence of any serious rules violations since 1972. And
21 Mr. Sirhan's minor conflicts in prison over the years have been deemed to be of little
22 significance. (e.g., see 2016 Parole Board, p. 200.)

23 Consistently, since the mid-1980's, CDCR psychologists have assessed Mr. Sirhan to
24 be at the lowest risk of dangerousness.⁶ For instance, in preparation for Mr. Sirhan's 1985
25

26
27 might-be-leaning-on-Sirhan-parole-1391081.

28 ⁴ The "official" explanation for the obvious math miscalculation (an 8 bullet revolver; 6 victims total; 5 of whom were hit with one bullet each and one of whom was hit with 4) is that one bullet that struck the senator went through his jacket and then struck one of the other five victims.

⁵ Code of Regulations, Title 15, provides for five ratings: "low", "moderate", "high risk drugs", "high risk property", "high risk violence". Section 3768.1(b) (1)-(5).

⁶ In preparation for Parole Suitability hearings, CDCR has its licensed psychologists evaluate

1 Parole Hearing, Dr. Captain Thompson stated that there exists "[l]ittle evidence [Sirhan]
2 would ever again attempt to take a life in anger" and Mr. Sirhan was assessed a CRA Score of
3 "low". In that same parole hearing, the Board recognized a second doctor's opinion that since
4 Mr. Sirhan's crime was politically motivated, the risk of choosing another victim was very
5 remote. A third doctor, Dr. Hicks, also expertly opined that Mr. Sirhan possessed "no
6 demonstrable predilection toward violence at this time." (*Id.*, p. 145.)⁷

7 The Risk Assessment report for Mr. Sirhan's 1986 parole hearing included the expert
8 opinion of Dr. Hicks, who stated:

9 "This individual [Sirhan] appears to be genuinely rehabilitated since
10 incarceration and demonstrates no evidence of current fanaticism or prone-
11 ness towards violence. He appears to be an excellent candidate for parole,
and there is no psychiatric contraindication to it."

12 (The 1986 Parole Hearing, at p. 24.). Moreover, the Board recognized that Mr. Sirhan posed
13 no behavior problems, and that he was courteous and respectful to authority figures and other
14 prisoners. The Board further noted his steady, stable work and "exceptional work
15 performance." (1986 Parole Hearing, at p. 20.)

16 In Mr. Sirhan's 1987 Hearing, the Board quoted the mental health evaluator's
17 professional assessment, where Dr. Drye stated:

18 "I believe that this man has made a considerable personal change as
19 well as getting out of the matrix of the Palestinian liberation type thinking;
20 if he can arrange some life of his own, including marriage, he would like

21 potential parolees. It describes the process thusly: "The Forensic Assessment Division (FAD)
22 provides the Board's suitability hearing panels with Comprehensive Risk Assessments to
23 assist in understanding a long-term inmate's potential for future violence and protective factors
24 that could minimize his or her risk if released to the community. FAD psychologists use
25 evidence-based risk assessment tools to present hearing panels with their structured
26 professional judgment, or expert opinion concerning each inmate's potential risk for future
27 violence. FAD clinicians' expert opinion include findings from a clinical interview of an
28 inmate and a review of his or her institutional record. Comprehensive Risk Assessments may
include but are not limited to, evaluation of the inmate's commitment offense, institutional
programming, past and present mental state, and analysis of static and dynamic risk factors
based on the inmate's behaviors and relationships, emotions and attitudes, and perceptions and
attributions." (<https://www.cdcr.ca.gov/bph/divisions/fad/>) Per Code of Regulations, Title 15,
a comprehensive risk assessment is "an actuarial tool that computes the likelihood to re-offend
(incur a felony arrest within a three-year period after release to parole), and uses static
indicators that do not change." (Sec. 3768.1(c).)

⁷ Counsel for Mr. Sirhan has repeatedly requested copies of these psychological reports, but to date, she has not received them. She therefore relies on the parole board officers' representations of those doctor's statements.

1 to do this. Since he has no other reason for killing, except political, and
2 this no longer interests him, I believe he is accurate in his assessment, his
violence potential is very low.”

3 “I would also comment that many of his outbursts - particularly when he
4 was at San Quentin, would seem much more normal if seen in the context
5 of an ordinary Arab behavior. There are very few Arabs in our prison system,
6 and what I think would be seen in an Arab community is only one more
form of excitement. It looks more bizarre to us.”

7 (1987 Parole Hearing, at pp. 95-96.)

8 In Mr. Sirhan’s Parole Hearing in 1994, the Board noted and quoted from Dr. Farr’s
9 1990 evaluation, where the doctor opined:

10 “I feel that there is not a single feature at this point which I wish to point
11 out as being pathological. I feel his paranoid component to his personality
12 has decreased as evidenced by less denial and the absence of angry outbursts during the
last year”.

13 (1990 Parole Hearing, at pp. 23-24.) The 1994 Board noted Dr. Martin’s evaluation, and
14 described it as the most comprehensive assessment since Mr. Sirhan’s inception into CDCR.
15 (*Id.*, at p. 22.) In his report, the Board noted, Dr. Martin opined that Mr. Sirhan’s potential for
16 violence (outside the institutional setting) was *less than that of the average inmate*. (*Id.*, at p.
17 22.) Moreover, the same Board noted Dr. Hix’ statement that “[Sirhan] made a considerable
18 personal change. *His potential for violence is very low.*” The doctor continued, as quoted by
19 the Board: “I would recommend that Mr. Sirhan be continued in his current program, but with
20 an early discharge being seriously considered after participation in the X program. (1994
21 Parole Hearing, p. 43.)⁸

22 Further evidence of Mr. Sirhan’s consistent “low risk for violence” assessments is in
23 2010, when Dr. Carrera opined that Mr. Sirhan presented a “**LOW RISK** for violence in the
24 free community.” (Dr. Carrera’s 2010 Evaluation Report, p. 20., emphasis and capital letters in
25 original.) Additionally, Dr. Steven Walker’s CRA rated Mr. Sirhan “within the **very low**
26 range of the clinical construction of psychopathy when compared to other adult offenders.”
27 (original emphasis.) (2010 CRA.)
28

⁸ Mr. Sirhan completed the “X” Program later that same year Dr. Hix recommended his release. The “X” Program is a prison program designed to specifically address psychological issues and treatment thereof.

1 Similarly, in 2016, Dr. Sahni's expert opinion was that Sirhan's "ongoing dynamic risk
2 relates squarely to the life crime itself. As such, ...at this time, he continues to represent a *low*
3 risk of future violence." (Dr. Sahni's 2016 Evaluation Report, p. 20, original emphasis.) And,
4 consistent with the others, in his most recent assessment in preparation for the 2021 Parole
5 hearing, it was determined that Mr. Sirhan "represents a Low risk for violence." (Dr. Crimele's
6 2021 Report, p. 10.)

7
8 C.

9 The Board's 2021 Parole Hearing and Decision

10 On August 27, 2021, the Board rendered its finding that "[b]ased on the legal standards
11 and the evidence. . ." (Board Decision, p. 4, lines 16-17) Mr. Sirhan does not not pose a
12 current and unreasonable risk of danger and is thus suitable for parole. In arriving at this
13 decision, the Board properly considered the traditional parole suitability factors, as well as
14 youth offender factors (Pen. Code §§ 4801(c) and 3051), and elderly prisoner factors (Pen.
15 Code § 3055.)

16 At the hearing, Mr. Sirhan specifically addressed five categorical topics the Board
17 suggested would assist it in determining whether or not he posed a current unreasonable risk to
18 society: anger management; remorse; substance abuse abatement; the potential for future
19 violence as a result of the on-going Arab-Israeli conflict; and awareness of the causative
20 factors and character flaws that contributed to his crimes. Mr. Sirhan addressed each one to
21 the Board's satisfaction.

22 With respect to learning to cope with anger, the Board noted all the programming Mr.
23 Sirhan has done to assist in managing present and future anger. He explained to the Board that
24 he has learned that anger is on a continuum and discussed the different phases, from
25 recognizing the anger that is engendered from any given frustration to coping mechanisms,
26 such as removing himself from the unpleasant encounter, or going for a walk or cooking or
27 talking a friend on the phone. He explained that he now empathizes with the other person and
28 tries to consider that maybe they had something going on for them that caused their rude or
selfish behavior. He explained that he did not possess that ability to reflect years ago when he
committed his crimes at 24 years old, but now meditation, solitude and spiritual thinking are

1 part of his daily life and those things have adjusted his perceptions in a positive way so that he
2 can avoid letting his anger take control. (Parole Hearing, pp. 44-55.) The Board
3 acknowledged Mr. Sirhan's calm demeanor and attributed it to the "tremendous amount of
4 programming" Mr. Sirhan had engaged in. (Parole Hearing, p. 95.)

5 With respect to his feelings regarding the on-going Arab-Israeli conflict, Mr. Sirhan
6 admits to still being emotional about it. At the hearing, he cried a bit when asked about the
7 continued lack of peace. Mr. Sirhan explained that he would not cry if he didn't have
8 empathy. He now realizes, he explained, that conflict on a global level is a human condition.
9 When asked, he assured the Board that he has no interest in being involved in the conflict
10 what-so-ever because that is for the officials to do and he believes they are doing a good job of
11 it. When asked about whether he was concerned that he would be used as a lightning rod to
12 "ferment" violence, he expressed his desire to refrain from getting involved, but when pressed
13 to address the hypothetical, he guaranteed that he would counsel for a peaceful resolution; he
14 would advocate for peace. (Board Hearing, pp. 34-37.) He reiterated that he had no quarrel
15 with any human being; "I want to make my peace with life, with all human beings". "I will
16 denounce any tendency to violate that attitude that I have now." (Board Hearing, p. 94.)

17 The Board also inquired about substance abuse abatement since Mr. Sirhan admits that
18 alcohol was involved on the night of the shooting. Mr. Sirhan acknowledged that he ignored
19 the training he received as a military cadet in high school when he allowed himself on that
20 night to possess a gun when he had been drinking. The Board considered the plethora of
21 substance abuse counseling Mr. Sirhan has not only engaged in but been the group leader in.
22 (Ex. B, Parole Hearing, pp. 38-43.)⁹

23 Mr. Sirhan addressed his character flaws and the insight he has gained through his
24 extensive psychological counseling. He now understands how his experiences as a young
25 refugee shaped his flawed way of thinking and the causal relationship between that and the
26 crimes. He also understands how impulsivity, a sense of bravado, immaturity and failure to
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⁹ Further, a review of Mr. Sirhan's Central file, which is part of the record, will demonstrate an absence of any write-ups for alcohol use during the 53 years of incarceration.

1 think through the consequences of his actions also contributed to his crime. (Ex. B, Parole
2 Hearing, pp. 65-67.) He told the Board: "I don't have it in me anymore." (*Id.*, at p.67.)

3 Finally, he addressed his remorse. He told the Board about how he now understands
4 the "ripple effect" his crime had on the victims, their next of kin and the world. He said that
5 Senator Kennedy was "the hope of the world as far as I can say" and that his own actions
6 harmed the families, the friends, the community, the staff of the Ambassador Hotel, the
7 country, and the world. (*Id.*, at p. 92.)

8 At the Board hearing, Mr. Paul Schrade, the only victim alive today, appeared with his
9 representatives¹⁰. They each made statements and supported Mr. Sirhan's release. Mr.
10 Schrade made a short statement at the hearing and further relied on his pre-recorded video-
11 statement. His victim advocate Jennifer Abreu spoke in detail of the rehabilitative work Mr.
12 Sirhan has done, and explained the empirical data about the programming, which
13 supplemented Mr. Schrade's plea for Mr. Sirhan's release. (*Id.*, at pp. 140-148.)

14 Robert F. Kennedy, III, appeared but declined to make a statement. (*Id.*, at p. 139.)
15 Douglas Kennedy, one of the Senator's children appeared and made a statement. Robert
16 Kennedy Jr. appeared via written statement, which was read into the record. Mr. Schrade,
17 Douglas Kennedy and Robert Kennedy Jr. all supported the release of Mr. Sirhan.

18 Douglas Kennedy, the 10th child of Ethel and Robert Kennedy, told the Board that he is
19 "grateful to ... see [Sirhan] ... as a human being worthy of compassion and love." (*Id.*, at p.
20 135, lines 4-6.) He told the Board that while he was listening to Mr. Sirhan express his
21 remorse, it brought tears to his eyes and it affected him deeply. (*Id.*, at p. 135.) He stated: "I
22 am grateful to, I – I'm looking at you, I'm looking at Mr. Sirhan, uh, right now. And, um, and,
23 uh, I – I do have some love for you, for him, and, um, and I – and I do wish him well in his,
24 uh, life and rehabilitation." (*Id.*, at p. 137, lines 12-16.) Douglas Kennedy ultimately
25 concluded that Mr. Sirhan should be released if he is no longer a danger to himself or others.
26 (*Id.*, at p. 135.)

27
28 ¹⁰ Per law, victims and next of kin are permitted to make statements concerning release of life
prisoners. 95-year-old Paul Schrade appeared with the two victim representatives he chose.
They each made statements and supported Mr. Sirhan's release. Mr. Schrade had also
prepared a video-recorded statement in advance of the hearing that was submitted to the
Board, along with a transcript of it. Mr. Schrade created the video-recording during the height

1 Robert F. Kennedy, Jr., through his written statement, described his face-to-face
2 meeting he had with Mr. Sirhan; how Mr. Sirhan clenched Robert Kennedy Jr.'s hands and
3 asked for forgiveness from Robert Jr., his siblings and his mother. (*Id.*, at p. 154.) Robert Jr.
4 characterized Sirhan as a "gentle, humble, kindhearted, frail and harmless old man who poses
5 no threat to our community." (Board Hearing, p. 154, lines 17-18.) Robert Jr. continued:

6 [Sirhan's] release will be testimony to humanity, compassion and idealism
7 of our justice system to which my father devoted his life. While nobody can
8 speak definitively on my, on behalf of my father, I firmly believe that based
9 on his own consuming commitment to fairness and justice, that he would
10 strongly encourage this Board to release Mr. Sirhan because of Sirhan's
11 impressive record of rehabilitation. This action would be consistent with the
12 rule of law which requires Sirhan's release, absent evidence that he currently
13 poses a danger. Mr. Sirhan was sentenced to life with the possibility of parole.
14 Parole is the rule and denial is the exception only justified if the Board
15 determines that Mr. Sirhan will present a high risk of danger to the community.
16 I understand that Mr. Sirhan has more than rehabilitated himself. I further
17 understand that his most recent Risk Assessment performed by CDCR
18 psychologists has confirmed what the many prior Risk Assessments which
19 opine that Mr. Sirhan does not pose a high risk of danger to society. Should
20 he be released, I offer to be a guiding friend to him. I know that Paul Schrade
21 had made the same offer to Mr. Sirhan. Any opposition to Mr. Sirhan's
22 release simply based on the crime is contrary to the law and contrary to
23 concepts of redemption and forgiveness. I ask that you extend the same
24 consideration to Mr. Sirhan that you've given to other lifers who have been
25 convicted of murder of whom you have released."

26 (*Id.*, at pp. 154, line 19—p. 155, line 20.)

27 D.

28 Governor Newsom's Reversal

29 The Governor, contrary to the informed and unbiased decision of his trained appointed
30 officials, found that Mr. Sirhan poses a current unreasonable risk to society. He bases his
31 conclusion on an erroneous statement of facts; an unreasonable finding of lack of insight; a
32 misapplication of the elderly prisoner and youthful offender considerations; and an otherwise
33 unsubstantiated "hunch" that Mr. Sirhan is currently dangerous and not deserving of parole.

of Covid and the uncertainties it created.

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VERIFICATION

I, Angela Berry, declare:

1. I am an attorney duly licensed to practice law before the courts of the State of California, with a State Bar Number of 157379.

2. I make this verification because petitioner is incarcerated in a county different from my business address of 75-5660 Kopiko Street, Suite C-7, #399 Kailua-Kona, HI 96740. In addition, I am more familiar with the legal allegations in the petition and thus in a better position to declare that the information in the petition is true on my information and belief. I represented Mr. Sirhan for his "*Franklin Proceedings*" (*People v. Franklin* (2016) 63 Cal. 4th 261 and *In re Cook* (2019) 7 Cal. 5th 439; the development of youthful offender mitigation) and at his August 27, 2021 Parole Board Hearing. Further I have read the records of the Board's hearing and decision. I also have read all of the exhibits attached to the petition.

3. I believe the contents of the petition to be a true and accurate representation of these records.

I declare under penalty of perjury under the laws of the State of California that the attested allegations are true.

Executed on September 13, 2022, at Kailua-Kona, HI.


Angela Berry
Attorney for Petitioner, Sirhan B. Sirhan

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MEMORANDUM OF POINTS AND AUTHORITIES

I.
**THE GOVERNOR'S REVERSAL VIOLATED PETITIONER'S STATE AND
FEDERAL RIGHTS TO CONSTITUTIONAL DUE PROCESS**

At the outset, it must be recalled that parole is the norm; denial of parole is the exception. The law presumes release on parole. *In re Lawrence* (2008) 44 Cal.4th 1181, 1204 (*Lawrence*). The presumption of parole can only be overcome if the record demonstrates current dangerousness; the prisoner need not prove he is not dangerous. 15 Calif. Code of Regs., Sec 2402(a); *In re Ross* (2009) 170 Cal. App. 4th 1490, 1502; *In re Lawrence, supra*.

A.

Procedural and Substantive Due Process Applies to Parole Decisions

California's parole scheme creates a cognizable liberty interest in an inmate's release on parole. This interest is protected by the procedural safeguards of the Due Process Clause of the United States Constitution. (U.S. Const., 5th & 14th amends.) Generally, federal due process is satisfied when the prisoner is given notice of the parole hearing and an opportunity to be heard. If parole is denied, due process further requires a statement of the reasons for the denial. (*Greenholtz v. Inmates of Neb. Pen. & Corr. Complex* (1979) 442 U.S. 1; see also *Morrissey v. Brewer* (1972) 408 U.S. 471, 481; accord *In re Rosencrantz* (2002) 29 Cal.4th 616, 655.) An inmate's liberty interest in parole is likewise protected under the broader due process guarantees of the California Constitution. (Cal. Const, art. 1, § 7, subd. (a), 15; *People v. Ramirez* (1979) 25 Cal.3d 260, 266-269.) California law recognizes both a procedural due process interest (*Irons v. Carey*, 505 F.3d 846, 850 (9th Cir. 2007) [all California prisoners whose sentences provide for the possibility of parole are vested with a constitutionally protected liberty interest in the receipt of a parole release date, a liberty interest that is protected by the procedural safeguards of the Due Process Clause]) and a substantive due process interest. (*People v. Ramirez, Id.*, 25 Cal.3d at pp. 266-269). The *Ramirez* Court held "when an individual is subjected to deprivatory governmental action, he always has a due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity." (*Ibid.*) Accordingly, the California Constitution recognizes both substantive and procedural due process interests in parole. (*In re Rosenkrantz, supra*, 29

1 Cal.4th at pp. 676-677; *People v. Ramirez, supra*, 25 Cal.3d at p. 268; *In re Powell* (1988) 45
2 Cal.3d 894, 904.)

3 Before an inmate may receive a parole date, the Board must find the inmate suitable for
4 parole. Here, the Board found Mr. Sirhan suitable on August 27, 2021. In murder cases, the
5 Governor has authority to reverse a grant of parole¹¹. Here, the Governor reversed his trained
6 appointees' decision on January 13, 2022. However, the Governor is equally bound by the
7 requirements of constitutional due process in making parole decisions. (Pen. Code, § 3041;
8 Cal. Code Regs. tit. 15, §§ 2401, 2281; *In re Rosenkrantz, supra*, 29 Cal.4th at p. 655.) And
9 due process is only satisfied if the assessment of the inmate's current risk of danger is
10 supported by "some evidence" in the record. (*In re Dannenberg, supra*, 34 Cal.4th at p. 1091;
11 see § 3041, subd. (b).) The Board in the instant case did not find evidence to support a finding
12 of current dangerousness, therefore it appropriately recommended Mr. Sirhan's release. The
13 Governor, however, came to a contrary decision. But the Governor's decision, as will be
14 shown, is not supported by the record.

15 1. The "Some Evidence" Standard

16 In *In re Rosenkrantz, supra*, 29 Cal.4th 616, the California Supreme Court for the first
17 time injected the requirement of the "some evidence" standard in parole suitability hearings.
18 In *In re Rosenkrantz, supra*, the Court began by acknowledging the Board's broad discretion
19 in rendering parole suitability decisions and the resultant deferential standard of review. (*Id.*,
20 at p. 679; *In re Dannenberg, supra*, 34 Cal.4th at p. 1082.) But while acknowledging this
21 deferential standard of review, the *Rosenkrantz* Court counseled that judicial review of
22 suitability decisions is not merely *pro forma*. In reviewing a decision that an inmate is
23 unsuitable for parole, "the judicial branch is authorized to review the factual basis of a
24 decision of the Board denying parole in order to ensure that the decision comports with the
25

26 ¹¹ In 1988, the California Constitution was amended, giving the Governor the ultimate
27 decision on parole release for prisoners serving life sentences for murder. (Proposition 89,
28 Cal. Const., Art. V, Sec. 8(b).) Historical Note: Mr. Sirhan had been granted parole in
1975, scheduled to be released in 1984. John Van De Kamp was the District Attorney of
Los Angeles County at the time. When running for Attorney General of California in
1982, Van de Kamp campaigned for a revocation of Mr. Sirhan's upcoming release date.
(The New York Times Archives, May 11, 1982, Section B, page 9.) Van de Kamp won his
election, and Prop. 89, which bestowed upon the governor the ultimate power to reverse
parole decisions, was passed while Van de Kamp was in office.

1 requirements of due process of law.” (*In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 658.) The
2 decision comports with due process if there is “some evidence in the record before the
3 [decision maker] supporting the decision to deny parole, based on the factors specified by
4 statute and regulation.” (*Ibid.*) Courts also must ensure that the evidence meeting the “some
5 evidence” standard is both reliable and of a solid value. (*Id.*, at p. 655; see Cal. Code. Regs.,
6 Tit. 15, § 2402, subd. (b).) It is not sufficient to derive findings from a silent or misconstrued
7 record. Reviewing courts additionally must determine if the decision maker gave the inmate
8 “individualized consideration of all relevant factors,” and that the conclusion was neither
9 arbitrary nor capricious. (*In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 655; *In re DeLuna* (2005)
10 126 Cal.App.4th 585; see U.S. Const., amends. V, XIV; Cal. Const., art. I, § 7, subd. (a).)

11 “As a result, parole applicants have a due process liberty interest in parole and an
12 expectation that they will be granted parole unless the Board finds, in the exercise of its
13 discretion, that they are unsuitable for parole in light of the circumstances specified by statute
14 and by regulation.” (*In re Lawrence* (2008) 44 Cal.4th 1181, 1191, 1204, quoting *In re*
15 *Rosenkrantz*, *supra*, 29 Cal.4th at p. 654; *In re Stonerod* (2013) 215 Cal.App.4th 596, 615.)

16 2. The Governor’s Decision, like the Board’s, Must Comport with Substantive Due
17 Process and Must Be Supported by “Some Evidence”

18 The Governor, without question, has the legal authority to reverse his Board’s grant of
19 parole. However, his discretion to do so is not omnipotent; the decision to reverse his Board’s
20 decision must comply with due process and the controlling legal standards. But, it did not.

21 In his written decision, the Governor states that he relies on his broad discretion in
22 reversing his own appointees’ assessment. (Governor’s Decision, p. 1 Exhibit A.) But, the
23 Governor’s decision-making authority is not unrestricted. The decision must “reflect[] *due*
24 *consideration of the specified factors* as applied to the individual prisoner in accordance with
25 applicable legal standards.” (*In re Shaputis* (2011) 53 Cal.4th 192, 210 (*Shaputis II*); *In re*
26 *Lawrence*, *supra*, 44 Cal.4th at p. 1204; *In re Shaputis* (2008) 44 Cal.4th 1241, 1260–1261
27 (*Shaputis I*); *In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 677; *In re Shelton* (2020) 52
28 Cal.App.5th 595, 607-608; *In re Stonerod*, *supra*, 215 Cal.App.4th at p. 616.) His decision to
deny parole must be supported by some evidence of a current unreasonable risk of danger.
This is where the Governor fails.

B.
The Governor's Decision Deprives Mr. Sirhan of Due Process Because
it Improperly Relies on the Gravity of the Offense and Does not Provide a Nexus between
the Crime from 53 Years Ago and Current Dangerousness

The Governor's decision placed undue emphasis on the gravity of the crime (and added unsupported "facts"¹²), rather than assessing the entire circumstances in determining the ultimate question of whether Mr. Sirhan poses a current unreasonable risk of danger to public safety. In so doing, the Governor erred.

In his decision, the Governor asserts that the gravity of the crime alone can provide a "valid basis for denying parole" (Exhibit A, p. 2) and he cites *In re Lawrence* at p. 1214 for that proposition. However, the Governor misconstrues *In re Lawrence*. The California Supreme Court in *In re Lawrence* specifically explained:

"Indeed, it is not the circumstance that the crime is particularly egregious that makes a prisoner unsuitable for parole—it is the implication concerning future dangerousness that derives from the prisoner's having committed that crime. Because the parole decision represents a prospective view—essentially a prediction concerning the future—and reflects an uncertain conclusion, rarely (if ever) will the existence of a single isolated fact in the record, evaluated in a vacuum, suffice to support or refute that decision. Accordingly, we conclude that although the Board and the Governor may rely upon the aggravated circumstances of the commitment offense as a basis for a decision denying parole, *the aggravated nature of the crime does not in and of itself provide some evidence*

¹² When rationalizing his opinion of the gravity of the offense, the Governor makes an erroneous factual statement. He states: "Mr. Sirhan shot Senator Kennedy in front of news cameras, which subjected the Kennedy family and American public to a ubiquitous video loop of Senator Kennedy's violent death and his wife's anguish at his side." (Governor's Decision, p. 3) Contrary to this erroneous assertion, and based on all **factual** accounts, the shooting of the Senator was *not* captured on video. This fake fact is often repeated by the ill-informed and circulates in rumor mills. The governor's reliance on erroneous and extraneous inflammatory propaganda instead of the facts, as derived from the official record of conviction, demonstrate the Governor's bias and the corollary deprivation of Mr. Sirhan's due process right to a fair, factual, and impartial review.

1 of **current** dangerousness to the public unless the record also establishes that
2 something in the prisoner's pre- or post-incarceration history,
3 or his or her current demeanor and mental state, indicates that the implications
4 regarding the prisoner's dangerousness that derive from his or her commission
5 of the commitment offense remain probative of the statutory determination
6 of a continuing threat to public safety.”

7 (*In re Lawrence*, at 1213-1214, emphasis added.) Moreover, not a single case since *Lawrence*
8 has found that the facts of the crime alone can justify a denial of parole. (See, e.g.: *In re Ross*
9 (2009) 170 Cal.App.4th 1490: [There must a nexus between the facts of the crime and current
10 dangerousness]; *In re Dannenberg* (2009) 173 Cal.App.4th 237: [The governor conceded he relied
11 solely on nature of commitment offense; governor's reversal of parole was reversed and parole was reinstated.]

12 **C.**

13 **The Governor Violated Mr. Sirhan's Rights of Constitutional Due Process**
14 **by Reversing His Board's Grant of Parole Without Providing Mr. Sirhan**
15 **With a Meaningful Opportunity to Be Heard**

16 Mr. Sirhan was not allowed to appear before the Governor and personally demonstrate
17 his suitability. Instead, unlike the Board members who assessed Mr. Sirhan face-to-face¹³ and,
18 who recommended parole, the Governor relied on the reading of a cold record. When faced
19 with potential uncertainty with the interpretation of any answer given by Mr. Sirhan during his
20 live hearing and/or during his Risk Assessment Evaluation, the Governor did not seek
21 clarification. This violated the procedural due process guarantee of a meaningful opportunity
22 to be heard, contributed to whimsical conclusions regarding Mr. Sirhan's lack of suitability,
23 and led to an arbitrary reversal of the Board's well-reasoned and duly considered decision.

24 **D.**

25 **Mr. Sirhan was Deprived Due Process because the Governor Misconstrued**
26 **the Record and/or Relied on Incorrect and/or Outdated Information**

27 A fundamentally fair proceeding compels the governor to impartially consider all the
28 evidence and make a decision based on evidence accurately construed. (*Gagnon v. Scarpelli*,
(1973) 411 U.S. 778, at pp. 786-787.) The Governor failed to discharge this burden when he
relied on information and/or beliefs that are proven to be wrong from a review of all the
evidence.

¹³ Albeit through video-conferencing due to the Pandemic.

1 The Governor bases his decision for denying parole on what he labelled Mr. Sirhan's
2 "shifting narrative" about the crime and "current refusal to accept responsibility", that, the
3 Governor asserts, displays a lack of insight and a justification to deny parole. (Governor's
4 Decision, p. 3, Exh. A.) The Governor's rationale mis-construes evidence; it ignores
5 persistent statements by Mr. Sirhan expressing remorse; it omits the many conclusions of the
6 CDCR psychologists that Mr. Sirhan expressed remorse and has gained the appropriate
7 insight to reduce his propensity for future violence; it disregards the acknowledgements of
8 two of the late Senator's sons (Douglas and Robert, Jr.) of Mr. Sirhan's remorse, as well as
9 the acknowledgment of remorse of victim Paul Schrade; and it fails to link this perceived lack
10 of insight and acceptance of responsibility to current dangerousness.

11 1. Admission of Guilt is Prohibited as a Prerequisite to a Finding of Suitability for
12 Release

13 First of all, it must be stressed that an admission of guilt is expressly prohibited as a
14 pre-requisite to a grant of parole. (Pen. Code § 5011, subdiv. (b); Code of Reg., Title 15, Sec.
15 2236; *In re Palermo* (2009) 171 Cal.App.4th 1096, 1110 (*Palermo*), disapproved on another
16 point in *In re Prather* (2010) 50 Cal.4th 238, 252; *In re McDonald* (2010) 189 Cal. App. 4th
17 1008.) And, importantly, "an inmate's refusal to agree with the prosecution's version of the
18 crime does not support a finding of lack of insight." (*In re Palermo* [citations].)" *In re Pugh*
(2012) 205 Cal.App.4th 260, 269.)

19 In *McDonald*, *supra*, 189 Cal. App. 4th 1008, the governor had rejected the
20 recommendation for parole due to the gravity of the offense and McDonald's complete denial
21 of involvement in the offense. On review, the court reversed the governor. Reiterating the
22 crucial principal that "lack of insight is not some evidence of current dangerousness unless it is
23 based on evidence in the record before the Governor" (*Id.*, at 1023), and citing Penal Code
24 section 5011, it ruled: "[T]he Governor cannot rely on the fact that the inmate insists on his
25 innocence; the express provisions of Penal Code section 5011 and section 2236 of title 15 of
26 the California Code of Regulations prohibit requiring an admission of guilt as a condition for
27 release on parole." (*Ibid.*)

28 In *Pugh*, *supra*, 205 Cal. App. 4th 260, the governor denied parole based on a perceived
shifting narrative that the governor believed justified a finding of lack of insight and then the
leap to a finding of current dangerousness. The governor, there, too, was reversed by the

1 courts. Pugh had asserted a different version of the particulars of the crime than that proved
2 at trial. But nevertheless, psychological reports recounted Pugh's remorse and understanding
3 of his involvement in the crime. Citing *Shaputis II*'s¹⁴ rule that only an inherently implausible
4 recitation of the crime by an inmate may suggest current dangerousness, it found Pugh's
5 version not inherently implausible and reinstated the Board's decision to grant parole.

6
7 2. *The Governor's Decision Makes Factually False Allegations, Misconstrues the*
8 *Record and Improperly Relies on Old Outdated Statements Attributed to Mr.*
9 *Sirhan when it Cites Examples of What it Deems a "shifting narrative"*

10 The Governor's decision purports to establish a nexus between what it considers a
11 "shifting narrative" of the crime and Mr. Sirhan's current dangerousness. However, in its
12 attempt to establish a "shifting narrative" the Governor makes assertions that are factually
13 wrong, misconstrues statements Mr. Sirhan made by taking them out of context, and appears
14 to improperly rely on very old CRAs and outdated statements attributed to Mr. Sirhan.

15 First, in making its case for a "shifting narrative", the Governor's decision cites "facts"
16 that are not facts at all – many are factually untrue, thus fatally destroying any causal
17 relationship to current dangerousness. For instance, the Governor's decision mistakenly
18 claims that Mr. Sirhan admitted to assassinating RFK in a recorded interview with the police.
19 (Gov. Decision, p. 3, Exhibit A.) This purported fact is simply untrue. While in police
20 custody, Mr. Sirhan never admitted to the police that he shot the Senator or anyone else. Quite
21 the contrary - he consistently claimed he did not remember the events of the evening.¹⁵

22 Next, the Governor's decision tries to make a case that even during the trial, Mr. Sirhan
23 took differing positions on his involvement in the crime. Here, the Governor erroneously
24 claims that at trial Mr. Sirhan testified that he could not remember his actions because he was
25 drunk. (Gov. Decision, p. 4, Exhibit A.) Contrary to the Governor's assertion, Sirhan never
26 said that. In fact, when asked by the prosecutor if alcohol was the reason for his failed
27 memory of the events, Mr. Sirhan said: "I don't know from the effects of what, sir. I was not
28

¹⁴ *Shaputis II, supra*, 53 Cal. 4th 192.

¹⁵ Counsel for Mr. Sirhan relies on 1) the representations of scholars and historians who are in possession of all the recorded statements Mr. Sirhan made while in police custody; and 2) the fact that he was never asked on direct or cross examination about any admissions he may have

1 myself, sir, as I am now.” (Trial Transcripts, Vol. 18, p. 5327, lines 14-15.). The Governor
2 then cites a statement Sirhan made about having 20 years of premeditation to kill the Senator.
3 (Gov. Decision, *Ibid.*) While the transcripts of the trial indicate that the statement was in fact
4 made, the Governor takes it completely out of context. The statement was not a confession.
5 Rather, the statement was made during a hearing that took place outside the presence of the
6 jury where Mr. Sirhan was verbalizing his discontent with the defense his attorneys were
7 presenting¹⁶. He asked that his attorneys be fired, and the court refused. Mr. Sirhan then
8 stated that he would rather plead guilty and accept the death penalty than have his attorneys
9 present the case they wanted to and against his wishes. The court informed him that that was
10 not permitted. Mr. Sirhan then asked to represent himself and the court would not allow it. It
11 was during that colloquy and with the ensuing frustration that Mr. Sirhan made his sarcastic
12 statement that he killed the senator with 20 years of premeditation. It is obvious that the
13 statement cannot be taken at face value: If true, Mr. Sirhan would have been a 4-year-old
14 Palestinian child living in Old Jerusalem in the Middle East. That would have been 13 years
15 before RFK even entered politics in 1961 as the U.S. Attorney General. The Governor’s
16 specious attempt to use that statement as a demonstration of a “shifting narrative” is
17 disingenuous and misleading and shows a complete lack of familiarity with the actual facts
18 surrounding this matter.

19 The Governor’s decision then cites statements Mr. Sirhan allegedly made in 1972,
20 1979, 1985, 1987 1989, 1990, 1997, 2001, 2011 to try and establish a link between those
21 statements and a finding of current dangerousness. Courts, when reversing the Board or
22 governor’s denial of parole, have consistently held that it is error to rely on old reports and
23 information, as historic facts do not necessarily equate to current dangerousness. (*In re*
24 *Lawrence* (2008) 44 Cal.4th 1181.)

25
26
27 made to the police.

28 ¹⁶ Mr. Sirhan did not agree with the approach the defense team was taking with certain
witnesses. But his attorneys essentially told Mr. Sirhan that since they were the attorneys they
had the prerogative to decide how the defense was presented. Under today’s law, the record
would support a reversal of Mr. Sirhan’s trial under the U.S. Supreme Court’s decision in
McCoy v. Louisiana (2018) 138 S.Ct. 1500, which held that a criminal defendant has a 6th
Amendment right to make fundamental choices about his/her own defense and failure to heed
to the defendant’s desire is structural error requiring reversal of the conviction.

1 The Governor's decision purports to further demonstrate a "shifting narrative" that it
2 claims demonstrates current dangerousness and points out that at Mr. Sirhan's 1989, 1990 and
3 2011 Board hearings, Mr. Sirhan maintained that he could not remember details, such as
4 shooting his gun. These statements do nothing but demonstrate a cohesive and consistent
5 narrative with what Mr. Sirhan told the police while in their custody and what he testified to at
6 trial. He has consistently maintained that he has no memory of the shooting.

7 The Governor's decision is flawed because of yet another misconstrued fact upon
8 which it asserts is a "shifting narrative" that somehow proves current dangerousness. The
9 Governor refers to a statement Mr. Sirhan made at his 2021 CRA, but takes it out of context,
10 and tries to portray it as Mr. Sirhan's complete denial of culpability. The Governor
11 disingenuously states in his decision: "In 2021, Mr. Sirhan told a Board psychologist that he
12 was innocent of the crimes and 'was in the wrong spot at the wrong time,' portraying himself
13 as the victim." (Governor's Decision, p. 5, Exhibit A.) Contrary to the Governor's
14 representation, Mr. Sirhan never stated he was innocent of the crimes in the 2021 CRA. (See
15 Exhibit C, attached.) Regarding the statement about being in the wrong place at the wrong
16 time, while traditionally an adage for the proposition that one got wrapped up into something
17 without intention, what Mr. Sirhan was in fact articulating is his belief that the forensic
18 evidence does not match the official narrative of the case. Mr. Sirhan's actual statement to the
19 evaluator is as follows:

20 "I was in front of him and the shots that hit him, were from behind him, and
21 that's what Robert Kennedy Jr. is going to tell the Parole Board, that I didn't
22 do it, because I was in the wrong spot at the wrong time."

23 (p. 7 CRA). It is clear in its true form and in its proper context, Mr. Sirhan was simply
24 relaying that given his physical positioning relative to the Senator's (they were face to face by
25 all eye-witness accounts), he could not have shot the bullets that struck the Senator in the back
26 and the back of the neck. The Governor next cites Dr. Crimele's opinion that Mr. Sirhan
27 "would not report his understanding of the facts of the crime, as he instead referenced others'
28 reports" as somehow a demonstration of current dangerousness. However, the Governor is
expecting Mr. Sirhan to remember facts he has consistently stated he cannot remember. Mr.
Sirhan relies on information others have gathered to fill in the gaps for his lack of memory.

1 Requiring Mr. Sirhan to suddenly “remember” the facts of the crime as a condition of release
2 is something that will never happen. It is an unrealistic and unconstitutional expectation.¹⁷
3 (Pen. Code § 5011; Code of Regs 2236.)

4 Finally, the Governor while using isolated statements from Dr. Crimele’s 2021 CRA
5 report, albeit taken out of context, to try and justify his decision to deny parole, he outright
6 ignores Dr. Crimele’s ultimate opinion that “Mr. Sirhan represents a Low risk for violence. He
7 presents with non-elevated risk relative to long-term parolees and well below average risk
8 relative to shorter-term parolees released without discretion.” (Exhibit C, 2021 CRA p. 10.)

9
10 3. The Governor’s Conclusion that Mr. Sirhan Lacks Insight is not Supported by the
11 Record

12 The record evidence demonstrates Mr. Sirhan’s insight, acceptance of responsibility
13 and showing of remorse. With respect to insight and remorse, it is important to recall how Dr.
14 Carrera, the psychologist who evaluated Mr. Sirhan in 2010 and rated him “low risk”,
15 described the concepts:

16 “Insight and remorse are abstract concepts, which do not readily lend
17 themselves to operationalized definition or reliable quantifiable measure-
18 ment. Therefore, any opinions regarding insight and remorse are subjective
19 in nature and should be interpreted with this caveat in mind.”

(Dr. Carrera’s 2010 psychological evaluation, p. 16.)

20 The Governor wrongly concludes that Mr. Sirhan lacks insight¹⁸, despite the consistent
21 record evidence to the contrary. For instance, as far back as the 1985 and 1996 Parole
22 Hearings, Mr. Sirhan expressed his remorse: He told the Board he learned from his crime and
23 lives with it everyday. He further explained that he was young when he committed his crime
24 and throughout the years, he had matured and has a lot of time to reflect on the value of human
25 life. (1985 Parole Hearing, pp. 59-65; 1986 Parole Hearing, p. 54.) Additionally, in his 1989

26
27 ¹⁷ The 2021 Parole Board, demonstrably familiar with the facts of the case, recognized this
28 fact when it stated that it was not expecting Mr. Sirhan’s, or anyone’s memory to improve
over time. In fact, the Board noted, it expected him to remember less with the passage of time.
(Ex. B, Board Hearing, p. 26.)

¹⁸ The Governor’s decision claims Mr. Sirhan lacks remorse, yet it cites and recognizes Mr.
Sirhan’s 1989 expression of remorse in an interview with Robert Frost.

1 parole hearing, Mr. Sirhan stated: "I have feelings of shame and inward guilt. . . .it is really a
2 haunting experience and I honestly feel the pain that they [the Kennedys] may have gone
3 through." (1989 Parole Hearing, pp. 130-131.)

4 Moreover, in his 1990 Parole Hearing, the Board recited Dr. B. Martin's 1989
5 professional opinion that Mr. Sirhan was "fairly clear on causative factors of his crime" and
6 that "[Sirhan] is likely to hold present gains." (1990 Parole Hearing, at p. 37.) It also noted
7 Dr. Farr's 1990 opinion that Mr. Sirhan is "open to giving causative reasons leading up to the
8 murder" (*Id.*, at p. 52) and that Mr. Sirhan has expressed extreme remorse. (*Id.*, at p. 53.)
9 Further, Robert Kennedy Jr. spoke of Sirhan's expressions of remorse in the letter he sent to
10 the 2021 Board. In his letter to the Board, Robert Kennedy Jr. explained that he had met face-
11 to-face with Mr. Sirhan. He told the Board: "Sirhan wept, clenched my hands and asked for
12 forgiveness from me, from my siblings, and from my mother for his part in that tragic
13 evening's events." (Ex. B, Parole Hearing, pp. 153-155.) Moreover, Douglas Kennedy spoke
14 of Mr. Sirhan's expressions of remorse that moved him deeply. (*Id.*, at p. 135.)

15 Mr. Sirhan's clear and unambiguous articulation of remorse continues throughout his
16 various parole board hearings and Mr. Newsom blatantly disregarded decades of statements of
17 remorse in order to support his political agenda of re-election.

18 *In re Pugh, supra*, is instructive here. In *Pugh*, the Board had granted parole, but it was
19 rejected by the governor. The governor's purported rationale was that Pugh lacked insight into
20 the offense, and that, in combination with the heinous nature of his crime, it caused Pugh to
21 pose a current risk of dangerousness. On habeas corpus, the trial court disagreed with the
22 governor's assessment and found no evidence in the record to establish Pugh currently lacked
23 insight. It reversed the governor's decision to deny parole. The warden appealed and the
24 appellate court again confirmed that the record lacked credible evidence that Pugh did not
25 possess insight. The appellate court first pointed out that Penal Code section 5011 prohibits a
26 parole board from requiring a prisoner to admit guilt as a condition of granting parole.¹⁹ It
27 then assigned error to the governor's reliance on older mental health examinations while
28 ignoring the more recent psychological reports indicating Pugh showed insight and remorse.

¹⁹ Pen. Code section 5011(b) reads: "The Board of Prison Terms shall not require, when

1 When ruling, the appellate court reiterated that “the nature of the offense is no longer an
2 accurate indicator of current dangerousness”. (*Id.*, at 263.) As such, it ruled that the
3 Governor’s decision to deny parole was properly reversed by the trial court.

4 Like in *Pugh*, the record in Mr. Sirhan’s case is replete with evidence of Mr. Sirhan’s
5 insight into the causative factors of his crimes and his repeated expressions of remorse. The
6 fact that he does not remember every detail of the crime should not be construed as lack of
7 insight and/or remorse; and requiring an admission by him of all details is expressly
8 prohibited. (Pen. Code §5011(b).) Thus, not only did Governor Newsom disregard the factual
9 record, but he acted in clear contravention of the law.

10 The Governor’s decision is further mistaken when it concludes that Mr. Sirhan has not
11 disavowed political violence and that makes him a current threat. The Governor misconstrues
12 the record. The Governor accuses Mr. Sirhan of not meaningfully disclaiming political
13 violence. In purported support for this outlandish accusation, the Governor’s decision cites a
14 1973 incident where terrorists took hostages, demanding Mr. Sirhan’s freedom. Mr. Sirhan
15 had no part in that violent event, but the Governor uses it against Mr. Sirhan. The Governor
16 draws his conclusion about a failure to disavow political violence by relying on Dr. Crimele’s
17 report concerning his interview with Mr. Sirhan. Dr. Crimele characterizes Mr. Sirhan’s
18 response to an inquiry into the 1973 event as “laughter”. (See Exhibit C, Dr. Crimele’s
19 Report.) The Governor wrongly interprets that response as a failure to denounce violence,
20 instead of interpreting it as a man who continues to deny any involvement in the violent ploy
21 and one who believes inquiry about an act he played no role in, that occurred decades ago,
22 should not rationally be considered for his suitability for parole 48 years later. Had the
23 Governor afforded Mr. Sirhan due process and a right to be heard, the Governor could have
24 understood Mr. Sirhan’s true position. (See Argument Part I C, *supra*.)

25 Moreover, the Board addressed this concern and the Governor appears to gloss over
26 that inquiry and the responses thereto. When asked by the 2021 Board about his feelings
27 regarding political actions by others in his name or others using him to “ferment more
28 violence”, Mr. Sirhan acknowledged the possibility but offered an equally possible alternative

setting parole dates, an admission of guilt to any crime for which an inmate was committed.”

1 – one where he could be an agent for peace. (Ex. B, Parole Hearing, pp. 35-36.) In his
2 decision, the Governor seemingly ignores Mr. Sirhan’s assurance to the Board that he would
3 advocate for peace.

4
5 4. The Governor’s Decision Fails to Demonstrate a Nexus Between What it Deems
6 Unsuitability Factors and Current Dangerousness

7 While the Governor’s decision is afforded deference, the court’s review “is not
8 toothless” and proper consideration of unsuitability factors requires more than rote recitation
9 of them. A legally binding denial of parole by the Governor requires reasoning “establishing
10 a rational nexus between those factors and the necessary basis for the ultimate decision—the
11 determination of current dangerousness.” (*Lawrence, supra*, 44 Cal.4th at p. 1210.) Here, not
12 only does the Governor rely on false, outdated and/or misconstrued facts, as discussed *supra*,
13 he does not illustrate how those facts equate to current dangerousness. For this reason, too, the
14 Governor’s decision must be reversed as a violation of due process.

15 The factors argued below demonstrate there is no nexus between those facts articulated
16 by Governor Newsom and current dangerousness.

17 **E.**

18 **The Governor Failed to Apply the Correct Law and Failed to**
19 **Properly Consider Elderly Prisoner Factors as Mandated by**
20 **Penal Code section 3055, Thus Depriving Mr. Sirhan of Due Process**

21 As a 77-year old, Mr. Sirhan qualifies as an Elderly Prisoner, requiring the governor to
22 give “special consideration” to Mr. Sirhan’s advancing age, his age-related health ailments,
23 and the comprehensive studies that prove a drastic reduction in the risk of future violence with
24 age. (Pen. Code § 3055.) The Board gave due consideration to this law and its components in
25 concluding that Mr. Sirhan is suitable for release on parole. The Governor, on the other hand,
26 claims to have considered the fact that Mr. Sirhan qualifies as an elderly prisoner, when he
27 wrote: “I have given special consideration to the Elderly Parole factors” (Exhibit A,
28 Governor’s Decision, page. 8), but he cites the wrong law and then draws conclusions that are
not supported by the record, thus violating Mr. Sirhan’s due process rights.

First of all, in his statement of the “Governing Law” (Exhibit A, pp. 1-3), the Governor
relies on the wrong law when referring to elderly parole consideration. He refers to two orders

1 issued in 2014 - *Coleman v. Brown* and *Plata v. Brown*, (Exhibit A, pp. 2-3), seemingly
2 unaware of the legislative enactment of Penal Code Section 3055 (signed by him, and effective
3 January 1, 2018; Assembly Bill No. 1440) that mandates the parole decision-maker to “give
4 special consideration to whether age, time served, and diminished physical condition, if any,
5 have reduced the elderly inmate’s risk for future violence.” (Pen. Code § 3055(c).) The
6 Governor relies on the *Coleman v. Brown* and *Plata v. Brown* orders and assumes that his
7 obligation requires him to give special consideration to “inmates who are *older than 60* and
8 who have served *more than 25 years* in prison”. (Exhibit A, Governor’s Decision, page 8,
9 emphasis added.) However, that is not the law. Amended Penal Code section 3055, signed by
10 the Governor and effective January 1, 2021 [Assembly Bill No. 3234], and thus effective at the
11 time of Mr. Sirhan’s parole hearing in August 2021, compels special consideration to an
12 inmate “50 years of age or older [who] has served a minimum of 20 years of continuous
13 incarceration on the [] current sentence”. (Pen. Code §3055(a).)

14 Mr. Sirhan has served 27 years as an elderly prisoner and has served 28 years more than
15 the triggering length of service for proper analysis under the elderly prisoner law. The
16 Governor failed to consider the law and as such violated Mr. Sirhan’s right to due process.

17 The fact that the Governor failed to consider the correct law violates Mr. Sirhan’s due
18 process rights in and of itself and requires reversal of the decision to deny parole. But
19 additionally, the Governor’s rationale in rejecting elderly prisoner considerations is flawed.
20 The Governor cites Dr. Crimele’s 2021 Risk Assessment Evaluation report as support for his
21 position²⁰ that Mr. Sirhan’s advancing age plays no role in the risk assessment. Through the
22 undue reliance on one line of Dr. Crimele’s report, the Governor casts aside the long litany of
23 health problems listed by his appointees at the parole hearing: atrial fibrillation and
24 bradycardia for which Mr. Sirhan takes two separate medications; anti-coagulation blood
25 issues; chronic kidney disease; chronic stiffness and pain in his neck and left shoulder due to
26 an injury he received when another inmate slashed his throat in 2019 and the repair shortened
27 the muscle connecting the neck to the shoulder. In fact, the Commissioner noted that during
28 the parole hearing, Mr. Sirhan sat slumped to the left to assist in alleviating some of the pain

²⁰ The Governor’s Decision refers to a line in Dr. Crimele’s report that Sirhan “has not had any

1 from his shoulder injury. (Parole Hearing, p. 14, pp. 98-100.) The Board found Mr. Sirhan
2 was “significantly incapacitated” to committing new crimes. (Board Hearing, p. 163.) But,
3 the Governor ignores that.

4 The governor then opines that elderly prisoner attributes are “not the most relevant
5 indication of [Sirhan’s] current risk level.” He cites his opinion of Mr. Sirhan’s lack of insight
6 and refusal to accept responsibility (debunked); his accusation that Mr. Sirhan has failed to
7 denounce political violence (untrue); and his opinion that Mr. Sirhan lacks requisite skills to
8 manage complex external triggers (contrary to the record evidence) as reasons to disregard the
9 elderly prisoner attributes. And, in order to make his argument, the Governor utterly
10 disregards Dr. Crimele’s ultimate opinion that Mr. Sirhan’s advancing age significantly lowers
11 his risk of recidivism and the CRA rating of “low”. Dr. Crimele opined:

12 “Generally speaking, the current recidivism rates for long term offenders
13 are lower than those of other prisoners released from shorter sentences.
14 *The board defines overall risk ratings relative to other life prisoners.* Based
15 upon an analysis of the presence and relevance of empirically supported risk factors,
16 case formulation of risk, and consideration of the inmate’s anticipated
17 risk management needs if granted parole supervision (i.e., intervention, monitoring),
18 *Mr. Sirhan represents a Low risk for violence.* He presents with
19 non-elevated risk relative to long-term parolees and well below average risk relative to
20 shorter-term parolees released without discretion. Low-risk long-
21 term parolees are expected to commit violence much less frequently than
22 other parolees.”

23 Dr. Crimele’s report, Exhibit C, p. 10, emphasis added.) Incidentally, the Board noted that Dr.
24 Carrera’s CRA Report from 2010, Dr. Sahni’s CRA Report from 2016, and Dr. Crimele’s
25 CRA report from 2021 all put Mr. Sirhan in the lowest rate of risk for violence - “at the low
26 end of a 1.5-2% recidivism rate.” (Ex. B, Parole Hearing. pp. 176-177.)

27 The Governor’s outright failure to apply Penal Code section 3055, his reliance on Dr.
28 Crimele’s statement that Mr. Sirhan has “not had any significant problems with his advancing
age” thereby disregarding Mr. Sirhan’s multiple physical ailments in the established record,
his disregard for Dr. Crimele’s professional assessment that Mr. Sirhan is a “low risk for
violence”, and his conclusion that Mr. Sirhan’s elderly prisoner factors are not relevant to a

significant problems with his advancing age.”

1 determination of current dangerousness violate due process and warrant reversal of the
2 Governor's decision.

3 F.

4 **The Governor Failed to Properly Assess Youthful Offender Mitigation,**
5 **Thus Depriving Mr. Sirhan of Due Process**

6 Mr. Sirhan qualifies as a youthful offender, obligating the Governor to give "great
7 weight" to the effect of the hallmark features of youth on his culpability and consider that
8 against Mr. Sirhan's subsequent growth and maturation. (§ 3051; § 4801(c); *People v.*
9 *Franklin* (2016) 63 Cal.4th 261.) The law requires the deciding body to not just *consider* but
10 to 'give great weight' to the diminished culpability of juveniles as compared to adults. . . , the
11 hallmark features of youth, and any subsequent growth and increased maturity of the prisoner
12 in accordance with relevant case law. (§4801, subd. (c).) (emphasis added)." (*Franklin*, at
13 277.) Senate Bill 260, which enacted the youthful offender laws, was "designed to ensure
14 [youthful offenders] will have a meaningful opportunity for release"... ." (*Ibid.*)

15 The Governor's decision to reverse his Board's recommendation for parole, that is
16 partially based on the Governor's purported consideration of youthful offender mitigation,
17 cannot stand because it provides little if any rationale for its conclusion of Mr. Sirhan's current
18 dangerousness despite his status as a youthful offender; it fails to even acknowledge the
19 specific Youthful Offender mitigation evidence offered on Mr. Sirhan's behalf; and it
20 completely overlooks or inexplicably disregards the psychological evaluation specifically
21 addressing Mr. Sirhan's youth and his particular psyche and how these conditions impacted
22 his crime and his contrasting growth and maturity over the last 53 years. In his written
23 decision, the Governor states that youthful offender factors were considered as is required by
24 law, but then he concludes that despite that consideration, Mr. Sirhan is not suitable for release
25 due to lack of insight. (See Gov. Decision, Exhibit A, pp. 7-8.)

26 The Governor's assertion that he had given "great weight" to the youthful offender criteria
27 is followed by a hollow conclusion that fails to analyze how the hallmarks of youth might
28 have factored into Mr. Sirhan's level of culpability. Contrary to any indication by the

1 Governor, the record evidence contains a detailed packet entitled "Sentencing Memorandum
2 and Statement in Mitigation; Exhibits in Support Thereof" (youthful offender packet) that
3 presents the youthful offender mitigation that deserved the Governor's due consideration (e.g.
4 "great weight"). The Governor's decision does not even acknowledge the 52-page Youthful
5 Offender Packet or, equally importantly, the results of the psychological evaluation conducted
6 by Dr. Megan Williamson contained therein. (See Exhibit D.)

7 Fair rumination of youthful offender factors would have considered the extensive report
8 of Dr. Megan Williamson, the psychologist who evaluated Mr. Sirhan in the context of
9 youthful offender mitigation. Mr. Sirhan told Dr. Williamson that he is not the same person
10 who entered prison at 24 years old. He told the doctor: "It's hard to describe because I am a
11 different person, different collection with a different set of values." He told her he has
12 "maturity in [his] heart". (Ex. D, Dr. Williamson's Report, p. 14.) Pertaining specifically to
13 youth, Dr. Williamson explains that at the age Mr. Sirhan was when he committed his crime,
14 his brain, like all human brains, was not yet fully developed. Specifically, she explains:

15 "[t]he prefrontal cortex (PFC) has been identified as the last area to mature
16 in the human brain, reaching maturation at around 25 or 26 years old. The prefrontal
17 cortex is responsible for impulse control and organization of
18 emotional reactions, long-term and complex planning, focusing and
19 organizing attention, and reward response. In an individual with an underdeveloped
20 PFC, you are more likely to see an impulsive response
21 based upon emotion versus an intellectual response where the individual
22 can override emotion and think through his response. In addition, the
23 individual will have difficulty analyzing the possible consequences of the
24 actions."

25 (Ex. D, Dr. Williamson's Report, p. 16.) And despite this undisputed record evidence, the
26 Governor acknowledges, notably without elaboration, that Mr. Sirhan exhibited only "some of
27 the hallmark features of youth". (Gov. Decision, Ex. A, p. 7.) Dr. Williamson further states:

28 Mr. Sirhan has matured considerably since the offense. He is now a
77-year-old man who has spent more than fifty years behind bars.
During those fifty-plus years, Mr. Sirhan has only received two rule
violations. That last one was in 1972. He received multiple certificates,
graduated summa cum laude with an associate's degree, and earned almost
enough credits for a bachelor's degree. Through most of his incarceration,
he has maintained full-time employment. His CDCR record indicated a
CSRA [risk assessment] of 1, which suggests that Mr. Sirhan is at low risk

1 for future violence.

2 (Dr. Williamson Report, pp. 16-17.)

3 Despite this unrefuted evidence, the Governor concludes, again without factual support
4 in the record, that while Mr. Sirhan “has made some efforts to improve himself, ... the record
5 evidence shows that he has not internalized his rehabilitation programming sufficiently to
6 reduce his risk of dangerousness.” (Gov. Dec., Exh. A, p. 7.) There is nothing in the record
7 that supports the Governor’s claim. In fact, the record evidence demonstrates the opposite.
8 (See this Brief, pp. 5-8, pp. 21-22). For Mr. Newsom to ignore the factual record and draw
9 conclusions without accurate factual foundation is a violation of Mr. Sirhan’s due process.

10 The Governor states he duly considered Mr. Sirhan’s “subsequent growth and increased
11 maturity” as is required by California law (Pen. Code §§3051, 4801(c).) However, the
12 Governor’s decision not only entirely fails to consider Dr. Williamson’s opinion about Mr.
13 Sirhan’s growth and development as compared to the immature youthful offender he was 53
14 years ago, it ignores the repeated conclusions of CDCR psychologists who have concluded
15 that Mr. Sirhan has gained the appropriate insight into the causative factors contributing to his
16 crime – a demonstration of growth and maturity that must be considered. (Pen. Code §§3051
17 and 4801(c).) As our State Supreme Court reminds us:

18 “In cases where psychological evaluations consistently indicate that an
19 inmate poses a low risk of danger to society, a contrary conclusion must
20 be based on more than a hunch or mere belief that he should gain more
21 insight into his past behavior. The [deciding body] must point to evidence
22 from which it is reasonable to infer that the inmate's lack of insight reveals
a danger undetected or underestimated in the psychological reports.”

23 (*In re Shaputis* (2011) 53 Cal.4th 192, 228 (*Shaputis II*) (conc. opn. of Liu, J.); see also *In re*
24 *Young* (2012) 204 Cal. App. 4th 288, 312; *In re Shelton* (2020) 53 Cal. App. 5th 650, 671.)
25 Penal Code section 4801(c) and 3051 require a comparison of youth-related traits to the person
26 the prisoner has become many years later. The Governor’s decision illustrates a hollow
27 conclusion without such analysis.

28 Moreover, in asserting that Mr. Sirhan has not done the work necessary to reduce his
risk of future danger, (See Gov. Dec., Exh. A, p. 7), the Governor erroneously and
impermissibly shifts the burden to Mr. Sirhan to prove he will not be a danger in the future.

1 However, that is an incorrect legal standard. Current dangerousness is the relevant inquiry (a
2 concept the Board properly understood when it stated that California is a presumptive state,
3 requiring a grant of parole unless the record evidence establishes current dangerousness. (Ex.
4 B, Parole Hearing, p. 159).). Statutory and case law dictate that parole shall be granted unless
5 the prisoner poses a current danger to public safety. (15 Cal. Code of Reg. §2402(a); *In re*
6 *Ross, supra*, 170 Cal. App. 4th 1490, 1502.) It must be emphasized again that parole is the
7 norm. Parole can only legally be denied if there is a finding of current dangerousness. (*In re*
8 *Lawrence, supra*, 1191.) And, such a finding must be supported by the factual record and the
9 opinions of experts and not upon conclusions lacking a factual basis. Assuming future
10 dangerousness and seeking support in the record to show the prisoner is *not* dangerous in order
11 to overcome a presumption of dangerousness is an impermissible application of the law, and
12 an impermissible burden shift onto the prisoner, and it violates due process.

13 The Governor similarly fails to acknowledge Mr. Sirhan's particular mental conditions
14 at the time of the crime, that together with his youth, made him even more susceptible to
15 committing his crime. Dr. Williamson diagnosed Mr. Sirhan with complex PTSD.
16 Symptoms include emotional regulation deficits and dissociative states. (Ex. D, Dr.
17 Williamson's Report, p. 15.) Dr. Williamson explains that Mr. Sirhan had not received mental
18 health treatment for his condition until his admission into CDCR.²¹ Dr. Williamson described
19 Mr. Sirhan's likely mental state at the time of the commission of his crime thusly:

20 "Although Mr. Sirhan was no longer living as a refugee in a war-torn
21 country, his trauma symptoms appeared to be triggered by viewing
22 newscasts on the Arab-Israeli war. His mother and brother recalled him
23 clenching his fists and staring off into space with an anguished facial
expression in the same manner he did in childhood during bombings."

24 (Ex. D, Dr. Williamson's Report, p. 15.) She opines that the news of the Jewish parade, which
25 was celebrating the outcome of the 6-day war with the Arabs²², combined with Robert

26
27 ²¹ While in the custody of CDCR, Mr. Sirhan has undergone extensive mental health treatment
28 and attended a myriad of self-help programs designed to assist in awareness and self-
regulation. The Governor failed to give due consideration to this "subsequent growth and
increased maturity" as he is required to do.

²² The June 5- 10, 1967 conflict resulted in the deaths of over 20,000 Arab troops and only less
than 1000 Israeli troops. ([https://en.m.wikipedia.org:Six-Day War](https://en.m.wikipedia.org:Six-Day_War)). Moreover, Mr. Sirhan, as a
young child, along with thousands of other Arabs, was physically run out of his home and
village in what the United Nations in 1971 called "the most serious violation of human rights

1 Kennedy's campaign pledge to further assist Israel militarily, could have triggered PTSD
2 response. She further explained:

3 Individuals with PTSD have been found to respond to perceived threats
4 more reactively than those without PTSD. In fact, structural changes
5 to the brain caused by long-term stress can cause a heightened response.
6 The most significant neurological impact of trauma can be seen in the considerably
7 decreased volume of the hippocampus. The hippocampus is
8 responsible for memory functions and aids in recording new memories
9 and retrieving them later in response to environmental stimuli. The hippo-
10 campus also assists in distinguishing between past and present memories. Therefore,
11 people with PTSD often lose the ability to discriminate between
12 past and present experiences or correctly interpret environmental contexts.
13 The involved neural mechanisms trigger extreme stress responses when confronted with
14 situations that simulate their traumatic past.
15 Meaning, an individual with PTSD can often misperceive interactions and mistakenly
16 interpret them as aggression. Additionally, individuals with
17 PTSD have been found to have a hyper-reactive amygdala and a less
18 activated prefrontal cortex (PFC). This means that people with PTSD
19 have less control, over-reactive anger, and impulsive behaviors when
20 emotionally triggered.

21 (Dr. Williamson's Report, p. 16.)

22 Dr. Williamson opined that the reaction Sirhan would have to hearing news about the
23 middle east conflict, as described by his mother and his brother, is a state of dissociation. She
24 declared that these states are associated with, of note, disruption of memory, awareness, sense
25 of identity and perception. In situations of chronic trauma, "the reliance on disassociation is
26 adaptive because it reduces the unbearable distress." (Dr. Williamson's Report, pp. 15-16.) Dr.
27 Williamson continues and opines that "[t]hese dissociative states may also be responsible for
28 Mr. Sirhan's notebook writings and his inability to recall specific facts of the case. The intense
arousal associated with trauma interferes with the ability to process and encode memory." (*Id.*,
p. 16.) Yet the Governor fails to consider this information when evaluating Mr. Sirhan's
subsequent growth and maturation. A fair consideration of the youthful offender mitigation
reveals the professional opinion that Mr. Sirhan's behavior at the time of the crime "is

that has come to its attention." (https://en.wikipedia.org/wiki/1967_Palestinian_exodus) In the
end, the Zionist occupation led to the demolition of over 400 Arab villages. (*Ibid.*)

1 consistent with an individual suffering from complex PTSD” whose dissociative states cause
2 memory and awareness deficits.

3 Because the Governor failed to appropriately consider youthful offender mitigation, not
4 only does it render the factors meaningless, but it denied due process for Mr. Sirhan, thus
5 requiring reversal of the Governor’s decision.

6
7 **G.**

8 **The Governor Deprived Mr. Sirhan of Federal and State Due Process**
9 **when he Failed to Recuse himself from the Decision in this Case**

10 The Governor additionally deprived Mr. Sirhan of a fundamentally fair hearing when
11 he failed to recuse himself from a matter on which he has repeatedly expressed an opinion
12 even before faced with the issue of Mr. Sirhan’s parole. He has often publicly referred to
13 Robert Kennedy as his “political hero”, and has described the “Robert Kennedy Shrine” he
14 had assembled in his home. Moreover, on September 15, 2021, he publicly announced that he
15 was “leaning against” parole; and on another occasion, he stated that while he believed in
16 redemption, Mr. Sirhan stole a lot of American dreams. He added that if Ethel Kennedy were
17 to contact him, that would weigh heavily on the decision.²³ These statements were made
18 prior to him even formally receiving Mr. Sirhan’s matter after the Board found him suitable
19 for release.²⁴

20 Due process required, given the Governor’s notorious affinity towards Mr. Sirhan’s
21 victim, that the Governor recuse himself from presiding over the decision on Mr. Sirhan’s
22 release. His failure to do so requires reversal of the Governor’s decision. “Impartiality”
23 entails the “absence of bias or prejudice in favor of, or against, particular parties or classes of
24 parties, as well as maintenance of an open mind.” (ABA Model Code Jud. Conduct (2007),
25 Terminology, at p. 4.) In the context of judicial recusal, “[p]otential bias and prejudice must

26
27 ²³ [https://apnews.com/article/sirhan-sirhan-middle-east-california-gavin-newsom-](https://apnews.com/article/sirhan-sirhan-middle-east-california-gavin-newsom-o8ab1b7dc92f58c78c2645c436311ba4)
28 [o8ab1b7dc92f58c78c2645c436311ba4](https://news.yahoo.com/gov-newsom-ethel-kennedy-opinion-181829284.html?guccounter=1&guce_referrer=aHR0cHM6Lv93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AOAAAGBtM67kc67XPnSJDTvYwGom6Y3SvHgYzfz3Gbv1ZrRnUsOPBOVro55h9iGixar5rO7J6fV1Li0av12BzO8Xb9K6HPAfZXiD7gipUecPuf-UZXQx7DypUuloi_v3eWwphrCaK2xAe2YCD0seK2CmYaqLb-J1dophYgaqw56WvX); and [https://news.yahoo.com/gov-newsom-ethel-](https://news.yahoo.com/gov-newsom-ethel-kennedy-opinion-181829284.html?guccounter=1&guce_referrer=aHR0cHM6Lv93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AOAAAGBtM67kc67XPnSJDTvYwGom6Y3SvHgYzfz3Gbv1ZrRnUsOPBOVro55h9iGixar5rO7J6fV1Li0av12BzO8Xb9K6HPAfZXiD7gipUecPuf-UZXQx7DypUuloi_v3eWwphrCaK2xAe2YCD0seK2CmYaqLb-J1dophYgaqw56WvX)
[kennedy-opinion-](https://news.yahoo.com/gov-newsom-ethel-kennedy-opinion-181829284.html?guccounter=1&guce_referrer=aHR0cHM6Lv93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AOAAAGBtM67kc67XPnSJDTvYwGom6Y3SvHgYzfz3Gbv1ZrRnUsOPBOVro55h9iGixar5rO7J6fV1Li0av12BzO8Xb9K6HPAfZXiD7gipUecPuf-UZXQx7DypUuloi_v3eWwphrCaK2xAe2YCD0seK2CmYaqLb-J1dophYgaqw56WvX)
[181829284.html?guccounter=1&guce_referrer=aHR0cHM6Lv93d3cuZ29vZ2xlLmNvbS8](https://news.yahoo.com/gov-newsom-ethel-kennedy-opinion-181829284.html?guccounter=1&guce_referrer=aHR0cHM6Lv93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AOAAAGBtM67kc67XPnSJDTvYwGom6Y3SvHgYzfz3Gbv1ZrRnUsOPBOVro55h9iGixar5rO7J6fV1Li0av12BzO8Xb9K6HPAfZXiD7gipUecPuf-UZXQx7DypUuloi_v3eWwphrCaK2xAe2YCD0seK2CmYaqLb-J1dophYgaqw56WvX)
[&guce_referrer_sig=AOAAAGBtM67kc67XPnSJDTvYwGom6Y3SvHgYzfz3Gbv1ZrR](https://news.yahoo.com/gov-newsom-ethel-kennedy-opinion-181829284.html?guccounter=1&guce_referrer=aHR0cHM6Lv93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AOAAAGBtM67kc67XPnSJDTvYwGom6Y3SvHgYzfz3Gbv1ZrRnUsOPBOVro55h9iGixar5rO7J6fV1Li0av12BzO8Xb9K6HPAfZXiD7gipUecPuf-UZXQx7DypUuloi_v3eWwphrCaK2xAe2YCD0seK2CmYaqLb-J1dophYgaqw56WvX)
[nUsOPBOVro55h9iGixar5rO7J6fV1Li0av12BzO8Xb9K6HPAfZXiD7gipUecPuf-](https://news.yahoo.com/gov-newsom-ethel-kennedy-opinion-181829284.html?guccounter=1&guce_referrer=aHR0cHM6Lv93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AOAAAGBtM67kc67XPnSJDTvYwGom6Y3SvHgYzfz3Gbv1ZrRnUsOPBOVro55h9iGixar5rO7J6fV1Li0av12BzO8Xb9K6HPAfZXiD7gipUecPuf-UZXQx7DypUuloi_v3eWwphrCaK2xAe2YCD0seK2CmYaqLb-J1dophYgaqw56WvX)
[UZXQx7DypUuloi_v3eWwphrCaK2xAe2YCD0seK2CmYaqLb-J1dophYgaqw56WvX](https://news.yahoo.com/gov-newsom-ethel-kennedy-opinion-181829284.html?guccounter=1&guce_referrer=aHR0cHM6Lv93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AOAAAGBtM67kc67XPnSJDTvYwGom6Y3SvHgYzfz3Gbv1ZrRnUsOPBOVro55h9iGixar5rO7J6fV1Li0av12BzO8Xb9K6HPAfZXiD7gipUecPuf-UZXQx7DypUuloi_v3eWwphrCaK2xAe2YCD0seK2CmYaqLb-J1dophYgaqw56WvX)

²⁴ See fn 3.

1 clearly be established by an objective standard.” (*People v. Chatman* (2006) 38 Cal.4th 344,
2 363, 42 Cal.Rptr.3d 621, 133 P.3d 534; see *In re Scott* (2003) 29 Cal.4th 783, 817, 129
3 Cal.Rptr.2d 605, 61 P.3d 402); *Haworth v. Superior Court of Los Angeles Cnty.*, (2010) 50
4 Cal. 4th 372.) Here, clearly, the Governor has a clear, articulated bias in favor of Robert
5 Kennedy, the victim.

6 Recusal of a decision maker in the context of any matter before a bench officer is
7 codified in Code of Civil Procedure section 170.1. Generally, recusal is based on the concept
8 of fundamental fairness a party should be able to remove a Judge if “[a] person aware of the
9 facts might reasonably entertain a doubt that the judge would be able to be impartial” (§ 170.1,
10 subd. (a)(6)(A)(iii)) involves sensitive considerations that strike at the “core” of our system of
11 justice — “the appearance of objectivity of the decision maker” — and require a careful
12 balancing of affected interests. (*United Farm Workers of America v. Superior Court* (1985)
13 170 Cal.App.3d 97, 100 (*United Farm Workers*).) These interests include “the public’s right to
14 be assured of the fair, but yet efficient, resolution of disputes” on one hand and “the parties’
15 right to a decision based upon the court’s objective evaluation of the facts and law” on the
16 other. (*Ibid.*)...” *United Farm Workers, Id.*)

17 While *United Farm Workers*, above, involved the disqualification of a trial judge, the
18 concepts articulated, to wit, “objectivity of the decision maker” and the “parties right to a
19 decision based upon the court’s objective evaluation of the facts and law” are equally – if not
20 more - applicable to the need for the Governor to be an objective arbiter regarding the
21 granting or denial of parole for a life prisoner.

22 Because Governor Newsom publicly stated his pre-disposition to reject the Board’s
23 recommendation of parole for Mr. Sirhan, stated that the victim was his childhood idol, and
24 because he made such statements about the outcome before even reading the Board record, he
25 evidenced a clear bias against Mr. Sirhan and in favor of the victim and / or his family. Due
26 process cannot stand for this.

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1 II.
2 THE GOVERNOR ABUSED HIS DISCRETION UNDER STATE LAW
3 WHEN HE FOUND THAT MR. SIRHAN CURRENTLY POSES AN
4 UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY BECAUSE HE
5 FAILED TO ASSESS MR. SIRHAN'S OVERALL
6 CIRCUMSTANCES UNDER THE PROPER LEGAL STANDARDS

7 A.
8 The Standard of Review: Independent Finding of
9 "Some Evidence" of Current Dangerousness

10 A parole decision by the Governor must be based on the same factors the Board is
11 required to consider. Constitutional due process requires that the decision be supported by
12 "some evidence" in the record. (*In re Shaputis, supra*, 53 Cal.4th at 221 (*Shaputis II*); *In re*
13 *Rosenkrantz, supra*, 29 Cal.4th at pp. at pp. 676–677.) Although the precise manner in which
14 the Governor balances the relevant factors lies within the Governor's discretion, "the decision
15 must reflect an individualized consideration of the specified criteria and cannot be arbitrary or
16 capricious." (*Ibid.*) "[T]he aggravated nature of the crime does not in and of itself provide
17 some evidence of current dangerousness to the public unless the record also establishes that
18 something in the prisoner's pre or post incarceration history, or his or her current demeanor
19 and mental state, indicates that the implications regarding the prisoner's dangerousness that
20 derive from his or her commission of the commitment offense remain probative to the
21 statutory determination of a continuing threat to public safety." (*In re Lawrence, supra*, 44
22 Cal.4th at p. 1214.) On review of a challenged reversal of the Board's recommendation for
23 release, courts independently review the entire record to determine "whether the identified
24 facts are probative to the central issue of current dangerousness when considered in light of the
25 full record before . . . the Governor." (*In re Lawrence*, at p. 1221.) To meet this standard of
26 review, the Governor's decision must establish a nexus between the suitability factor and the
27 finding of current dangerousness that is based on an application of the proper legal standard to
28 an accurate interpretation of the material facts. (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 677;
In re Lawrence, supra, 44 Cal.4th at p. 1204; *In re Shaputis, supra*, 44 Cal.4th at 1260–1261
(*Shaputis I*); *In re Stonerod, supra*, 215 Cal.App.4th at p. 616.) Thus, "[t]he proper

1 articulation of the standard of review is whether there exists ‘some evidence’ demonstrating
2 that an inmate poses a current threat to public safety, rather than merely some evidence
3 suggesting the existence of a statutory factor of unsuitability.” (*In re Lawrence*, *supra*, 44
4 Cal.4th at p. 1191; *Shaputis II*, *supra*, 53 Cal.4th at p. 209.) The Governor’s decision is
5 subject to reversal if it “does not reflect due consideration of all relevant statutory and
6 regulatory factors or is not supported by a modicum of evidence in the record rationally
7 indicative of current dangerousness, not mere guesswork.” (*Ibid.*) The “some evidence”
8 standard is violated if the Governor merely proves the existence of a statutory factor of
9 unsuitability without balancing that factor against the conclusion of a current unreasonable risk
10 of danger. *Ibid.*

11 In *In re Lawrence*, the California Supreme Court reversed the governor’s decision to
12 override his Board in its recommendation for parole because the governor had improperly
13 relied on the facts and circumstances of the crime itself to find that the prisoner/petitioner
14 remained a current danger to the public. Concluding that both the Board and the Governor are
15 bound by the confines of due process and statutory law, the California Supreme Court set aside
16 the governor’s decision because relying on the facts of the crime and simultaneously ignoring
17 evidence of the prisoner’s rehabilitation, insight, remorse and psychological health did not
18 comport with the due process and statutory rights to meaningful consideration for parole. It
19 explained that the “statutory and regulatory mandate to normally grant parole to life prisoners
20 who have committed murder means that, particularly after these prisoners have served their
21 suggested base terms, the underlying circumstances of the commitment offense alone rarely
22 will provide a valid basis for denying parole when there is strong evidence of rehabilitation
23 and no other evidence of current dangerousness.” (*Id.*, at 1211.)

24 Current dangerousness is the relevant inquiry by the Board. Statutory and case law
25 dictate that parole shall be granted *unless* the prisoner poses a *current* danger to public safety.
26 (15 Calif. Code of Regs., Sec 2402(a); *In re Ross* (2009) 170 Cal. App. 4th 1490, 1502.) And
27 due process is violated if parole is denied through simple identification of the existence or
28 non-existence of suitability or non-suitability factors. The California Supreme Court reminds
us: “It is not the existence or nonexistence of suitability or unsuitability factors that forms the

1 crux of the parole decision; the significant circumstance is how those factors interrelate to
2 support a conclusion of current dangerousness to the public.” (*Lawrence, supra*, at 1213.)

3 The Governor’s decision cites what it considered non-suitability factors (albeit, these
4 are wrongly construed or outright non-existent, see *supra*) but fails to provide the relationship
5 between those perceived factors and current dangerousness. Instead, the Governor simply
6 concludes these factors equate to unsuitability for release. But denying parole on a hunch that
7 non-suitability factors exist that equate to a finding of a current unreasonable risk to the public
8 violates due process. As our State Supreme Court reminds us:

9 “In cases where psychological evaluations consistently indicate that an
10 inmate poses a low risk of danger to society, a contrary conclusion must
11 be based on more than a hunch or mere belief that he should gain more
12 insight into his past behavior. The [deciding body] must point to evidence
13 from which it is reasonable to infer that the inmate’s lack of insight reveals
14 a danger undetected or underestimated in the psychological reports.”

15 (*In re Shaputis* (2011) 53 Cal.4th 192, 228 (*Shaputis II*) (conc. opn. of Liu, J.); see also *In re*
16 *Young* (2012) 204 Cal. App. 4th 288, 312; *In re Shelton* (2020) 53 Cal. App. 5th 650, 671.)

17 After 53 years in prison, with the last 49 years demonstrating an unblemished record of
18 institutional programming, rehabilitation, and psychological treatment, the Governor’s ill-
19 supported denial exceeded the limits of his legal discretion and must be reversed. It also
20 violated Mr. Sirhan’s rights of due process under the state and federal constitutions. (U.S.
21 Const., 5th & 14th Amends.; *Estelle v. McGuire* (1991) 502 U.S. 62; Cal. Const., art. 1, § 7,
22 subd. (a) *In re Lawrence* (2008) 44 Cal.4th 1181, 1192-1193.)

23 B.

24 The Governing Legal Framework

25 The California Supreme Court’s 2008 decision in *In re Lawrence, supra*, 44 Cal.4th
26 1181, provides the foundational legal framework for the standard of proof in parole decisions.
27 The high court in *Lawrence* reversed the Governor’s finding that Ms. Lawrence was not
28 suitable for parole on the ground that “some evidence” did not support the Governor’s
determination that Ms. Lawrence currently posed an unreasonable risk of danger to public
safety. (*In re Lawrence, supra*, 44 Cal.4th at p. 1191.) The defendant in *Lawrence* shot her

lover's wife four times then stabbed the wife to death with a potato peeler after becoming enraged when the husband ended his extra martial affair with the defendant. After committing the murder, the defendant told her family the murder was a birthday present to herself, then fled the state. (*Id.*, at p. 1193.) Eleven years later, the defendant voluntarily returned to California and surrendered herself to the authorities, but denied involvement in the murder. In 1983, she was convicted of first-degree murder and sentenced to an indeterminate life sentence. (*Id.*, at p. 1190.) Like Mr. Sirhan, Ms. Lawrence received a number of positive psychological evaluations. For her, it was during the last decade of her incarceration. (*Id.*, at p. 1195.) For Mr. Sirhan it has been since the mid-1980's. Also like Mr. Sirhan, Ms. Lawrence remained free of serious discipline violations throughout her incarceration and contributed to the prison community in a variety of ways. She participated in many educational groups and earned college degrees in prison. (*Id.*, at p. 1194.) Just as Mr. Sirhan did. Mr. Sirhan obtained his AA degree, graduating *magna cum laud* with a 4.0 GPA; he presided over self-help groups, including AA's; he consistently worked whenever work was available. Moreover, to augment his decades-long record of positive programming, Mr. Sirhan rigorously pursued Cognitive Behavior Therapy programs grounded in data that is verified to reduce California's recidivism rate by half; thereby proving to the Board and Californians he is prepared and eager to be a positive part of society.²⁵

In *Lawrence*, the Governor reversed Ms. Lawrence's grant of parole, just as in Sirhan's case. In reinstating the Board's decision, the Supreme Court in *Lawrence* found the Governor's decision was unsupported by the evidence or proper legal standard. The Governor in *Lawrence* based his decision primarily on the gravity of the commitment evidence, with the

²⁵ During the pandemic when correctional facilities essentially ceased all programming, Mr. Sirhan pursued outside rehabilitative assistance through Redemption Row California. The Executive Director and Chief Psychologist Jen Abreu and her partner Dr. Mohamed Elnakib, Psy.D provided extraordinary rehabilitative programming for Mr. Sirhan that specifically focused on insight, empathy, and self-awareness that was tailored specifically to his unique long-term confinement. The Board appropriately recognized and commended Mr. Sirhan for continuing with his rehabilitative work during the pandemic when many other prisoners used the pandemic shut-down of programming as an excuse to take a break from self-improvement. (Comm'r Barton's comment, 2021 Parole Hearing, p. 15.)

1 contributing factors of Ms. Lawrence's initial lack of remorse, early negative psychological
2 evaluations, and eight counseling "chronos" for minor prison violations. (*Id.*, at p. 1199) In
3 analyzing these factors, the Supreme Court found that, though each factor was historically
4 true, none of the factors applied to Ms. Lawrence's current behavior, nor had the Governor
5 cited a nexus between the historic factors and Ms. Lawrence's current circumstances. The
6 Supreme Court held that a finding of parole unsuitability requires proof that the inmate
7 currently poses an unreasonable risk of danger to public safety. (*Id.*, at p. 1191.) *Lawrence*
8 established that the relevant inquiry in parole decisions is, "whether the circumstances of the
9 commitment offense, when considered in light of other facts in the record, are such that they
10 continue to be predictive of current dangerousness many years after the commission of the
11 offense." (*Id.*, at p. 1235.) This inquiry is an "individualized one, and cannot be undertaken
12 simply by examining the circumstances of the crime in isolation, without consideration of the
13 passage of time" or other mitigating factors. (*Ibid.*)

14 The *Lawrence* Court found Ms. Lawrence suitable for parole even though she
15 shot her lover's wife and stabbed her to death with a vegetable peeler, after which
16 she characterized the murder as a birthday present to herself. Psychological
17 evaluations found her to be mildly psychotic, and that she initially showed no
18 remorse for the murder. (*Id.*, at p. 1199.) The Court found that the factors relied
19 upon by the Governor in denying parole were overcome by Ms. Lawrence's record of
20 rehabilitation in prison. (*Ibid.*) The legal standard applied to Ms. Lawrence proves
21 Mr. Sirhan too is suitable for parole because he currently does not pose an
22 unreasonable risk of danger to public safety.

23 C.

24 None of the Factors Cited by the Governor Prove Mr. Sirhan 25 Currently Poses an Unreasonable Risk of Danger

26 In assessing Mr. Sirhan's suitability for parole, the Governor was
27 required to go beyond the question of whether some evidence supported the
28 unsuitability factors he cited. The governing legal standard compelled him to
decide if some evidence supported the core determination of whether Mr. Sirhan's release on
parole would unreasonably endanger public safety. (*In re Lawrence, supra*, at p. 1209, italics)

1 added.) Citing character flaws is not enough. There must be a stated and proven nexus
2 between perceived non-suitability factors and current dangerousness. Otherwise, the
3 dangerousness finding is arbitrary and capricious, a hunch. The Governor's decision fails to
4 meet the required standard.

5 1. Gravity of the commitment offense

6 A primary reason for reversing Mr. Sirhan's recommendation for parole is the gravity
7 of the commitment offense. (Governor's Decision, Exh. A.) However, immutable historic
8 facts, such as egregious details of the commitment offense, lose their predictive value over
9 time because they do not account for the inmate's intervening reform. (*In re Lawrence, supra*,
10 44 Cal.4th at p. 1191.) Where the record is replete with evidence establishing an inmate's
11 rehabilitation, remorse, and current psychological health, balanced against a record devoid of
12 evidence that the inmate currently poses a threat to public safety, the inmate's due process
13 rights are violated by relying on immutable and unchangeable circumstances in denying a
14 grant of parole. (*Id.* at p. 1227.) The parole decision does not depend upon whether the
15 commitment offense was an exceptionally brutal murder. The Supreme Court has repeatedly
16 established that "the determination of whether an inmate poses a current danger is not
17 dependent upon whether his or her commitment offense is more or less egregious than other,
18 similar crimes. (*Id.*, at p. 1221; *In re Dannenberg, supra*, 34 Cal.4th at pp. 1083-1084, 1095;
19 see *In re Shaputis, supra*, 44 Cal.4th at p. 1254.) "Focus upon whether a petitioner's crime was
20 'particularly egregious' in comparison to other murders in other cases is not called for by the
21 statutes, which contemplate an individualized assessment of an inmate's suitability for parole .
22" (*In re Lawrence, supra*, 44 Cal.4th at p. 1217.) The determination of current
23 dangerousness does not depend "upon whether the circumstances of the offense exhibit
24 viciousness above the minimum elements required for conviction of that offense." (*In re*
25 *Shaputis, supra*, 44 Cal.4th at p. 1254.) All murders are egregious crimes involving extreme
26 violence. This does not preclude parole where the defendant is sentenced to an indeterminate
27 life term. In fact, the law presumes release of prisoners sentenced to indeterminate life
28 sentences. The presumption of parole can only be overcome with a legal finding of current
dangerousness. And that is why many individuals convicted of egregious murders have been
found suitable under the legal standard that they no longer pose an unreasonable risk of danger

1 to public safety. (See, e.g., *In re Dannenberg* (2005) 34 Cal.4th 1061, 1069; *In re Dannenberg*
2 (2009) 173 Cal.App.4th 237, 241; *In re MacDonald* (2010) 189 Cal. App.4th 1008, 1013-
3 1017; *In re Moses* (2010) 182 Cal.App.4th 1279, 1285-1286; *In re Twinn* (2010) 190
4 Cal.App.4th 447, 452.)

5 Mr. Sirhan's conviction charge of the murder of Senator Kennedy more than 50 years
6 ago is an immutable fact he can never change, regardless of the amount of rehabilitation or
7 positive programming he has accomplished. The Supreme Court in *Lawrence* acknowledged
8 that, "in rare circumstances, the aggravated nature of the crime alone can provide a valid basis
9 for denying parole, even when there is strong evidence of rehabilitation and no other evidence
10 of current dangerousness." (*Ibid.*) But, the Court continued by explaining that the gravity of
11 the commitment offense, as an immutable and unchangeable circumstance, must have a nexus
12 between the elevated circumstances of the commitment murder and the inmate's current
13 circumstances in order for it to support a conclusion that those same factors are present in the
14 inmate's current behavior. (*In re Lawrence, supra*, at pp. 1181, 1221; *In re Stoneroad, supra*,
15 215 Cal.App.4th 596, 614, 617.) The result of *Lawrence* and its progeny is that the
16 aggravating nature of a crime can no longer provide evidence of current dangerousness "unless
17 there is also evidence that there is something about the commitment offense which suggests
18 the inmate still presents a threat to public safety." (*In re Denham* (2012) 211 Cal.App.4th 702,
19 715, citing *In re Lawrence, supra*, at p. 1214; *In re Stoneroad, supra*, 215 Cal.App.4th at p.
20 621.) Since *Lawrence*, no published case has found that a rehabilitated inmate remains
21 unsuitable for parole based solely on the gravity of a commitment murder. In the instant
22 matter, the Parole Board considered the enormous gravity of Mr. Sirhan's offenses, but still
23 concluded Mr. Sirhan was not a current danger because of the plethora of mitigation in his
24 record that included over 49 years of good behavior and positive programming, no prior or
25 subsequent criminal record, adequate treatment for substance abuse, impressive awareness of
26 causative factors (See Ex. B, Parole Hearing, p. 169) and "those things that show you've gone
27 beyond that. And the fact that you were willing to step in, assist an officer when he was in
28 potential danger and that officer wrote of that".²⁶ (*Id.*, p. 169, lines 8-10.) The Board noted

²⁶ In fact, what the correctional described in his letter to the Board is Mr. Sirhan and another

1 that even though this crime was atrocious and Mr. Sirhan's acceptance of responsibility is "not
2 perfect", those things were "overwhelmingly outweighed by the factors in mitigation." (*Id.*, p.
3 162.) In other words, the Board found no nexus between Mr. Sirhan's commitment offense
4 and his current risk of danger. According to the Board, Sirhan's many years of positive reform
5 purged his risk factors from the person he is today.

6
7 2. The Inaptly Described "Shifting Narrative" of the Crime and the Governor's
8 Conclusion it Demonstrates Lack of Insight; the Governor's Unsupported Conclusion that Mr.
9 Sirhan has Failed to Denounce Violence; and the Governor's Erroneous Conclusion that Mr.
Sirhan Does Not Possess Appropriate Coping Skills

10 The Governor abused his discretion in reversing his Board's recommendation for
11 release on parole. The so-called "shifting narrative", bolstered in the Governor's decision with
12 non-existent facts, is unsupported by the record evidence. (Discussed *supra*, Memorandum of
13 Points and Authorities, Part ID2, pp. 19-27.) Moreover, the Governor's conclusion that Mr.
14 Sirhan has failed to denounce violence is unsupported and contrary to the factual record.

15 Finally, the Governor's conclusion that Mr. Sirhan lacks appropriate insight and
16 remorse is not only unsupported in the record, but it contradicts numerous trained
17 professionals who personally evaluated Mr. Sirhan. (See Statement of Facts, this Brief, Parts B
18 and C , *supra*.) The irrefutable facts are that as early as 1985, Sirhan expressed he learned
19 from his crime and "lives with it every day". He explained he matured and had time to reflect
20 on the value of human life. In 1989, he said he had "feelings of shame and inward guilt...it
21 really a haunting experience and I honestly feel the pain that they [the Kennedys] may have
22 gone through." In 1990 a Psychological evaluator stated that he expressed "extreme remorse".
23 In Parole hearings he showed sympathy, sadness, and humility and acknowledged he prays for
24 the Kennedys regularly. Further, the Governor discounts the recent deep remorse and
25 compassion he showed to Mr. Robert Kennedy Jr. and the Kennedy family during an in-person
26 meeting. Further, the Governor disregards the opinion of Paul Schrade, a direct victim of Mr.

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inmate assisted him in restraining two other inmates who had been fighting each other. The
correctional officer wrote: "I feel that without the assistance of Inmate [X] and Inmate Sirhan
B-21014 holding Inmate [X] back, I would have been jeopardized physically."

1 Sirhan's crime, and the opinion of Douglas Kennedy who attended the 2021 parole hearing
2 (discussed *supra*.)

3
4 **D.**

5 **Other Factors Leading to an Abuse of Discretion**

6 The Governor's outright failure to consider Penal Code section 3055 (elderly prisoner
7 parole); his failure to properly consider youthful offender mitigation (Pen. Code §§ 3051 and
8 4801(c)); his recitation of and reliance on fake facts; his misconstruction of the record; and his
9 impermissible shifting of the burden to Mr. Sirhan *to prove lack of dangerousness* (see
10 Discussion of all, *supra*) all contribute to an abuse of discretion warranting reversal of the
11 Governor's decision to deny parole.

12 **E.**

13 **The Record Evidence Does not Establish That Mr. Sirhan Poses a Current**
14 **Unreasonable Risk of Danger; thus He Meets the Standard for Parole Suitability**

15 It is to be recalled, that parole is the norm and it is presumed. Parole will only be
16 denied if there is evidence of current dangerousness. The prisoner need not prove that he is
17 *not* dangerous; the record evidence must affirmatively establish that he *is* currently
18 dangerousness.

19 Since 1972, Mr. Sirhan has not received a single serious rules violation. He is
20 described by current correctional officers as a "prosocial individual who follows directions and
21 avoids problems and problem inmates and displays no anger or loss of temper." (Board
22 Hearing, p. 168.) He has continued to do everything expected of him.

23 For instance, in the 1985 denial of parole, the Board recommended that Mr. Sirhan
24 remain discipline-free, upgrade his vocational abilities and education; participate in self-help
25 therapy and cooperate with clinicians for a transfer to "Category X [psychiatric treatment]
26 Program". Mr. Sirhan has continued to remain discipline free; he has continued to engage in
27 self-help and educational training when it has been available to him; he has continued to have
28 exceptional work performance, being described as a "reliable, productive, excellent worker".
(1987 Parole Hearing, pp. 38-39.) Mr. Sirhan not only regularly attended AA meetings, he
facilitated the meetings as the group leader and was inspiration to the others in the group.

1 (1990 Parole Hearing, pp. 26-27.) He obtained his AA degree and graduated with the
2 distinguished honor of *magna cum laud*. He also completed the Category X Psychological
3 program as directed. Sirhan involves himself in pro-social, positive programming with his
4 peers as well as community groups in society. He has been involved with developing a
5 curriculum that will be used to assist Lifer's and LWOP community which has academic merit
6 through various professors in the University of California system and mental health
7 professionals. He has collaborated with other incarcerated individuals on written works that
8 are pending publishing which center around remorse and insight. Sirhan continues to be an
9 active participant in religious activities by attending church services and involving himself in
10 faith-based programming. Sirhan has often tutored other inmates in various subjects who are
11 trying to obtain their GED. He maintains frequent contact through letter writing and phone
12 calls to his brother and outside support system.

13 Despite Mr. Sirhan's compliance with Board recommendations and Mr. Sirhan's stellar
14 record of rehabilitation, the Governor denied parole, defying his Board's recommendation and
15 ignoring the numerous and repeated CRAs assessing Mr. Sirhan at the lowest risk for violence.
16 The emerging message is that there is nothing that will satisfy the Governor – not low risk
17 assessments time after time, not discipline-free behavior for decades, not programming and
18 education, not a positive work history where he is commended by prison staff for being an
19 excellent worker who is respectful to staff and other inmates²⁷, not opinions by the trained
20 professionals who have evaluated him and concluded that he has demonstrated remorse and
21 understands the causative precedents to his crime, and not even doing exactly what the Parole
22 Board had recommended.

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25 ²⁷ Within the letters the Board received from current correctional officers were statements
26 from one that stated: "I found [Sirhan] to be very upright in his character and respectful in his
27 conduct with staff and with his peers, without any deviance. He is polite and well-spoken, and
28 he exemplifies the rare 'model inmate' description that staff wishes to see in the inmate
population." Additionally, this correctional officer opined that Sirhan "avoids conflict".
Another correctional officer who submitted a letter on Sirhan's behalf stated that Sirhan has a
"non-violent predisposition." In this correctional officer's opinion, "[Sirhan] has exhibited the
attributes of a rehabilitated individual." Yet another correctional officer submitted a letter to
the Board in support of Mr. Sirhan. This correctional officer stated: "I view this individual as
genuine in his conduct and in his attempts to rehabilitate himself. In my opinion, I believe this
inmate has demonstrated remorse and has dealt with his incarceration in a positive manner.
Mr. Sirhan has been a model inmate and I believe he would continue this if he should be

1 Given the ongoing discipline-free passage of time, the performance of positive
2 programming, and the participation in the Board's list of recommendations, it is becoming
3 clear that the real reason for the Governor's denial of parole is reliance on the crime itself – the
4 immutable and unchanging facts of the commitment offenses.

5 “[I]n some cases, indefinite detention based solely on an inmate's
6 commitment offense, regardless of the extent of his rehabilitation, will
7 at some point violate due process, given the liberty interest in parole that
8 flows from the relevant California statutes”.

9 (*Irons v. Carey* (9th Circ. 2007) 505 F.3d 846, at 854.) The Governor's denial of parole under
10 these particular circumstances results in an abuse of discretion and a denial of due process.
11 Mr. Sirhan's record does not support a genuine finding of unsuitability justifying denial of
12 parole. Accordingly, this Court should overrule that the Governor's decision to deny parole
13 and reinstate the Board's decision granting it.

14 III.

15 THE GOVERNOR'S DENIAL OF PAROLE VIOLATES THE EIGHTH 16 AMENDMENT'S PROHIBITION AGAINST CRUEL AND UNUSUAL 17 PUNISHMENT BY TURNING MR. SIRHAN'S INDETERMINATE 18 LIFE SENTENCE INTO A DE FACTO SENTENCE OF 19 LIFE WITHOUT THE POSSIBILITY OF PAROLE

20 The Governor's refusal to fairly apply the governing legal standard to Mr. Sirhan's
21 individualized circumstances constitutes the imposition of a de facto sentence of life without
22 the possibility of parole. The Governor lacks the authority to change Mr. Sirhan's
23 indeterminate life sentence, with a minimum service term of seven years, into a sentence
24 where he cannot satisfy the governor and obtain a meaningful chance at life outside of prison.
25 (See *In re Lynch* (1972) 8 Cal.3d 410, 414 [if claim of constitutionally excessive punishment
26 is properly presented, it is for the courts, “as coequal guardian[s] of the Constitution, to
27 condemn any violation of that prohibition”].)

28 In general, fixing appropriate penalties for crimes falls within the exclusive
province of the Legislature. (See, e.g., *People v. Ward* (2005) 36 Cal.4th 186, 218;

released from prison.”

1 *People v. Dillon* (1983) 34 Cal.3d 441, 478.) Sentences implicate sensitive questions
2 of policy and values that "are in the first instance for the judgment of the Legislature [or the
3 people] alone." (*In re Lynch, supra*, 8 Cal.3d at p. 414.) However, the legislative power to
4 craft punishments is subject to the constraints imposed by the state and federal Constitutions
5 against sentences that constitute cruel and unusual punishment. Defendants may rely on these
6 constitutional provisions to obtain relief from a sentence that was otherwise lawfully imposed.
7 (See *Hutto v. Davis* (1982) 454 U.S. 370, 374; *In re Dannenberg, supra*, 34 Cal.4th at p.
8 1071.) An inmate may challenge the minimum term established by a statute, "without regard
9 to the constitutionality vel non of the maximum." (*In re Lynch, supra*, 8 Cal.3d at p. 419, fn.
10 9.) Inmates also may challenge the constitutionality of the long years of imprisonment the
11 inmate has served. "Life-top inmates may test, in court, whether their continued punishment
12 violates the Constitution" based on the serial denial of parole. (*In re Palmer II, supra*, 10
13 Cal.5th at p. at 971.)

14 Mr. Sirhan's continued incarceration for more than 50 years based on a crime he
15 committed as a youthful offender, in which the Board has found him suitable for parole is
16 "shocking and offensive" within the meaning of the state and federal Constitutions. (U.S.
17 Const., 8th Amend; Cal. Const., art. I, § 17.)

18 The purpose of parole is to help inmates "reintegrate into society as
19 constructive individuals as soon as they are able, without being confined for the full
20 term of the sentence imposed." (*Morrissey v. Brewer* (1972) 408 U.S. 471, 477.) Mr. Sirhan
21 was sentenced to life with the possibility of parole after service of seven years. He has served
22 more than 53 years and has been found suitable for parole by the Governor's appointees. The
23 Governor's refusal to allow parole in Mr. Sirhan's case not only violates constitutional due
24 process and is an abuse of discretion, but it negates the importance of the vital role parole
25 serves in our system of criminal justice.

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1 IV.

2 **ALLOWING THE GOVERNOR, AS AN ELECTED OFFICIAL,**
3 **TO MAKE THE FINAL PAROLE DECISION IN MURDER CASES**
4 **VIOLATES EQUAL PROTECTION BY CREATING A DIFFERENT STANDARD**
5 **FOR PERSONS, LIKE MR. SIRHAN, WHO HAVE BEEN CONVICTED OF**
6 **CELEBRATED OR NOTORIOUS CRIMES**

7 A.

8 Summary of Argument

9 Since 1989, the California Constitution has given the Governor the authority to
10 reverse grants of parole in murders cases. (Cal. Const., art. V, subd.(b), § 8.). The
11 Governor, as an elected official, has an inherent conflict against approving parole for high
12 profile defendants, such as Mr. Sirhan, whose grant of parole may be unpopular with the
13 voting public. This results in an equal protection violation by creating a different parole
14 standard for inmates whose murder convictions arise from celebrated or notorious crimes.

15 Governor Newsom's parole reversal in Mr. Sirhan's case proves he did not act as an
16 impartial factfinder who applied the same legal standard in Mr. Sirhan's case. In his decision,
17 the Governor stated:

18 "Mr. Sirhan's assassination of Senator Kennedy is among the most
19 notorious crimes in American history. Senator Kennedy's murder caused
20 his family immeasurable suffering, including his pregnant wife, their ten
21 children, and the extended Kennedy family. Mr. Sirhan shot Senator
22 Kennedy in front of news cameras²⁸, which subjected the Kennedy family
23 and American public to a ubiquitous video loop of Senator Kennedy's
24 violent death and his wife's anguish at his side.

25 Mr. Sirhan's crimes also caused great harm to the American people. Senator
26 Kennedy's assassination upended the 1968 presidential election, leaving
27 millions in the United States and beyond mourning the promise of his
28 candidacy. Compounding the grief of the Kennedy family and the American
public, Mr. Sirhan killed Senator Kennedy during a dark season of political
assassinations, just nine weeks after Dr. Martin Luther King, Jr.'s murder
and four and a half years after the murder of Senator Kennedy's brother,
President John F. Kennedy.

(Governor's Decision, Exh. A, at p. 3.)

²⁸ See fn 12.

1 The Governor's characterization of the crime as "among the most notorious crimes in
2 American history", coupled with his recurrent public statement that Sirhan's victim is his hero
3 for whom he even dedicated a shrine of some sort in his home, and his conclusory statement
4 that despite Mr. Sirhan's record of rehabilitation, good behavior and programming, he "has
5 failed to develop the insight necessary to mitigate his current dangerousness" (Governor's
6 Decision, p. 10, Exhibit A) demonstrates that there is nothing Mr. Sirhan can do to obtain
7 parole from this governor. Accordingly, Mr. Sirhan and similarly situated inmates are
8 evaluated by a different parole legal standard than other inmates convicted of murder.

9
10 **B.**

11 **The Governor Violated Equal Protection by Evaluating Mr. Sirhan**
12 **Under a Different, Harsher, Standard for Granting Parole.**

13 Article V, section 8, subdivision (b) of the California Constitution states,

14 No decision of the parole authority of this State with
15 respect to the granting, denial, revocation, or suspension of
16 parole of a person sentenced to an indeterminate term upon
17 conviction of murder shall become effective for a period of
18 30 days, during which the Governor may review the
19 decision subject to procedures provided by statute. The
20 Governor may only affirm, modify, or reverse the decision
21 of the parole authority on the basis of the same factors which
the parole authority is required to consider. The Governor
shall report to the Legislature each parole decision
affirmed, modified, or reversed, stating the pertinent facts
and reasons for the action.

22 The statutory procedures for the Governor's review of a parole decision are
23 set forth in section 3041.2, which states:

- 24 (a) During the 30 days following the granting, denial,
25 revocation, or suspension by a parole authority of the parole
26 of a person sentenced to an indeterminate prison term
27 based upon a conviction of murder, the Governor, when
28 reviewing the authority's decision pursuant to subdivision
(b) of Section 8 of Article V of the Constitution, shall review
materials provided by the parole authority.
(b) If the Governor decides to reverse or modify a parole
decision of a parole authority pursuant to subdivision (b) of

1 Section 8 of Article V of the Constitution, he or she shall
2 send a written statement to the inmate specifying the
3 reasons for his or her decision.”

4 Prior to the addition of subdivision (b) to section 8 of article V, the power to
5 grant or deny parole was statutory and committed exclusively to the judgment and
6 discretion of the Board. (*In re Rosenkrantz, supra*, 29 Cal.4th at pp. 658–659; *In re*
7 *Fain* (1983) 145 Cal.App.3d 540, 548–550.) The Governor had no direct role in
8 decisions whether to grant or deny parole to an incarcerated individual, other than
9 to request that the full Board sitting en banc review a parole decision (Pen. Code §
10 3041.1) or revoke parole (Pen. Code § 3062). The constitutional authority of the Governor to
11 reverse a grant of parole by the Board was limited to the fundamentally distinct power to grant
12 a reprieve, pardon, or commutation. (*In re Fain, supra*, 145 Cal.App.3d at p. 548; see Cal.
13 Const., Art. V., § 8, subd. (a).) By adding subdivision (b) to section 8 of Article V, the
14 California voters conferred upon the Governor constitutional authority to review the Board's
15 decisions concerning the parole of individuals who have been convicted of murder and serving
16 indeterminate sentences for that offense.

17 Prior to the addition of subdivision (b), the American Civil Liberties Union (“ACLU”)
18 opposed this expansion of the Governor’s role in parole decisions because it raised “serious
19 questions of due process and equal protection by attempting to create a different standard for
20 persons convicted of celebrated or notorious crimes.” (Exh. E, [arguments in opposition to
21 SCA 9].)

22 The ACLU further opposed the proposal as adding a supplemental level of executive
23 authority not in existence at the time the individual committed and was subsequently convicted
24 of a criminal offense and argued against expanding the Governor’s role in this way because it
25 “improperly attempts to override the neutrality and expertise of the parole authority.” As
26 relevant here, the ACLU further argued,

27 Decisions made by the granting authority would be provisional for
28 the 30-day term during which the state executive may find it expedient
to unilaterally disregard or disaffirm the initial decision. Such revisions
by a Governor could easily result from political or popular influences
that, properly, are not considered by the parole authority. This factor
alone would allow subjective and often irrelevant or irrational concerns

1 to override carefully considered factual judgments.

2 (*Id.*, Exh. E, [arguments in opposition to SCA].)

3
4 This prescient concern has materialized in Mr. Sirhan's case. The Governor's parole
5 reversal that is based on a lack of evidence and an improper application of the relevant law,
6 violated equal protection by creating a class of inmates convicted of infamous murders who
7 are judged more harshly by the Governor.

8 The Fourteenth Amendment to the United States Constitution and article I, section 7 of
9 the California Constitution guarantee all persons the equal protection of the laws. (*In re*
10 *Williams* (2020) 57 Cal.App.5th 427, 433.) Persons who are similarly situated with respect to a
11 law's legitimate purposes must be treated equally. (*People v. Brown* (2012) 54 Cal.4th 314,
12 328.) Equal protection of the law is denied where no rational relationship exists between the
13 disparity of treatment and a legitimate governmental purpose. (*People v. Turnage* (2012) 55
14 Cal.4th 62, 74.)

15 In evaluating a claimed equal protection violation, courts undertake *de novo* review in
16 answering two questions to decide whether a statutory distinction is so devoid of even minimal
17 rationality that it violates equal protection. (See *People v. Laird* (2018) 27 Cal.App.5th 458,
18 469.) First, it must be determined if the state has adopted a classification affecting two or more
19 groups that are similarly situated in an unequal manner. (*People v. Chatman* (2018) 4 Cal.5th
20 277, 289.) Here, article V, section 8, subdivision (b) of the California Constitution has
21 resulted in the creation of a class of inmates convicted of high profile, notorious murders
22 whose grants of parole by the Board are reversed by the Governor as a result of political or
23 popular influences that, properly, are not considered by the parole authority. This allows
24 subjective and often irrelevant or irrational concerns to override carefully considered factual
25 judgments by the Board. The first step of an equal protection argument is satisfied in this case.

26 Second, an equal protection claim is successfully stated if the challenged classification
27 of a similarly situated group bears no relationship to a legitimate state purpose under "rational
28 basis" scrutiny. (*People v. Love* (2020) 55 Cal.App.5th 273, 287–288.) This second element is
met because there can be no legitimate purpose to disregard the applicable standard for
assessing parole suitability based on the subjective and irrelevant concern over currying public

1 favor by an elected official. Although "rational basis scrutiny" is exceedingly deferential, it is
2 met in this case because it is not possible to conceive of a rational reason for the resulting
3 differential treatment between rehabilitated inmates who qualify for release to parole under the
4 governing legal standard, but who are denied parole because a contrary finding would be
5 unpopular with the voting citizenry. Nor can the Kennedy family's influence be ignored,
6 which led to further improper political influence that should not properly be considered by the
7 gate-keeper. After the Board's recommendation for Mr. Sirhan's release and leading up to the
8 Governor's decision, members of the Kennedy family published several Op Eds in various
9 publications and secured many public appearances condemning the Board's recommendation
10 to release Mr. Sirhan and appealing to the Governor to reverse the decision. The Kennedy
11 family's political influence over the last six decades cannot be ignored. Such influence in
12 combination with the political aspirations of the decision maker makes for an impermissible
13 classification for some lifers with the no legitimate basis for the disparate treatment.
14 Accordingly, Article V, section 8, subdivision (b) of the California Constitution violates the
15 Equal Protection Clause of both the U.S. and State Constitutions. (U.S. Const., Amend. 14,
16 Sec. 1; Cal. Const. Art. 1, Sec. 3(b)(4).)

17 18 CONCLUSION²⁹

19 The real reason for the Governor's reversal is the victim's identity, Robert Kennedy.
20 Not only is Robert Kennedy this Governor's political hero, as the Governor publicly stated just
21 weeks before denying Mr. Sirhan's parole, the Kennedy name remains a stalwart force in
22 American politics. The Governor's decision was based on his personal affinity towards the
23 victim and his continued political ambitions, not on the requirements of due process.

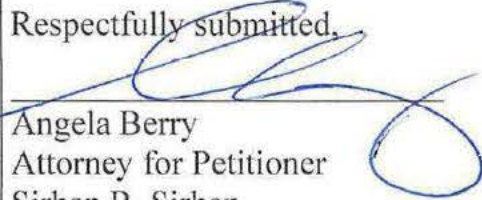
24 Because the record evidence fails to establish some evidence of current dangerousness,
25 the Governor deprived Mr. Sirhan of constitutional due process and violated state law by
26 abusing his executive discretion. Mr. Sirhan is not currently an unreasonable risk to public
27

28 _____
²⁹ Counsel for Mr. Sirhan gives special recognition and thanks to Denise F. Bohdan, CA attorney and RFK assassination researcher, for her invaluable assistance in the preparation of this legal filing. The unique combination of her knowledge of the facts of the assassination and her legal prowess have made her an indispensable companion in this journey.

1 safety if placed on supervised parole. Therefore, it is respectfully requested this Honorable
2 Court grant the requested relief.

3
4 DATED: September 25 2022

5
6 Respectfully submitted,

7 
8 Angela Berry
9 Attorney for Petitioner
10 Sirhan B. Sirhan
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1 PROOF OF SERVICE
2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I, Angela Berry, declare:

4 I am employed in the City and County of Los Angeles, California. I am over the age of
5 18 years and not a party to the within action. My business address is 75-5660 Kopiko Street,
Suite C-7, #399 Kailua-Kona, HI 96740.

6 On September ___, 2022, I served the foregoing document described as PETITION
7 FOR WRIT OF HABEAS CORPUS upon the persons shown below:

8 Los Angeles County District Attorney's Office
211 W. Temple Street
9 Los Angeles, CA 90012

10 Attorney General, Rob Bonta
11 300 S Spring Street
12 Los Angeles, CA 90013

13 Mr. Sirhan Sirhan CDCR # B21014
14 R. J. Donovan Facility, CDCR
480 Alta Road, San Diego, CA 92179

15
16 _____ (BY MAIL) I am readily familiar with the firm's practice of collection and processing
17 of correspondence for mailing with United States Postal Service, and that the
18 correspondence shall be deposited with the United States Postal Service this same day
in the ordinary course of business pursuant to Code of Civil Procedure Sec. 1013(e).

19 _____ (BY FACSIMILE) In addition to service by mail as set forth above, a copy of said
20 document(s) also was/were delivered by facsimile transmission to the addressee
21 pursuant to Code of Civil Procedure Sec. 1013(e).

22 _____ (BY PERSONAL SERVICE) I hand-delivered said document(s) to the addressee
23 pursuant to Code of Civil Procedure Sec. 1011.

24 _____ (BY EXPRESS MAIL) I caused said document(s) to be deposited in a box or other
25 facility regularly maintained by the express service carrier providing overnight delivery
pursuant to Code of Civil Procedure Sec. 1013(c).

26 I declare under penalty of perjury under the laws of California that the foregoing is true
27 and correct.

28 Executed at Kailua-Kona, HI, on this ___ day of September, 2022.

Angela Berry

Chronology of Governor's Statements

APPENDIX E

CHRONOLOGY OF GOVERNOR NEWSOM'S STATEMENTS

1. Tad Friend, "Gavin Newsom, the Next Head of the California Resistance", The New Yorker Magazine, October 29, 2018, p.8:

- a. **"I get that you shouldn't run on nostalgia, that the branding should be 'Represent tomorrow,' "Newsom said. "But I'm too in love with the optimism of those years. This picture of Bobby Kennedy crouching to talk to a kid in the Central Valley—this hardheaded guy nobody particularly loved, whose journey made him a different man? That's everything."**

- b. **Description of Gov. Newsom's Home by Author: "three RFK photographs adorned the walls. In one, from 1968, Kennedy was stumping with Newsom's father, Bill, who was running for the State Senate".**

2. Transcript of KTUV, Governor's Speech After Recall, September 14, 2021,

URL: <https://www.youtube.com/watch?v=Ia-ZOTZLz3A>

This video evidence shows the Governor choking up when he begins to quote from memory, his political hero, Robert F. Kennedy:

- a. **"It's a remarkable moment in our nation's history, but I am reminded of, uh, something a few decades ago someone told me when describing a difficult and challenging moment. He said**

“the world is too small. Our time is too short. And our wisdom is too limited to win fleeting victories at other people’s expense. He went on to say, “we must all triumph together”. So in that spirit of recognizing and reconciling this moment and trying to understand what’s going on not just what’s going on in this State but all across America. I just want to say this. Tonight, I am humbled, I’m grateful, but resolved ...in the spirit of *my* political hero, Robert Kennedy. “to make more gentle the life of this world”. Thank you all very much and thank you to 40 million Americans, 40 million Californians and thank you for rejecting this recall.

3. White, Jeremy, “Newsom: RFK Admiration Shows ‘where I might be Leaning’ on Sirhan Parole”, Politico, September 15, 2021 On-line,
URL: <https://www.politico.com/states/california/story/2021/09/15/newsom-rfk-admiration-shows->

The Governor admits he has a pre-conceived opinion:

- a. **“But he [Governor Newsom] emphasized that Kennedy looms large as a personal hero whose image adorns the Governor’s office and his office at home.”**
- b. **“I think that gives you a sense of where I might be leaning right now,” “I don’t want to prejudice any further this process”,**
- c. **“this is very raw emotionally.”**

d. “memories of that time that some people may want to suppress, understandably.”

4. Transcript of October 21, 2021, NBC News, Meet the Press

URL: <https://www.nbcnews.com/meet-the-press/video/gov-newsom-ethel-kennedy-s-opinion-has-weight-on-sirhan-decision-release-124271174002>

Governor states the “Kennedy family”, not just the victim, is enshrined in photos in his home:

a. “Robert Kennedy is my political hero. You look at my house, it’s like a shrine to the Kennedy family and Bobby in particular”.

The Governor prognosticates about what the world may have been like had the victim been alive, which is conjecture:

b. “He took away a lot of hope, um and this country, this world, has dramatically changed as a consequence, and I have to factor that in...”

The Governor’s reverence for Ms. Kennedy is visibly palpable. His demeanor demonstrates the extent of his desire to have a communication with her.

c. “C’mon, Bobby’s wife? If, if I want to preview a point of view, that’s going to be profoundly determinative”. “If Ethel Kennedy calls me up, uh, and uh, expresses her point of view, there’s weight, and uh, there’s a different level of weightiness of

weight. And that's a call from Ethel Kennedy. And, again, I'm not looking for that call."

- d. "But I'm very desirous of getting a better understanding of where she is in relation-"**

The Governor admits to taking *ex-parte* communications that can influence his decision, including from people who text him on his cell phone, thus he has gone beyond the record before the Board.

- e. "I have gotten emails and text messages from folks that are some of the most heart-felt and deep and emotional."**

The Governor describes a photo of the victim as the "most valued thing" he owns "in his life", and that it ties both his deceased parents personally to the victim:

- f. "And again, I want to remind you, that not only do I have a shrine of sorts, that's exaggerated, but pictures of Bobby Kennedy, but the most valuable thing I own in my life is a picture of my Dad, who passed away, and Bobby Kennedy, signed to my Mother, who passed away, Tessa, from Bobby Kennedy. And it was done just a few months before he died, so this one, this one is tough one."**

5. Thompson, D., "California Governor Mulls RFK assassin Sirhan Sirhan Parole", AP On-line, December 28, 2021

URL: AP Assoc. Press, <https://apnews.com/article/sirhan-sirhan-middle-east-california-gavin-newsom-08ab1b7dc92f58c78c2645c436311ba4>

The Governor demonstrates his acknowledgment of receipt of influence that is outside of the Board record:

- a. **“People aren’t just giving an opinion about yes or no, they’re expressing their memories of that time...and connecting the dots to the ‘60’s and that stress and anxiety and the wounds.”**
“And in a way that makes this decision even that much more powerful, because of the impact that has on opening up those memories, many memories that people want to suppress, understandably.”

6. Newsom, G., Los Angeles times, Op. Ed., January 13, 2022

URL: <https://www.latimes.com/opinion/story/2022-01-13/sirhan-gavin-newsom-parole-decision>:

The Governor states he viewed items at the State Archives, which are outside of the Board record:

- a. **“After carefully reviewing the case, including records in the California State Archives, I have determined that Sirhan has not developed the accountability and insight required to support his safe release into the community.”**

Tad Friend, “Gavin Newsom, the Next Head of the California Resistance”, The New Yorker Magazine, October 29, 2018

E 1.a and E 1.b

THE POLITICAL SCENE

GAVIN NEWSOM, THE NEXT HEAD OF THE CALIFORNIA RESISTANCE

Like many Democrats in the Trump era, Newsom aims to harness the alarm of moderates, the rage of progressives, and the widespread yearning for a new politics.

By Tad Friend

October 29, 2018





0:00 / 54:32

The grin. The slow clap. The grin, the slow clap, and the brisk hand rub. Gavin Newsom, California's leading candidate for governor, paced a crowded Teamsters hall in Fresno, manifesting his delight at being among real people for a real talk at last. The pageantry also gave him time to read the crowd—hundreds of expectant faces, citizens of a Central Valley checkered by alfalfa fields and raisin-processing facilities and half-abandoned downtowns—and suss out what they wanted to hear. Town halls are Newsom's favorite way to campaign; this one, in early June, was his thirty-fifth of the electoral season. A former baseball standout once recruited by the Texas Rangers, he views town halls as spring training for the rigors of governing.

It was four days before the “jungle primary,” a multiparty free-for-all that would advance two gubernatorial candidates from a field of twenty-seven to the general election, in November. Newsom, the state's lieutenant governor, was far ahead in the polls, and, if his position held, he would come into office with a budget surplus of nearly nine billion dollars. But, like many Democratic politicians in the Donald Trump era, he was trying to harness not only the alarm of moderates and the rage of progressives but the almost universal yearning for a new politics entirely. He sought a platform that would exemplify the slogan—“Courage for a Change”—blazoned across his campaign bus: a platform that was risky and inspiring, yet at the same time sensible and inclusive and grounded in the lunch-pail realities of

daily life. But what platform, exactly? And would anyone really believe he could make it happen?

His visuals are certainly unassailable. Tall and lithe and still boyish at fifty-one, with teeth that Tom Cruise would envy and hair lacquered with Oribe gel, Newsom—who as the mayor of San Francisco was known as Mayor McHottie—is easy on the eyes. His wife, Jennifer Siebel Newsom, a documentary filmmaker and a former actress who for a time dated George Clooney, was alarmed by the hunger that Newsom can evoke. She said, “I can’t tell you how many women and gay men would tell me, when I started dating him, ‘I want him!’ ” In Fresno, he sported his trademark look: a white Ermenegildo Zegna shirt with the sleeves rolled up and a blue Tom Ford tie. It was also his hero Bobby Kennedy’s look—the Bobby Kennedy who visited Cesar Chavez in the Central Valley fifty years ago, when America was breaking apart over Vietnam. Newsom seeks to embody Kennedy’s grainy glamour, to provide moral clarity in a bewildering hour.

If R.F.K. came across as a bare-knuckle fighter converted to humility, Newsom presents an image that an adviser describes as “pretty boy with a slide rule.” The back of his state-issued S.U.V. is stacked with notebooks filled with ideas and data culled from books and articles and conversations with nearly four hundred experts; it’s a kind of rolling athenaeum. Severely dyslexic as a child, he learned to learn by copying key passages in his left-handed scrawl and reading them aloud. He gradually compresses each of the topics he follows into a one-sheet of facts that salt his talks: *Fourteen per cent of low-income families’ after-tax income goes to diapers! Eighty-five per cent of brain growth happens in the first three years!* His campaign manager, Addisu Demissie, who has also helped to run campaigns for Cory Booker and Hillary Clinton, told me, “Gavin is by far the most knowledgeable candidate I’ve ever worked with.” Newsom lacks the God-given gifts of, say, Eric Garcetti, the Los Angeles mayor who dazzled voters as a break-dancing Rhodes Scholar. But, he told me, “I will outwork you. I will read more, I will think more, I will reflect more. I just will.”

Although Newsom is prepared to answer any question, he sometimes has trouble answering *your* question. When asked to name the biggest issue facing Fresno, Newsom spoke rapidly, in his hoarsely resonant baritone. “Affordability,” he said. “I mean, it’s *the* issue—cost of living, housing, it’s the No. 1 issue, issues of childcare for your family, issues of education, cost of education, *access*.” The way he punches certain words gives his speech the inexhaustible quality of a sea chantey. “And the perennial issue—I was just down in Bakersfield—the issue of air quality, issue of health, and the unique health *disparities* that exist out there, the issues of primary-care physicians, access to quality care, affordability of quality health care, all those issues have to be tackled. And, with all due respect, while our economy is growing—4.2-per-cent unemployment rate, twenty-four consecutive months of job creation—people don’t live in the aggregate, not everybody’s *feeling* that recovery, and we’ve got to deal with the issue of income and wealth disparity.” There was more, until he concluded, “And so I feel very, very passionately about those issues.”

Like the state he hopes to govern, Newsom evokes an endless wave rather than a fixed locale. Eric Garcetti said, “Gavin is future-facing, like California. He’s almost from central casting. Like a tech entrepreneur, he’ll test ideas and fail forward—he’ll adapt to whatever happens.” Newsom’s approach to policy is self-avowedly entrepreneurial and bold. A longtime California political observer said, “There’s always a narrative of great moral challenge that Gavin Newsom single-handedly rises to while all around him cower.”

Newsom reminded the crowd in the Teamsters hall of the “proof points” of his audacity: his leadership in legalizing cannabis use in the state; his introduction of universal access to health care in San Francisco; and, particularly, his decision, in 2004, to ignore the law and permit the city’s same-sex couples to marry. He skipped over the wayward, muddled period of his mayoralty when he drank too much and had an affair with his appointments secretary.

From the start of his first term as an executive, Newsom apprehensively called himself “the future ex-mayor of San Francisco.” He says that it was a reminder not to fall in love with the role, because “people don’t give a damn. They forget you.” Actually, he’s almost too memorable. Despite all his policy-paper annotating, Newsom, who built a fortune on a consortium of hospitality businesses, has the air of a man who just sauntered off a yacht. He married Jennifer Siebel, in 2008, at an “Out of Africa”-themed wedding, attended by San Francisco and Silicon Valley’s élite, including Sergey Brin, George Shultz, Charles Schwab, and Gordon and Ann Getty—who a decade earlier had thrown Newsom’s “Great Gatsby”-themed thirtieth-birthday party. Voters still have trouble believing that a man so palpably blessed could feel their pain.

After forty minutes in Fresno, Newsom knew that he hadn’t yet made the crowd believe it. When Elizabeth Howard, an eight-year-old African-American with pink and white ribbons in her hair, said she was worried that there would be a shooting at her school, Newsom reminded the audience that, in 2017, he took on the National Rifle Association and got voters to pass Prop. 63, which implements a background check on everyone who buys ammunition. Then he turned back to Elizabeth and knelt before her. At such moments, his voice slows and gravels up. “When you go to school, the last thing you should be thinking about is guns,” he said. “I promise you you’ll be safe in school and able to learn.” The applause, long pending, broke at last.

In the civil war against Donald Trump, Newsom casts himself as Abe Lincoln. He says that California’s gubernatorial election will anoint “the next head of the resistance.” Much of Newsom’s Twitter feed, which has 1.4 million followers, is devoted to calling out the President, disputing him on issues and labelling him “a small, scared bully” and “a pathetic disgrace.” On the stump, Newsom points out that the “nation-state” of California is larger than a hundred and thirty-seven countries and has the fifth-largest economy on the planet. “The world is looking to *us* for leadership,” he often says.

California seems like a natural home for the resistance. The day after Trump was elected, the leaders of the State Senate and the State Assembly jointly declared, “California was not a part of this nation when its history began, but we are clearly now the keeper of its future.” The state has sued the Trump Administration forty-four times, on matters ranging from DACA to health care to the census. As the White House abandons environmental protections, California is suing to maintain its historic right to set its own air-quality standards, and it passed a law mandating that all its electricity come from carbon-free sources by 2045. It also resisted the new federal income-tax laws, established its own form of net neutrality, and declared itself a sanctuary state.

Yet the state that gave birth to the counterculture, in 1967, gave us the Reagan revolution the same year. Across the decades, California has led the nation’s judder to the right with three populist ballot initiatives: Prop. 13, which capped property taxes; Prop. 184, a widely imitated three-strikes law; and Prop. 187, which denied state services to undocumented immigrants. What’s more, by electing Arnold Schwarzenegger governor, in 2003, the state normalized the idea of installing a bombastic and untried entertainer in office. And, while California boasts Hollywood and Silicon Valley, it also has the nation’s highest poverty rate and nearly half the country’s homeless population.

So there are plenty of reasons for the state’s nationally ambitious politicians to look after local concerns. Governor Jerry Brown, who has served four terms in the job since 1975 and is widely admired for his recent work to refill the state’s empty coffers, told me, “Do people really believe that ‘all your problems are Trump’? It’s too abstract—it’s not road repair, tuition, health care, crime. It can rub people the wrong way.”

“I disagree,” Newsom said. “You gotta go after a bully.” In September, when Trump joked about moving to California because it has free health care (it doesn’t, but Newsom hopes to institute a single-payer program), Newsom tweeted back, “Next time you call me and my policies out, have the guts to @ me and we can

have a chat.” He takes Trump’s jabs at California personally, because he takes nearly everything personally. SCN Strategies, a leading political-consulting firm in San Francisco, used to train its candidates how not to deal with the media by showing them Newsom’s tantrums when challenged by television reporters: the petulant silences and huffy diatribes. (“Off the record, I’m amazingly disappointed, amazingly!”) SCN doesn’t show that footage around these days, because it’s now advising Newsom himself on what not to do.

When Newsom can’t defuse a challenge, he sometimes gets sulky. This spring, a group of billionaires who favor charter schools began funding a PAC supporting Newsom’s chief Democratic rival, the former Los Angeles mayor Antonio Villaraigosa. The PAC raised and spent more than twenty-two million dollars; Michael Bloomberg and Eli Broad, former Newsom allies, donated five million between them. Newsom immediately wrote off both men: “They clearly do not want to have a relationship anymore.” He was a little less brusque with Reed Hastings, the Netflix C.E.O., who’d given seven million. Hastings told me he explained to Newsom that “it wasn’t an anti-Gavin thing—it was just that I had a great relationship with Antonio.” Newsom said, “We had this strange conversation where I told Reed, ‘I thought you guys would only put in ten million’—I really thought five—and he said, ‘I’m only putting in half of what I otherwise would, because it’s *you*.’” Newsom snorted. “With all due respect to Antonio, it’s demonstrated they can’t win by building him up, so they have to tear me down. If they can knock me down three or four points and come in second, then they’re validated. And then they could put in a hundred million dollars in the general, easy—*easy!*” He told me, somewhat implausibly, that he hadn’t seen the attack ads the PAC was airing: “Is it the arrogant-jerk, slicked-hair thing? Yeah, I get it.” He grimaced at the unfairness. Newsom—the clear leader in the race, a multimillionaire who had already raised thirty-two million dollars—was casting himself as an upstart being steamrolled by the moneyed elite.

“Privately,” he continued, “I’ve developed a *real* animus against private wealth. Wow, just because you made a lot of money, you can buy anything you want, including a candidate? If it’s me and Antonio in the general, there could be a real evolution in me, where I come out a very different person expressing outrage against a system stacked against him. It’s a new muscle I’m developing. You may be talking to Bernie Sanders in six months.”

A fter a day of meetings, Newsom returned, with evident pleasure, to his house high on a hill in Kentfield, north of San Francisco. It’s modern, tasteful, and secluded. On our way, he’d joked, preemptively, about how I was likely to draw a lazy inference from the Tesla in his driveway. Actually, there were three.

In his home office, Newsom pointed to his clutter-free desk and said, “I eat here and work here and watch MSNBC here. And I always check Tucker Carlson on Fox, to see how far he’s going on the racism spectrum.” Histories of Bobby Kennedy and his era filled the bookshelves, and three R.F.K. photographs adorned the walls. In one, from 1968, Kennedy was stumping with Newsom’s father, Bill, who was running for the State Senate. Kennedy was assassinated a week later, and Bill Newsom lost that fall. “I get that you shouldn’t run on nostalgia, that the branding should be ‘Represent tomorrow,’ ” Newsom said. “But I’m too in love with the optimism of those years. This picture of Bobby Kennedy crouching to talk to a kid in the Central Valley—this hardheaded guy nobody particularly loved, whose journey made him a different man? That’s *everything*.”

John Avalos, a former member of the San Francisco Board of Supervisors, supports Newsom’s campaign but is troubled by his rhetorical use of Kennedy. “It wasn’t R.F.K. who made 1968 so great,” Avalos said. “It was the huge people’s movement around the world that brought R.F.K. forward and gave him energy. Gavin’s vision is ‘What I’m going to do—not *with* people but *for* them.’ ” Newsom doesn’t relish the rote functions of politics. His smile when he poses with voters is a rictus, he ducks fund-raising calls, and he lacks patience for the

backroom hugger-mugger required to pass legislation. Tom Ammiano, a board member who initiated a health-care plan that Newsom later made his own, said, “There were members of the board who woke up every morning wanting to fuck Gavin Newsom over.”

Muttering about the housekeeper, Newsom angled two chairs together. His cousin Jeremy Scherer had told me, “Gavin’s such a fanatic about detail that I don’t think I’ve ever seen a lit candle at his house. Once you light a candle, it looks used.”

Newsom realigned an arrowhead on a shelf, then grinned sheepishly. “I’ve got some issues,” he said.

We moved into the living room, where his wife embraced him. Siebel Newsom—warm, telegenic, and fluent in Spanish—is a potent asset on the campaign trail. Her belief in him at least equals his own, and she is quicker to discuss the possibility of a President Newsom.

She lowered her voice and told Newsom that Hunter, their seven-year-old, “had his first bad experience with older boys today. They put poop on his head.”

“Well, welcome to life, buddy.”

Their four children tumbled into the room, and then their white Labrador, Max, raced in noisily from the kitchen. Newsom stood and commanded, “No barking, bud!” Max, still barking, bounded into my lap, and the children hooted and ran to pet him. Siebel Newsom, murmuring to her children in Spanish and to Max in alpha tones, restored order.

Newsom turned to his nine-year-old daughter, Montana, and said, “Tad’s going to ask you, ‘Do you like Daddy’s hair with hair gel or no hair gel?’ ”

“No hair gel,” she said. Newsom spread his arms and threw his head back—*a guy can’t win.*

After the children ran off, I brought up a perplexing issue: for someone as personable as Newsom is, he doesn't seem to have many intimates. His habit of prefacing disclosures with "Literally," "Candidly," or "Swear to God" suggests a man accustomed to striving for familiarity. I wrote about Newsom for this magazine in 2004, and noticed a certain insularity then, too; his wife at the time, Kimberly Guilfoyle, told me, "If San Francisco were a woman, he would have married her." (In what is perhaps a form of long-simmering revenge, she is now dating Donald Trump, Jr.) Katherine Munson, a childhood friend of Newsom's, recently told me, "Gavin is always around pretty people. But he doesn't seem to have many real friends."

Newsom turned to his wife: "We have a lot of great friends, right? We have a good circle?" She nodded reassuringly. "Total strangers, walking the street with them, I'm very comfortable," he continued, half to himself. Siebel Newsom glanced at me. She'd told me that Newsom's childhood, when he was bullied and felt conspicuous—he had a lisp, a bowl haircut, and braces on his legs from a growth spurt—made him mistrust being sought out now. "Going from that to being treated like a god made him very uncomfortable," she said.

When Newsom was two, his parents separated, and he and his younger sister lived with their mother, Tessa, who worked three jobs and took in foster children to help pay the rent. Bill Newsom—who had gone to high school with Gordon Getty and who administered the Getty trusts—occasionally swooped in to take Gavin on vacation with the Getty family: polar-bear watching in Hudson Bay, safaris in Africa. When he returned from these jaunts, his mother would say, "Hope you had *fun!*" and storm off to bed. "The *guilt*," he told me. "She made me feel horrible."

One night, Newsom recalled hearing "my mother yelling and screaming at my dad because he wasn't able to help us financially, because he was very close to bankruptcy. He didn't care about money, but I *never* wanted to be in that position." Jeremy Scherer said, "Gavin's mother's struggles motivated him to be

more successful in politics than his father was—and to *show* him he could be more successful.”

In middle school, Newsom, drawing inspiration from “Rocky,” took up boxing and drank raw eggs to toughen himself. Then he began applying hair gel and wearing blazers and business suits, a costume inspired by “Remington Steele,” the TV show that starred Pierce Brosnan as a con man who assumes the identity of a glamorous private detective. “The suit was literally a mask,” he said. “I am still that anxious kid with the bowl-cut hair, the dyslexic kid—the rest is a façade. The only thing that saved me was sports.” In high school, as a baseball and basketball star, Newsom began to see himself as an underdog with a responsibility for other underdogs. His friend and teammate Derek Smith told me, “Gavin was the guy who stood up and made sure no harm came to us.”

In 1992, after graduating from Santa Clara University, Newsom went into business with Gordon Getty’s son Billy, opening PlumpJack Wine & Spirits in San Francisco. Then Newsom launched the Balboa Café, which became a gathering place for the city’s young heirs, scions of families like the Fishers and the Pritzkers, who in turn became his early political patrons. Gordon Getty, a minority investor in those businesses, invested more heavily as Newsom kept expanding, and owned forty-nine per cent of the PlumpJack Group by the time Newsom ran for mayor in 2003. Getty also underwrote the mortgage for Newsom’s first home; as he once told me, he thought of Newsom as a son. Newsom acknowledges that the help was invaluable but insists that it was his own farsightedness and hard work that made PlumpJack grow. After becoming mayor, he turned control of the business over to his sister, Hilary, and to Jeremy Scherer. It now comprises eighteen restaurants, wineries, hotels, and the like, and Newsom’s share of its profits is some \$1.5 million a year. Newsom prefers to emphasize his childhood’s Cinderella struggles, because the rescue-by-fairy-godmother aspect gets used against him. One gubernatorial rival called him a “Davos Democrat”; another’s PAC labelled him “Fortunate \$on.” “It’s

not exactly that Gavin is jealous that he doesn't have a swam-over-the-Rio-Grande background," one of his advisers said, "but he does want an underdog story." Siebel Newsom, who argues that "the perception of Prince Gavin is all wrong," asked SCN Strategies to focus its ad campaign on the hardscrabble years. But those spots tested poorly, as SCN had predicted they would, and the campaign ended up being about Newsom's courage.

As the Newsoms ate cheese and crackers, he teasingly brought up her plan for the ads, and she got indignant: "I said, 'People have to know who he really is.' And Sean Clegg"—a partner at SCN—"said, 'People don't *care* who he really is.' " She looked to her husband for support.

"That's the problem," he said. "Sean knows what he's doing."

On the bus after events, Newsom appraises his performance at length, sometimes aloud. An undone shirt button made him look like a "jerk," he'd garbled his point about rent control, or, often, he'd been too diffuse: "My biggest threat to being a successful governor is my profound incapacity to distill what I want to accomplish into one or two issues."

He kept feeling that he was failing to connect on the biggest topic: job automation. One study has estimated that by 2030 the "robocalypse" will erase eight hundred million jobs. Newsom, gesturing at his staff, told me, "These guys said, 'Enough with the future-of-work riffs, with *the robots are coming*.' I was spending too much time with the Elons of the world"—Elon Musk—"and I was just scaring people. If you're going to identify a problem, at least express optimism about finding a solution. When I get into the remedy of doing transformation maps in each industry, and layering over a skills map, when I talk about nanodegrees and upscaling, well, *I've lost every single person*. Trump trounced on this issue, completely lying and telling them the old manufacturing economy was coming back: 'I'm going to protect your job and it's O.K.' "

Maybe the answer lay in the tapes. As a young man, Newsom made VHS tapes of three subjects and studied them obsessively: the smooth lefty swing of the Giants' first baseman Will Clark; episodes of "Remington Steele"; and every speech by Bill Clinton. When Newsom was mayor, his staff always knew when he'd been studying Clinton, because he'd speak with an Arkansas twang. He still employs Clinton mannerisms on the stump: the bit lip of empathy, the genial head toggle as he adjudicates, the drill-sergeant jaw pop before he wades in. Yet one official who knows both men suggested that their affects differ: "Bill Clinton peers deeply into your soul. Gavin peers deeply into the mirror at himself."

Newsom told me he wanted to personalize the robocalypse the way Clinton personalized the economy in a town-hall-style debate in the 1992 campaign. Newsom, a gifted mimic, slid into a husky Clinton voice as he recited the exchange: after George H. W. Bush seemed baffled by a question about how economic anxieties had personally affected him, Clinton approached Bush's interlocutor and asked her name. "I'll tell you how it's affected me," he said. "In my state, when people lose their jobs, there's a good chance I'll know 'em by their names. When a factory closes, I know the people who ran it." Newsom shook his head admiringly: " 'I know everybody in my state, *I know their names*'—I mean, come on, that's impossible! But that moment was, like, Whoa, what just happened? I fell in love with politics then."

Jerry Brown told me that Newsom's persona, "lively and attractive and on the move," appealed to voters' periodic wish for political renewal. A mandarin figure, Brown prides himself on mentoring no one. Nonetheless, Newsom spent months trying to gain his endorsement before the primary. Newsom has known Brown his whole life: his grandfather was a campaign manager for Brown's father, Pat, a two-term California governor, and Brown appointed Bill Newsom to the state Court of Appeals. For the past eight years, Newsom's office has been twenty yards from Brown's. Yet Brown wouldn't engage. "Most politicians are mostly interested in themselves," he told me. "Think of racehorses running around the track. One may

look back to see if the others are gaining, but it's a fairly individualistic pursuit." He kept telling Newsom that he didn't need the endorsement, that he was going to win anyway. Or maybe he wouldn't, in which case, why should he give it?

Newsom finally said, "I don't want your endorsement politically, I want it personally."

"It's all politics, Gavin," Brown replied, coolly.

"Not for me!" Newsom declared.

Afterward, Newsom told me, "I am laudatory everywhere I go, and that's what Jerry expects, and he is not laudatory everywhere he goes, and that's what I expect." He laughed. "And that is actually a pretty good relationship with Jerry Brown."

Newsom strode through throngs of homeless people camped on Ellis Street in San Francisco's Tenderloin district, calling out, "How you doing, brother?" and "Nice to see you, Ma'am." He stopped periodically to listen to Odyssean histories, offer tips on navigating the system, and turn down a repeatedly proffered beer—"I try not to do it in the middle of the day, to control myself, brother."

As mayor, Newsom often toured the Tenderloin unannounced to see what was really happening. He'd been elected in 2003 owing to the popularity of a ballot measure called "Care Not Cash," which he'd sponsored the previous year. The resulting program greatly reduced direct payments to the homeless and used the money to provide them with housing and services. Brown, who was then the mayor of Oakland, told me that he studied the program to see if it was worth emulating. "It was *something*," he allowed, "but, as with so many things in government, you have these slogans, and then what really happens? We still have a lot of homelessness in San Francisco, right?"

Although the city secured housing for twelve thousand people during Newsom's administration, its streets are far denser with tents and shopping carts than they were in 2003. As Newsom smiled and thumbs-upped, he muttered, "There's no statewide policy, no timeline, no goals, no strategy—no one gives a damn! You wonder if you had any impact."

Outside the Quick-Stop Liquor Store, a young African-American man holding an orange hairbrush approached Newsom: "What you going to do for us?"

"What do you need?"

"More houses for us, not white-people houses." The man, who gave his name as Quan, said he lived in the Alice Griffith housing project.

"Double Rock!" Newsom cried, using the project's nickname. "You going to college?"

"Why should I?"

Newsom laughed. "You want me to *literally* answer that damn question? I can tell by your physiology you already know the answer." His voice was stern, the tough-love headmaster. As Quan angled away, laughing, Newsom pursued him, saying, "Community college! Forty-six bucks a unit! And we can waive that—"

"What if I got a felony?" Quan cried, raising his arms as if in surrender.

“All right, we gotta work on that!” Newsom called. “If it’s drug-related, we can waive that, too, after Prop. 47!” But Quan was gone.

Newsom squinted at the surroundings and said, “All this in the shadow of the Salesforce Tower”—the city’s tallest building, whose anchor tenant is Salesforce, the cloud-computing company run by his friend Marc Benioff. Over the years, as Newsom has grappled with the intractability of poverty and racism, he has become more progressive on such issues as cash bail, sentencing reform, and California’s status as a sanctuary state. As governor, he plans to appoint a homelessness tsar, to preempt the problem of homeless people congregating in cities with more services—cities such as San Francisco. But he’s not sure that will work, either.

As we walked by a soup kitchen called St. Anthony’s Dining Room, I mentioned that his former campaign manager Jim Ross had told me that, one winter night in 2002, Newsom drove to a discount clothing shop, bought a couple of thousand dollars’ worth of socks and underwear, and delivered it to St. Anthony’s. Newsom nodded ruefully. “Sometimes,” he said, “you get so frustrated you just have to do something directly.”

Newsom’s mayoralty was defined by a similarly impulsive decision on gay marriage. Three weeks into the job, he heard President George W. Bush propose a constitutional amendment to preserve “the sanctity of marriage” and thought, *He’s attacking my citizens!* Two weeks later, he directed the city clerk to approve same-sex marriages. Newsom’s family, his staff, and every Democratic official he’d consulted advised him not to do it. Nancy Pelosi, the Minority Leader of the House of Representatives, said, “I told Gavin, ‘We all share this value—but is this the right timing?’ He said, ‘This is about the *people* and what matters to them.’ ”

The result was a widely publicized “Winter of Love,” in which four thousand and thirty-six same-sex couples got married. That summer, though, a court nullified the marriages, and Newsom found himself isolated. When Barack Obama came to San Francisco, he made sure that he wasn’t photographed with Newsom. In

November, after George Bush defeated John Kerry, Senator Dianne Feinstein blamed Newsom's initiative, saying, "That whole issue has been too much, too fast, too soon."

In 2008, California's Supreme Court struck down the law banning gay marriage, and an elated Newsom announced, "This door is wide open now! It's going to happen whether you like it or not!" Ads for Prop. 8, a ballot measure to amend the state constitution to prohibit gay marriage, used that video clip to devastating effect. Newsom knew that he'd spiked the ball on the five-yard line: "A politician saying 'Whether you like it or not'—that doesn't feel like democracy." After Prop. 8 passed, *Newsweek* wrote, "Newsom has become a joke to Democratic insiders, a man whose bright national future ended before it began."

Only in 2013, when the Supreme Court upheld the equality of same-sex marriage, was he vindicated. Newsom told me that he remained proud of his original act of civil disobedience. But, he added, "so many of my political heroes read me the riot act. And, look, for a lot of years there was a lot of evidence that they were right." He sighed. "I don't know if I'd have the guts to do it again. Because back then I didn't know what I didn't know—I had a beginner's mind."

On primary night, Newsom, his wife, and twelve members of his team huddled in a low-ceilinged room upstairs at Verso, a San Francisco night club owned by PlumpJack, while his supporters drank downstairs. Newsom's strategy had been to single out his opponent John Cox, a Republican businessman whom Donald Trump had endorsed in a tweet. Newsom ran ads attacking Cox—which were actually intended to improve Cox's standing among conservatives, so that he'd come in second, ahead of Antonio Villaraigosa. Other Democrats in the race called Newsom selfish; two Democrats atop the ballot would increase Democratic turnout in the fall and lift the Party's candidates in tight congressional races. But he was desperate to avoid going head to head with Villaraigosa and his charter-school PAC of billionaires.

As the polls closed, Newsom sat with his fingers steeped. “What are the new numbers?” he asked.

Daniel Lopez, his political director, peered at his computer. “Which county?”

“*Over all*,” Newsom said. Silence. “I’m going to start drinking!”

Lopez looked up at last: “It’s all still coming in—but we’re winning L.A. County.” Los Angeles is Villaraigosa’s home turf. “Thirty-two for us, twenty-one for Cox, eighteen for Antonio.”

“Jesus Christ!” Newsom said, relieved.

“It was the ads,” Sean Clegg suggested, dryly. Siebel Newsom made a face: touché. Minutes later, CNN called the race—Newsom and Cox would advance. Villaraigosa, who finished a distant third, later told me that Newsom’s cutthroat strategy was the smart play: “I told Gavin, ‘I’d have done the same thing.’”

Newsom showed his phone to a staffer and said, “Classic!” Texts were already streaming in from people wanting to host fund-raisers. When Reed Hastings texted congratulations (“You are a star! If you’ll still have me, I’d be honored to support you”), Newsom responded with an olive branch (“Honored!!”). Hastings promptly donated the maximum, twenty-nine thousand five hundred dollars.

Though the champagne was flowing, there was an air of anticlimax. What now? Newsom trudged downstairs and delivered a stock address about the glories of California, “a state where we don’t obstruct justice, we demand justice for everybody; where we don’t regulate women’s bodies more than we regulate assault weapons out on our streets.” Conspicuously missing, on the night when Newsom effectively became the next governor, was a clear signal of what exactly he hoped to do. “We haven’t been able to attach a narrative around the campaign,” he told me. “I feel I’ve let people down on that. It’s all these *pieces*—we’re just reacting.”

Two months later, he said that he was still searching. “Everybody threw back at me, ‘We do have a narrative! It’s “Courage for a Change.” ’ Courage is the brand, it’s what I’ve sold—not *sold*, exactly,” he clarified. “But I feel we need something more.” Why not embrace your shift to the left, the way Bobby Kennedy did? Especially as progressives have captured the Party’s energy? He nodded and said, “I started out in the middle and I’ve moved . . .” He caught himself. “I don’t know if more to the left. The more educated I become, the more I become a social-justice warrior about systemic racism. But I’m still a passionate free-enterprise Democrat. And I’m like Jerry—you’ve got to balance budgets, too.” He pointed, putting the world on notice: “That’s going to disappoint a *lot* of people.” From the rubble of an admission that he lacked a narrative, Newsom rescued the one narrative that had always consoled him: courage.

When his wife wandered to the back of the campaign bus, Newsom informed her that he’d just been telling me how they’ve begun to meditate.

“The way we’re going to calm our nation and soothe all our aggression is this,” Siebel Newsom said. “Leading with love and positivity.” He made a face. “It’s California—you can get away with it!” she said.

“I don’t think you can,” he said. “That’s why this whole thing has been under wraps.” He was kidding, sort of. Newsom was inspired to try meditation by observing its effect on achievers such as Kobe Bryant and Marc Benioff, who teaches the practice. Benioff told me, “After Gavin went through his crisis, I think he was looking for a lot of things to shift in himself. What you see today is Gavin 2.0.”

The crisis was Newsom’s acknowledgment, in February, 2007, that two years earlier he’d had an affair with his appointments secretary, Ruby Rippey-Tourk, the wife of his deputy chief of staff and good friend Alex Tourk. In a sombre public

statement, Newsom said, “The affair is something I have to live with, and something that I am deeply sorry for.” He later announced that he would seek counselling for alcohol abuse. The period after his marriage broke up had got messy. He brought a nineteen-year-old girlfriend to an event where she was seen drinking wine; he showed up tipsy one night for a hospital visit to a mortally wounded police officer; and, when Rippey-Tourk went on sick leave to address her own alcohol abuse, the city, in an apparent exception to its procedures, paid her more than ten thousand dollars under a catastrophic-illness program.

In the #MeToo era, voters might have judged Newsom more harshly. But he was reelected that fall with seventy-four per cent of the vote. Still, Newsom told me that he’d been “humbled in a profound way, humiliated and embarrassed.” He went on to say that he wouldn’t be on the verge of becoming governor if he hadn’t made those mistakes: “There’s more to me now. I’m more empathetic, I have a sense of gratitude, and I don’t judge like I used to judge—including the guy in the White House.” But, even as he cast his tribulations as a part of the hero’s arc, he avoided detailing why they had happened. When I pushed, he obscured himself in a cloud of bullet points: “Personal journey, renewal, turning the page.”

His counsellor was Mimi Silbert, who runs a rehab center called the Delancey Street Foundation. They met daily at first, and then more sporadically across four years. The first thing Silbert did was to tell him to stop drinking. (Two years later, having decided he wasn’t an alcoholic, she gave him permission to drink socially.) “I have two speeds, on and off,” Newsom told me he’d explained. “I said to Mimi, ‘When I have a drink, that’s my moment when I turn off. It’s *my* time.’ And she said, ‘You’re still the fucking mayor!’ I had never thought of that.”

Silbert told me, “I would be trying to get at the feelings, but emotions were not Gavin’s strong suit. He gets excited by ideas, by having achieved thirty-seven per cent of his goals. And in that period there was no policy pathway out. He was just sad and lonely and he drank too much.”

Haltingly, Newsom began to tell Silbert about the residue of his childhood. His mother had tried to read with him, but it didn't go well. Newsom's daughter Montana is dyslexic and, he said, "I tell Jen, 'Don't make me read with her!' Because when she's struggling with the words my daughter is me and I'm my mother, and it's too hard." His mother grew so concerned by his torment over homework that she told him, "It's O.K. to be average." Bristling at the memory, Newsom told me, "I said, 'No! That's not going to work for me!' That may have been the most damaging thing she ever said to me. It gave me all my drive. I hate her for it—but I love her for it."

He overcorrected. Newsom's sister, Hilary, said that when their mother had breast cancer, in her fifties, he was difficult to reach. "Gavin had trouble explaining to me how hard for him it was to be with her when she was dying, and I had trouble explaining to him how much I needed him," she said. "Back then, he seemed like the kind of guy who would never change a diaper."

In May, 2002, his mother decided to end her life through assisted suicide. Newsom recalled, "She left me a message, because I was too busy: 'Hope you're well. Next Wednesday will be the last day for me. Hope you can make it.' I saved the cassette with the message on it, that's how sick I am." He crossed his arms and jammed his hands into his armpits. "I have P.T.S.D., and this is bringing it all back," he said. "The night before we gave her the drugs, I cooked her dinner, hard-boiled eggs, and she told me, 'Get out of politics.' She was worried about the stress on me."

Seven years later, Newsom made his first run for governor. The plan was to preempt Jerry Brown, then the state's attorney general. But Brown announced a few months later, and Newsom knew he was finished. Still, he said, "I didn't have the guts to get out for another six weeks. I was playacting. *Undeserving* was the point—Jerry was the better candidate."

Afraid that if he got out of politics he'd never get back in, he ran for lieutenant governor, a job he'd disparaged as "a largely ceremonial post." He spent a year and a half trying to establish his authority, as the chair of a state commission for economic development, but Brown refused to appoint enough members for the commission to meet. "He was very dismissive of me in the first term," Newsom said. "He literally didn't say a word to me." Brown took issue with this characterization, telling me, "I spoke to him as much as I spoke to Mervyn Dymally"—the long-forgotten lieutenant governor in Brown's first term, in the seventies, a man so tainted by stories of corruption that he was voted out.

Newsom avoided the capitol, in Sacramento, instead taking a desk at a work space for startups in San Francisco. He wrote a book called "Citizenville," a techno-utopian vision of how to transform government. And, in his second term, he promoted ballot measures legalizing marijuana and instituting background checks on purchasers of ammunition. After Brown had enforced sufficient deference, he unbent a bit. Siebel Newsom said, "Gavin would come back and say, 'Jerry showed me around the governor's mansion!' So there have been scraps thrown."

The political consultant Ace Smith, who has worked on most of Newsom's campaigns, said, "Gavin's disastrous 2009 campaign for governor, and then having to suck up his pride and go for lieutenant governor—getting knocked on his ass—made him a lot more humble." His happy second marriage and growing family also aided in a quiet transformation. Still, the hair gel. "I see that person, too, the tall, slick guy with the suits," Newsom suddenly announced one afternoon, as his S.U.V. roared down the highway. "The image is self-inflicted. I didn't set out to create it, and when I worked at the wine store I wore ripped jeans and had my hat backward, but when I became a sommelier at the café I put the suits back on and played that part: 'Wonderful to see you again, Mr. Smith. We have a delightful Chardonnay tonight.' And then politics reinforced it."

He longs to merge his personas: "There's a blended version, where I'm *on* but I'm not putting on the mask. I am so tempted to do an event with a hat and jeans and

a T-shirt. But at the last minute I have vivid images of politicians who put on cowboy boots and Wranglers, still with a crease on them, to walk into the Dairy Queen. And when Obama wore the mom jeans to throw out that first pitch?" He was recalling the debacle of the 2009 All-Star Game. "I just can't forget that."

With Villaraigosa out of the race, Newsom finally secured Jerry Brown's endorsement, and by August he had a twenty-two-point lead over Cox. He decided to dedicate his September bus tour to supporting Democrats in six tight congressional races, hoping to help the Party win control of the House. Rather than attacking Cox any further, he would run ads that simply announced his plans. He polled prospective voters about seven issues, trying to determine whether they saw the state's problems through a lens of poverty or of education. Poverty won, but Newsom nonetheless authorized ads about education. "Education *is* economic opportunity *is* access to jobs *and* affordability!" he told me. "All the dots connect! And we'll extend that to a college narrative—we're going to add a second free year of community college. So the frame is really the California Dream, how it's in peril with infrastructure and homelessness. It's a positive frame, it's not the anti-Trump frame, which would be our lazy campaign—though we can go there if we have to." (As the election neared, they did.)

In September, he sent me a long text after a breakfast with the Reverend James Lawson, a civil-rights leader who met with Bobby Kennedy. He wrote that Lawson "hit me hard saying what was missing was 'a sense of urgency' a declaration to a 'cause' . . . 'passion' / 'vision.'" He made Newsom realize that "this campaign is not about a campaign for governor, resplendent w dozens of policy ideas," but is a crusade to address "poverty, particularly childhood poverty."

Lawson, he told me, had provided the narrative he'd been seeking. As Newsom put it in his subsequent ads, urging prenatal nurse visits and pre-kindergarten for all, "Renewing the California Dream? It starts with ending child poverty." More important, Lawson had reminded him what it was all about: "He asked me—it

was almost spiritual—what my purpose in life was: ‘*Why are you here?*’ ” The question hit Newsom so hard that he couldn’t muster an answer.

Late one afternoon, Newsom went to San Francisco’s City Hall to meet with the new mayor, London Breed. Breed, the first African-American woman to hold the post, was focussed on homelessness, and she, too, liked to gauge the city’s efforts by walking the streets unannounced. The two officials were natural allies. Yet Newsom, sitting in the office where he had last made decisions of real consequence, appeared ill at ease. A television in the corner was live-streaming Breed’s former colleagues on the Board of Supervisors. “You gotta be up here!” Newsom exclaimed, raising his arm. “You can’t get sucked into that”—he dropped his arm to the floor.

Breed replied, “Because I had the TV on, I was able to stop them from cutting two hundred and fifty police officers out of my budget.” As they discussed individual city employees, Newsom kept glancing at the TV. “I really, seriously am concerned that you are watching the Board of Supervisors,” he finally declared. “Rise above!”

“I just have it on as background—”

“No! Shut it off!”

Breed, unruffled, resumed talking about a homeless encampment on Mission Street. “Eight people, and only two of them accepted our help,” she said.

Newsom frowned, thinking of Quan, the young man with the orange hairbrush. “I wish—I wish you could have been there when we met one of those kids out in the Tenderloin,” he said. Maybe together they could have brought Quan around. On the other hand, as his advisers kept reminding him, he wasn’t about to be elected mayor of California. He, too, needed to rise above.

Newsom leaned in across his old desk and said, “I just want to warn you—it goes fast. Like *that*. You have no idea, but you’re the future ex-mayor.”

Breed’s chief of staff, who’d come in to wind up the meeting, frowned and said, “She’s got nine more years.”

“No,” Newsom said. “It goes so fast.”

Outside the mayoral suite, he stood for a moment on the landing. “Candidly, listening to her was like listening to me,” he said. “I remember those emotions.” In 2004, Newsom had told me that he could easily step away after one term: “Politics is life-consuming, but it’s not a life.” When I reminded him of that, he replied, “It’s become my identity.” Newsom’s cousin Jeremy Scherer told me, “What’s enamoring to Gavin about politics is that it’s impossible and you never win. There’s always someone who hates you and says you’re doing a terrible job.”

Newsom gazed up into the building’s marble dome. Did he get smaller, or did the problems get bigger? You enter politics to change lives, and you end up hoping just to save your own. “I always imagined what it would be like to leave this office,” he said. “I thought it would be powerful, but the minute I swore in Ed Lee as the next mayor, literally seconds later, every reporter is running toward Ed Lee, every staffer is running toward him, and I remember walking down these stairs alone. Ed never called me, my staff didn’t call me—nobody. All that energy, over in a *nanosecond*.” He shivered, draped his jacket over his shoulder, and loped downstairs to the S.U.V. waiting to speed him on his way to being the future ex-governor of California. ♦

Published in the print edition of the November 5, 2018, issue, with the headline “Golden Boy 2.0.”



*Tad Friend has been a staff writer at *The New Yorker* since 1998. He is the author of the memoir “In the Early Times: A Life Reframed.”*

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Transcript of KTUV, Governor's Speech After Recall, September 14, 2021

URL: <https://www.youtube.com/watch?v=Ia-ZOTZLz3A>

E 2.a

TRANSCRIPT PER CAL. RULE OF COURT 2.1040 (b)

Prepared by: Denise F. Bohdan, Co-Counsel for Petitioner

Date of Publication of Video on-line: September 14, 2021

Title: KTUV San Francisco, “YouTube Video, Governor’s Speech After Recall Vote”

Length: **5 minutes**

Source: <https://www.youtube.com/watch?v=la-ZOTZLz3A>

[Transcribed in Pertinent Part, beginning at 3 minutes, 50 seconds into video. First part of speech is devoted to the recall and other current issues wholly unrelated to the case at bar]

Begin at timecode 3:50

Governor:

“It’s a remarkable moment in our nation’s history, but I am reminded of, uh, something a few decades ago someone told me when describing a difficult and challenging moment. He said “the world is too small. Our time is too short. And our wisdom is too limited to win fleeting victories at other people’s expense. He went on to say, “we must all triumph together”.

So in that spirit of recognizing and reconciling this moment and trying to understand what’s going on not just what’s going on in this State but all across America

I just want to say this. Tonight I am humbled, I’m grateful, but resolved ...in the spirit of *my* political hero, Robert Kennedy. “to make more gentle the light of this world”. Thank you all very much and thank you to 40 million Americans, 40 million Californians and thank you for rejecting this recall.

END

White, Jeremy, “Newsom: RFK Admiration Shows ‘where I might be leaning’ on Sirhan Parole”, Politico, September 15, 2021 on-line

URL: <https://www.politico.com/states/california/story/2021/09/15/newsom-rfk-admiration-shows->

E 3.a – E 3.d

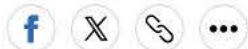


Newsom: RFK admiration shows 'where I might be leaning' on Sirhan parole



Nearly half a century after Sirhan Sirhan killed Robert F. Kennedy in Los Angeles, the prospect of Sirhan exiting prison has spurred passionate reactions. | Gregory Bull, Pool/AP Photo

By JEREMY B. WHITE
09/15/2021 07:11 PM EDT



ALAMEDA, Calif. — Gov. Gavin Newsom hinted on Wednesday that he is inclined not to release Robert F. Kennedy's assassin from prison, although he

stressed that he has not made a decision.

A state parole board recently recommended Sirhan Sirhan be released, initiating a process that will leave Newsom with the final say over Sirhan's fate. During a stop at an elementary school a day after defeating the gubernatorial recall, Newsom said he did not want to take a public position that would interfere with those proceedings and "put that entire process at risk."

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But he emphasized that Kennedy looms large as a personal hero whose image adorns the governor's office and his office at home.

"I think that gives you a sense of where I might be leaning right now," Newsom said, although he quickly batted down a follow-up question about whether he is likely to block Sirhan's release. "I don't want to prejudice any further this process," he said.

Nearly half a century after Sirhan killed Kennedy in Los Angeles, the prospect of Sirhan exiting prison has spurred passionate reactions. Members of the Kennedy family have split on whether parole would be appropriate.

Newsom said he has been flooded by text messages and emails from people conveying visceral reactions to Sirhan's fate.

"This is very raw emotionally," Newsom said, stirring up "memories of that time" that some people "may want to suppress, understandably."

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Transcript of October 21, 2021, NBC News, Meet the Press

URL: <https://www.nbcnews.com/meet-the-press/video/gov-newsom-ethel-kennedy-s-opinion-has-weight-on-sirhan-decision-release-124271174002>

E 4.a – E 4.f

XXXXXXXXXX _____

TRANSCRIPT PER CAL. RULE OF COURT 2.1040 (b)

Prepared by: Angela Berry, Attorney for Petitioner

Date of Publication of Video on-line: October 21, 2021

Title: **“Meet the Press” Interview**

Source: <https://www.nbcnews.com/meet-the-press/video/gov-newsom-ethel-kennedy-s-opinion-has-weight-on-sirhan-decision-release-124271174002>

Length: 2 min. 27 sec.

LEGEND: I = INTERVIEWER

G = GOVERNOR

I: THE SIRHAN SIRHAN DECISION, IS THIS A...IS THIS A TOUGH DECISION?

G: [OVERTALKING] TOUGH ONE...THIS IS A TOUGH ONE. IT'S INTERESTING. TOUGH. TOUGH.

[OVERTALKING, UNINTELLIGABLE]

I: WHAT MAKES IT TOUGH?

G: WELL, I MEAN, IT'S INTERESTING-

I: WHAT MAKES IT TOUGH?

G: IT'S INTERESTING. IT'S INTERESTING YOU ASK THE QUESTION. I LAUGH, I DON'T LAUGH TO BE DISMISSIVE; I LAUGH BECAUSE THAT'S A HARD ONE FOR ME.
BOBBY KENNEDY – IS MY...

I: IT'S ALL ON YOU, RIGHT?

G: ROBERT KENNEDY IS MY POLITICAL HERO, I MEAN, LOOK AT MY HOUSE, IT'S LIKE A SHRINE TO THE KENNEDY FAMILY AND BOBBY IN PARTICULAR.

I: AND YOU WONDER WHY SOME OF US ASK YOU IF YOU'RE INTERESTED IN RUNNING FOR PRESIDENT

G: WELL, I JUST...BUT ...I...I .. ATTACH TO THE PROVOCATIVE IDEALISM OF THE 60S. I MEAN THERE'S SOMETHING ABOUT THAT SERVICE, CONTRIBUTION, OPPOR-. I MEAN, THERE'S SOMETHING BEAUTIFUL THERE THAT WE NEED TO ATTACH OURSELVES TO AGAIN. BUT WITH THAT SAID, UM, THIS IS HARD BECAUSE I BELIEVE IN REDEMPTION; I BELIEVE IN SECOND CHANCES, BUT AT THE SAME TIME, MAN, HE TOOK AWAY DREAMS. UH, HE TOOK AWAY A LOT OF HOPE UM AND THIS COUNTRY, THIS WORLD, HAS DRAMATICALLY CHANGED AS A CONSEQUENCE, AND I HAVE TO FACTOR THAT IN, AND SO I, I -

I: WHAT ABOUT THE FAMILY?

G: I, I, THIS IS HARD ...

I: WHAT ABOUT THE FAMILY? SOME EVEN SAY THEY'RE NOT DIVIDED EVENLY. DOES THAT MATTER TO YOU?

G: UH, PROFOUNDLY.

I: YEAH.

G: COME ON, BOBBY'S WIFE.

I: RIGHT.

G: IF, IF I WANT TO PREVIEW A POINT OF VIEW, THAT'S GOING TO BE PROFOUNDLY DETERMINATIVE-

I: ETHEL KENNEDY MATTERS TO YOU?

G: IF ETHEL KENNEDY CALLS ME UP, UH, AND UH, EXPRESSES HER POINT OF VIEW, THERE'S WEIGHT, AND UH, THERE'S A DIFFERENT LEVEL OF WEIGHTINESS OF WEIGHT. AND THAT'S A CALL FROM ETHEL KENNEDY.
AND, AGAIN, I'M NOT LOOKING FOR THAT CALL.

I: RIGHT.

G: BUT I'M VERY DESIROUS OF GETTING A BETTER UNDERSTANDING OF WHERE SHE IS IN RELATION-

I: WHEN DO YOU HAVE TO MAKE THIS DECISION?

G: IT HASN'T BEEN FORMALLY BROUGHT TO MY DESK. SO IT'S A MATTER OF MONTHS. BUT IT'S COMING UP. AND IT'S UM, GENERATING A LOT OF INTEREST. I'VE NEVER – I'LL TELL YA, IT'S REALLY – YOU ASK THIS QUESTION, I HAVE GOTTEN EMAILS AND TEXT MESSAGES FROM FOLKS THAT ARE SOME OF THE MOST HEART-FELT AND DEEP AND EMOTIONAL.

I: ON BOTH SIDES OF THE ISSUE?

G: ON BOTH SIDES OF THIS ISSUE. IT'S A VERY – IT HITS HOME BECAUSE

I: JOHN HINKLEY'S OUT RIGHT NOW. DOES THAT MATTER TO YOU?

G: YES. INTERESTING AND PEOPLE BROUGHT THAT UP. IT MATTERS BUT BOBBY'S LOSS CARRIES A DIFFERENT WEIGHT. AND AGAIN I WANT TO REMIND YOU, THAT NOT ONLY DO I HAVE A SHRINE OF SORTS, THAT'S EXAGGERATED, BUT PICTURES OF BOBBY KENNEDY, BUT THE MOST VALUABLE THING I OWN IN MY LIFE IS A PICTURE OF MY DAD, WHO PASSED AWAY, AND BOBBY KENNEDY, SIGNED TO MY MOTHER, WHO PASSED AWAY, TESSA, FROM BOBBY KENNEDY. AND IT WAS DONE JUST A FEW MONTHS BEFORE HE DIED, SO THIS ONE, UH, THIS ONE'S A TOUGH ONE.

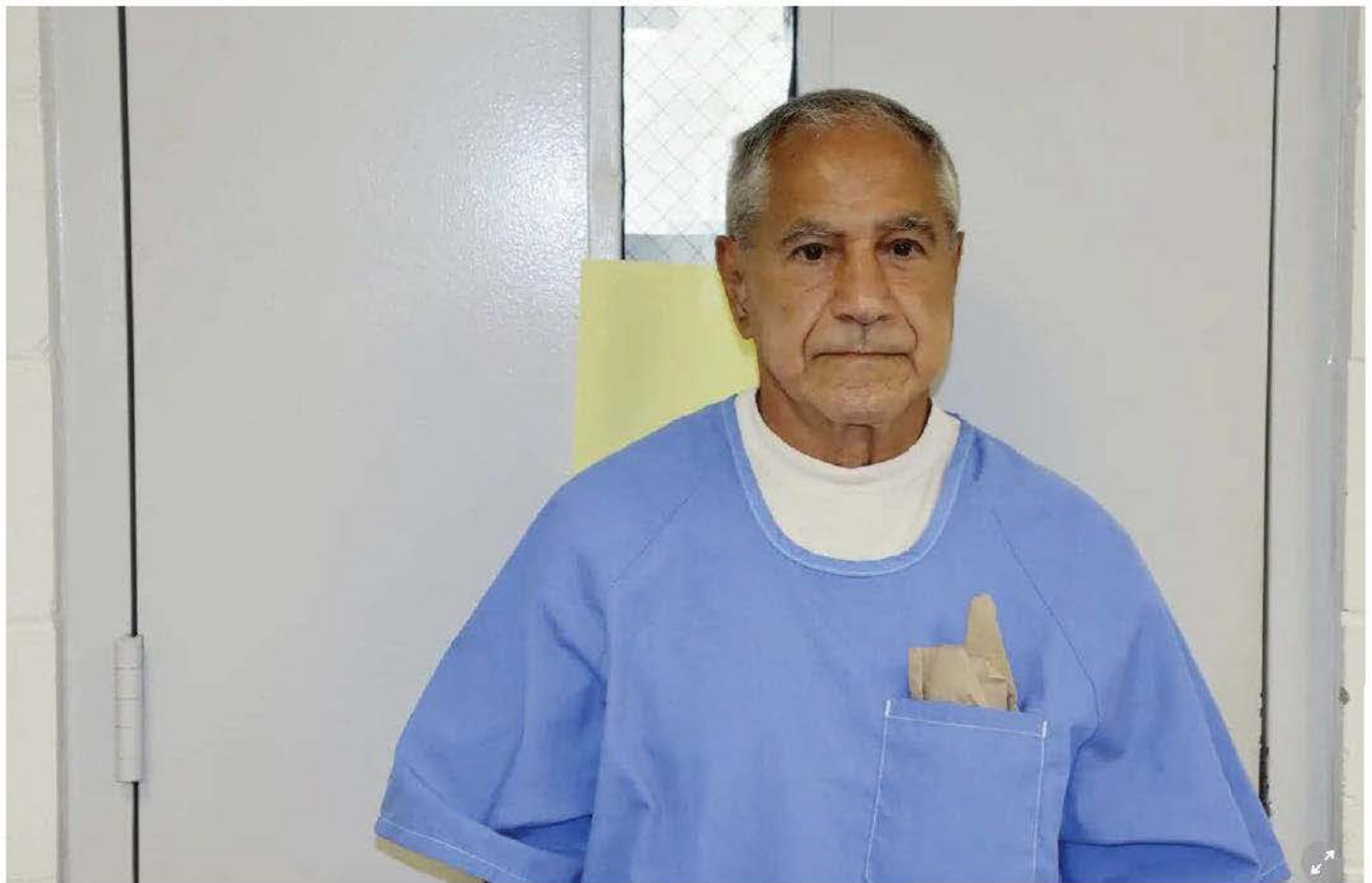
END.

Thompson, D., “California Governor Mulls RFK assassin Sirhan Sirhan Parole”, AP On-line, December 28, 2021

URL: AP Assoc. Press, <https://apnews.com/article/sirhan-sirhan-middle-east-california-gavin-newsom-08ab1b7dc92f58c78c2645c436311ba4>

E 5.a

California governor mulls RFK assassin Sirhan Sirhan parole



BY DON THOMPSON

Published 9:18 AM PDT, December 28, 2021

SACRAMENTO, Calif. (AP) — California's governor must soon decide whether to free one of America's most

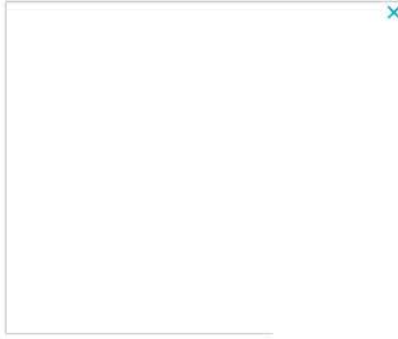
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"People aren't just giving an opinion about yes or no, they're expressing their memories of that time ... and connecting the dots to the '60s and that stress and anxiety and the wounds," Newsom said after the panel made its recommendation.

"And in a way that makes this decision even that much more powerful, because of the impact that has on opening up those memories, many memories that people want to suppress, understandably," said the Democratic governor, who called RFK his "political hero" in a victory speech after he beat back a recall election in September.

Fifteen times, parole panels rejected freeing Sirhan, now 77, before deciding that he is no longer a danger to public safety.

New laws since his last previous parole hearing in 2016 meant the panel had to consider that Sirhan committed the offense at a young age, when he was 24; is now an elderly prisoner; and that the Christian Palestinian who immigrated from Jordan had suffered childhood trauma from the conflict in the Middle East.

Also, for the first time, Los Angeles County prosecutors weren't at the parole hearing to object, under District Attorney George Gascón's policy that prosecutors should not be involved in deciding whether prisoners are ready for release.

And two of RFK's sons supported releasing him, including Douglas Kennedy, who told the parole panel that Sirhan was "worthy of compassion and love." Robert F. Kennedy Jr. wrote to the panel urging that Sirhan be freed, citing his "impressive record of rehabilitation."

But six of Kennedy's nine surviving children urged Newsom to block the release of a man who "took our father from our family and he took him from America." The statement was signed by Joseph P. Kennedy II, Courtney Kennedy, Kerry Kennedy, Christopher G. Kennedy, Maxwell T. Kennedy, and Rory Kennedy.

Ethel Kennedy, RFK's wife, said Sirhan "should not have the opportunity to terrorize again."

Sirhan has consistently said he doesn't recall shooting Kennedy and wounding five others the Ambassador Hotel in Los Angeles. But he told parole commissioners that he takes responsibility killing a man he called "the hope of the world."

He was initially sentenced to death, but that sentence was commuted to life when the California Supreme Court briefly outlawed capital punishment in 1972.

Sirhan's attorney, Angela Berry, said in a written argument for his release that he suffers a heart condition and has survived prostate cancer, Valley Fever and having his throat slashed by another prisoner in 2019.

If freed, Munir Sirhan says his older brother can live with him, if he is not deported to Jordan. Sirhan Sirhan waived his right to fight deportation.

"We are just two old brothers who wish to live out the rest of our lives together," he wrote to the parole board.

After the parole panel's decision, corrections officials released 101 pages of those documents and letters from across the nation, all but one supporting Sirhan's release.

Some compared him to a political prisoner or advanced various conspiracy theories around Sirhan's involvement or the assassinations of both Kennedy brothers. Many were clearly part of an organized effort, with similar wording or fill-in-the-blank responses.

Others were more personal.

One man recalled how, as a 19-year-old college student, he traveled by bus to an inner-city neighborhood to get out the vote for Robert Kennedy.

"He was a person who I loved and respected and in whom I had deep confidence that he would put a quick end to that unjust and immoral war in Vietnam," wrote the man, whose contact information was redacted.

Instead, the man was drafted in 1971.

"Sirhan's involvement in RFK's murder changed my life," he wrote. "But looking at life from this end, I forgive him."

The lone writer who opposed Sirhan's release said in a handwritten note that he still remembers details of "the god-awful" assassination a half-century later.

"Sirhan has caused the death of a man with a great political future," he wrote, and "along with that has taken away the innocence of people of my generation."

Ad removed. [Details](#)

Newsom, G., Los Angeles Times, Op. Ed. January 13, 2022

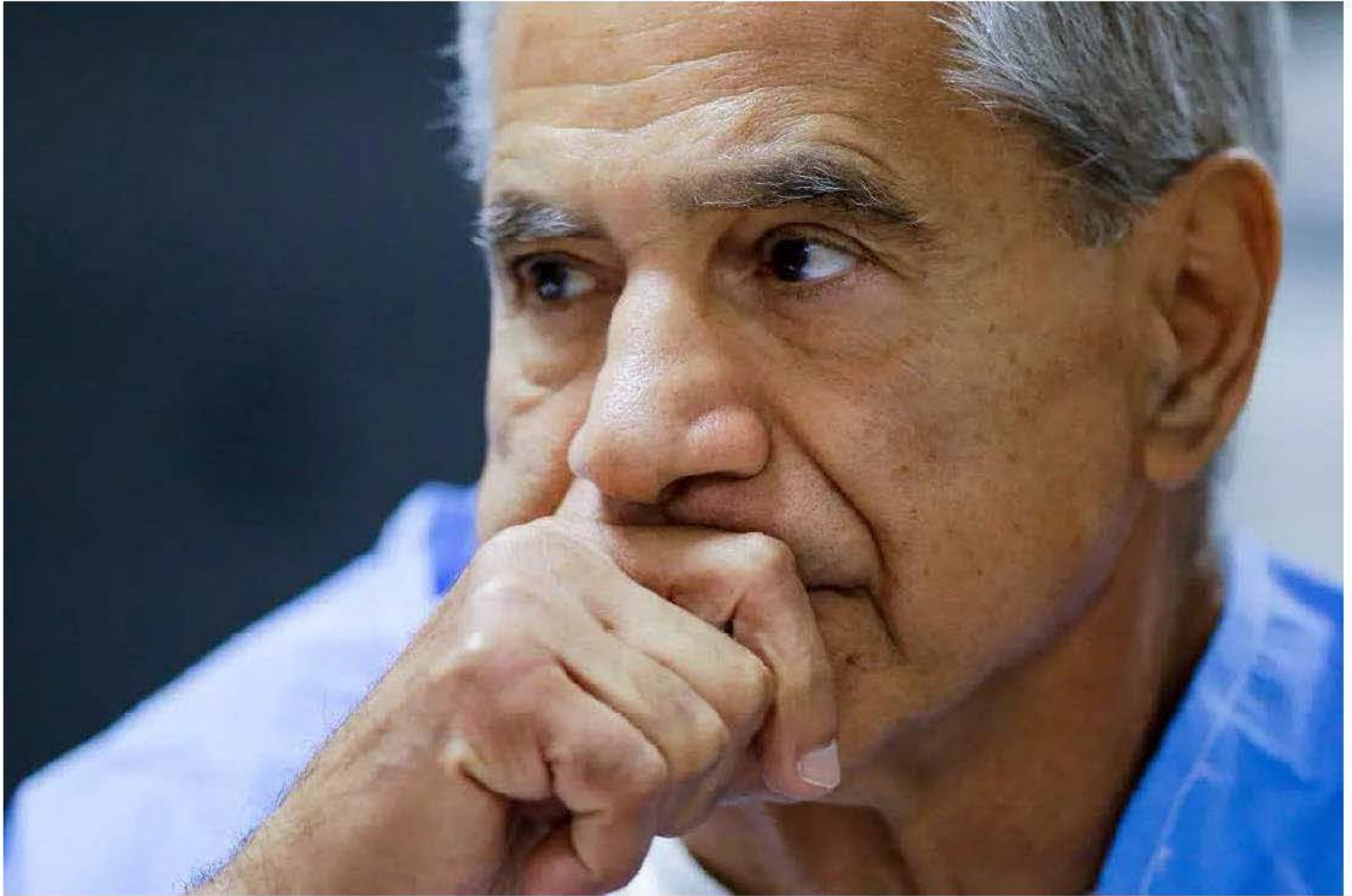
URL: <https://apnews.com/article/sirhan-sirhan-middle-east-california-gavin-newsom-08ab1b7dc92f58c78c2645c436311ba4>

E 6.a



OPINION

Op-Ed: Newsom: Why I will not release Sirhan Sirhan on parole



Sirhan Sirhan appears at a parole hearing in 2016 at the Richard J. Donovan Correctional Facility in San Diego.

(Gregory Bull / Associated Press)

By Gavin Newsom

Jan. 13, 2022 2:12 PM PT

In 1968, Sirhan Sirhan assassinated Sen. Robert F. Kennedy just moments after Kennedy won the California presidential primary. Sirhan also shot and injured five bystanders. Decades later, Sirhan refuses to accept responsibility for the crimes.

California's [Board of Parole Hearings](#) recently found that Sirhan is suitable for parole. I disagree. After carefully reviewing the case, including records in the California State Archives, I have determined that Sirhan has not developed the accountability and insight required to support his safe release into the community. I must [reverse Sirhan's parole grant](#).

Kennedy's assassination not only changed the course of this nation and robbed the world of a promising young leader, it also left his 11 children without a father and his wife without a husband. Kennedy's family bears his loss every day. Millions of Americans lost a unifier in a time of national turmoil and grief, just nine weeks after the assassination of the Rev. Martin Luther King, Jr., and four-and-a-half years after the murder of Kennedy's brother, President John F. Kennedy.



CALIFORNIA

Gov. Gavin Newsom rejects parole for Sirhan Sirhan, convicted of killing Robert F. Kennedy

Jan. 13, 2022

Yet, after decades in prison, Sirhan still lacks the insight that would prevent him from making the kind of dangerous and destructive decisions he made in the past. The most glaring proof of Sirhan's deficient insight is his shifting narrative about his assassination of Kennedy, and his [current refusal to accept responsibility](#) for it.

The evidence that Sirhan assassinated Kennedy is overwhelming and irrefutable. Before the assassination, Sirhan recorded his plans to kill Kennedy, writing, "RFK must die. RFK must be killed. Robert F. Kennedy must be assassinated." At the time of the assassination, Sirhan accepted sole responsibility. In a [televised interview](#), Sirhan confirmed that he assassinated Kennedy and acted alone.

Incredibly, in the 1990s, Sirhan began dodging responsibility. He claimed he could not remember the crime, then stated he was innocent. In 2016, Sirhan said he believed he

did not kill Kennedy based on what he had read in his attorney's legal briefs. As recently as last year, Sirhan portrayed himself as the victim, claiming he "was in the wrong spot at the wrong time."



CALIFORNIA

Kennedy family deeply divided over parole for RFK assassin Sirhan Sirhan

Aug. 28, 2021

It is abundantly clear that, because of Sirhan's lack of insight, his release on parole would pose a threat to public safety.

Sirhan is now 77 years old, but he remains a potent symbol of political violence. In the past, terrorists took hostages — and ultimately killed some of them — [in Sirhan's name](#). Despite inciting violence in the past, recently Sirhan laughingly dismissed the current relevance of his status as an ideological lightning rod. He does not understand, let alone have the skills to manage, the complex risks of his self-created notoriety. He cannot be safely released from prison because he has not mitigated his risk of fomenting further political violence.

Over the years, Sirhan and his advocates have churned false claims about Kennedy's assassination. Each claim of Sirhan's innocence has been investigated and disproved. These falsehoods fuel Sirhan's denial of accountability. Their repetition also perpetrates an additional and ongoing harm by keeping open and unhealed the wound that the assassination inflicted on the Kennedy family and the American public.

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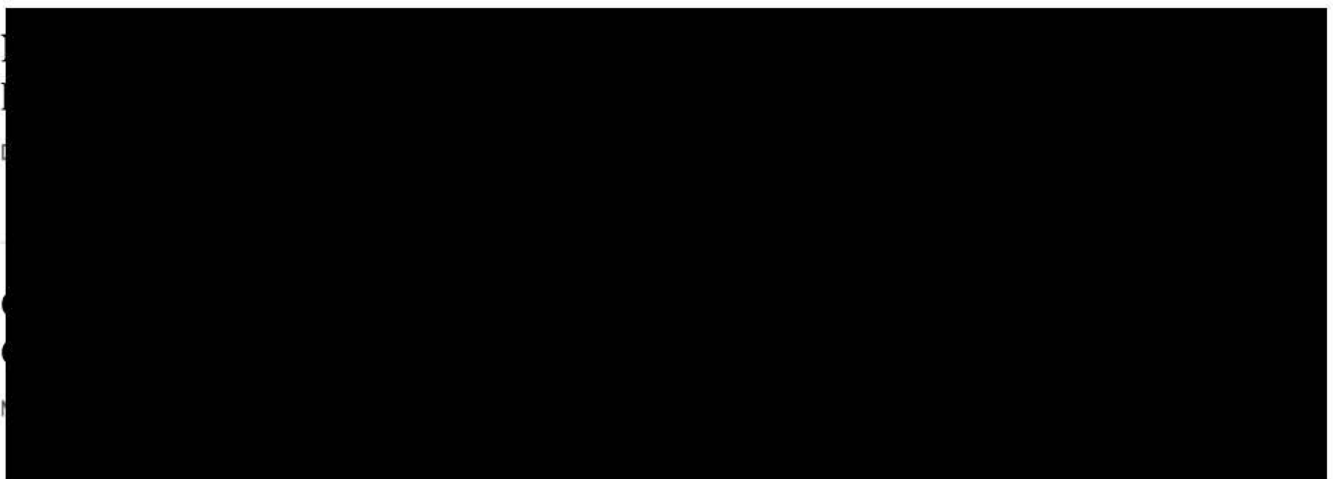
Perhaps it is easier for some to accept debunked false claims than confront the difficult truth: Sirhan, one man with a gun, acting alone, inflicted grievous harm to our country.

I will not flinch from this truth. The parole cases I review each week reveal the depths of human violence and its destruction. But these cases also give me hope. They show the resilience of crime victims and survivors, as well as the transformation of incarcerated people who choose to do the difficult work to make amends for the harm they caused. They model what Robert F. Kennedy encouraged all of us to undertake when [he said](#), “Surely we can begin to work a little harder to bind up the wounds among us and to become in our own hearts brothers and countrymen once again.”

Sirhan has much work to do. I encourage him to start by taking Kennedy’s words to heart.

Gavin Newsom is the 40th governor of California.

More to Read



Letter to Governor Newsom from BGR Law Firm, dated Dec. 9, 2021

APPENDIX F



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December 9, 2021

By Email and Overnight Mail

Governor Gavin Newsom
c/o Legal Affairs Secretary Ann Paterson
Office of the Governor
1303 10th Street, Suite 1173
Sacramento, CA 95814

Re: Governor's Review of August 27, 2021, Two-Member Panel Decision of
Board Of Parole Hearings Involving Sirhan Sirhan

Dear Governor Newsom:

We submit this statement on behalf of family members of decedent Robert Francis Kennedy: widow Ethel, children Joseph, Courtney, Kerry, Chris, Max, and Rory, and other family members whose own testimonials will be submitted under separate cover. (Attached hereto as Exhibits A, B, and C are, respectively, the report of expert Barbara Turner, a retired Deputy District Attorney in the Parole Division of the Los Angeles District Attorney's Office; a copy of handwritten notes made by Mr. Sirhan prior to the assassination; and a declaration of retired Sergeant Mikecal E. Mosher of the California Department of Corrections and Rehabilitation.)

1. Introduction / Summary of Argument.

Mr. Sirhan is legally undeserving of parole. Under California law, the Governor may properly deny parole where there is some evidence that the applicant's release would threaten the safety of the public. The record of official proceedings concerning Mr. Sirhan's actions and statements, spanning from his 1969 trial court proceedings through 16 hearings before the Board of Parole Hearings ("Board"), culminating in the August 27, 2021, two-person Board session, demonstrates vividly that Mr. Sirhan continues to pose precisely such a threat.

Rather than having gained personal insight into his actions – or shown accountability or remorse – or demonstrated reformation, in the ensuing 53 years, Mr. Sirhan has resorted to lies and dissembling about his premeditated murder of

Governor Gavin Newsom
December 9, 2021
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Senator Kennedy. He has mocked the criminal justice process in doing so, and in providing authorities with answers he believed they wanted to hear, rather than with sincerity, contrition, or the truth.

To this day, moreover, Mr. Sirhan remains susceptible to agitation by the very motive – the Israeli-Arab conflict – that in 1968 animated his criminality. He has even attempted to justify his crime by analogizing Robert F. Kennedy – a democratically-elected United States Senator in the midst of a competitive, multi-state primary election – to the fascist, totalitarian dictator Adolf Hitler. And he has made that analogy repeatedly, including in public statements. Despite Mr. Sirhan's age, nothing in the extensive record suggests he would not or could not, when so agitated, commit the very type of crime he did many decades ago.

The Kennedy family has been decimated by Mr. Sirhan's act. Justice here requires a denial by the Governor of parole, so as to keep safe the other victim here – the American people.

2. Factual Background.

The biography of Robert Francis Kennedy is readily accessible: in public life, a scion of the Kennedy family; Attorney General of the United States; United States Senator representing New York; and candidate for United States President, who prevailed in the California Democratic primary and was poised to secure his Party's nomination for the 1968 election. In his private life, a devoted family man – husband of Ethel, father of children Kathleen, Joseph, Robert Jr., David, Courtney, Michael, Kerry, Chris, Max, Douglas, and Rory.

Although these and other facts can be learned from various forms of media, what has been irretrievably lost to multiple global generations by the singular act of one assassin is the continued participation of Robert F. Kennedy in the public life of our country and the world over the last half-century. What the history books make clear is that Robert F. Kennedy was an especially compelling leader, skilled in the hard work of making actual change in a representative democracy, and inspiring – by word and action – the full diversity of America. One need only to be sentient in our polarized times to understand the value that such a leader could have brought, had his full cycle of life not been stolen from us all.

Governor Gavin Newsom

December 9, 2021

Page 3

One individual, Sirhan Sirhan, aimed to – and did – tragically and prematurely end Senator Kennedy's life and life's work. Mr. Sirhan (in his own words during a parole hearing) was agitated at the time of the assassination

"because of Senator Kennedy's – promise to send fifty bombers – to kill and – deliver damage and death on my – my kindred in the Middle East. I don't think that it was fair of the Senator and I don't – and I still don't think it's fair for – for this country to send over, you know, instruments of death and destruction on helpless people who have done nothing to this country – to merit, you know, the ill will of the American people."

(Parole Hearing Transcript, May 28, 1987, at 25:9-20.) Prior to his premeditated assassination of Senator Kennedy, Mr. Sirhan wrote (in his own hand) that:

"RFK must be be be disposed of . . . disposed . . . disposed . . . disposed . . . disposed . . . disposed of properly[.] Robert Fitzgerald [sic] Kennedy must soon die die die die die die die die die die"

(See Exhibit B.)

Mr. Sirhan shot Senator Kennedy on June 5, 1968 (he was to die on June 6), and a jury thereafter found Mr. Sirhan guilty of first-degree murder. The jury recommended a death penalty, which the trial judge imposed. In 1971, the California Supreme Court issued a 75-page opinion upholding Mr. Sirhan's first-degree murder conviction but – as a consequence of the California Supreme Court decision commuting to life in prison all capital sentences in the State of California, see *People v. Anderson* (1972) 6 Cal. 3d 628 – modified Mr. Sirhan's sentence to life imprisonment, which by definition made him eligible for parole consideration after seven years. Mr. Sirhan thereafter sought parole from the Board, unsuccessfully, on 15 occasions.

Mr. Sirhan's assassination of Senator Kennedy victimized not merely the Kennedy family, but many individuals spanning a worldwide generation. The individual many considered America's most compassionate public figure – the

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singular figure who might have helped unify a terribly divided country – was suddenly gone. Hosea Williams, one of Dr. King's closest aides, summed up the feelings of much of the nation's black community in 1968:

"We felt as long as Dr. King lived, he would lead us to higher grounds But after he was killed, it left us hopeless, very desperate, dangerous men. I was so despondent and frustrated at Dr. King's death, I had to seriously ask myself Can this country be saved? I guess the thing that kept us going was that maybe Bobby Kennedy would come up with some answers for this country After Dr. King was killed, there was just about nobody else left but Bobby Kennedy. I remember telling him he had a chance to be a prophet. But prophets get shot."

Robert F. Kennedy et al., *RFK: His Words for Our Times* 374 (2018). As the historian and Robert F. Kennedy biographer Larry Tye has written, Senator Kennedy was "the most trusted white man in black America." Larry Tye, *The Most Trusted White Man in Black America*, Politico.com (July 7, 2016), <https://www.politico.com/magazine/story/2016/07/robert-f-kennedy-race-relations-martin-luther-king-assassination-214021/>.

The extent and depth of the loss of Senator Kennedy is best revealed by illustrations of the extent and depth of his impact, not just in the United States, but worldwide, on his generation. A mere handful of excerpts from speeches on poverty, race, and internationalism suffices to illustrate the power of Senator Kennedy's impact:

- In a March 18, 1968, speech, Senator Kennedy addressed the
"other Americans – I have seen children in Mississippi starving, their bodies so crippled from hunger and their minds have been so destroyed for their whole life that they will have no future. I have seen children . . . in the Delta area of Mississippi with distended stomachs, whose faces are covered with sores from starvation, and we

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haven't developed a policy so we can get enough food so that they can live, so that their children, so that their lives are not destroyed, I don't think that's acceptable in the United States of America and I think we need a change. . . . If we believe that we, as Americans, are bound together by a common concern for each other, then an urgent national priority is upon us. We must begin to end the disgrace of this other America."

- On April 4, 1968, Senator Kennedy addressed a crowd with the news that "Martin Luther King was shot and was killed tonight in Memphis, Tennessee." Senator Kennedy spoke directly to the state of race relations by stating that "in this difficult day, in this difficult time for the United States, it's perhaps well to ask what kind of a nation we are and what direction we want to move in." He continued:

"For those of you who are black . . . you can be filled with bitterness, and with hatred, and a desire for revenge. We can move in that direction as a country, in greater polarization black people amongst blacks, and white amongst whites, filled with hatred toward one another. Or we can make an effort, as Martin Luther King did, to understand, and to comprehend, and replace that violence, that stain of bloodshed that has spread across our land, with an effort to understand, compassion, and love. For those of you who are black and are tempted to fill with hatred and mistrust of the injustice of such an act, against all white people, I would only say that I can also feel in my own heart the same kind of feeling. I had a member of my family killed, but he was killed by a white man. But we have to make an effort in the United States. We have to make an effort to understand, to get beyond, or go beyond these rather difficult times."

- South African Margaret Marshall recounted spending time with Senator Kennedy during his 1966 trip to South Africa. That year South Africa was in the throes of apartheid, and Senator Kennedy addressed the National Union of

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South African Students in what became known as the "Day of Affirmation Speech."
He exhorted students:

"It is from numberless diverse acts of courage such as these that the belief that human history is thus shaped. Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring those ripples build a current which can sweep down the mightiest walls of oppression and resistance."

That speech, Margaret Marshall recalled fifty years after Senator Kennedy's assassination, "really formed the basis of my own life." She went on to become the first woman to serve as Chief Justice of the Massachusetts Supreme Judicial Court.

The premature loss of Senator Kennedy – not just from the lives of his widow and orphaned children and other family members, but also from the world community that looked to his leadership at a fragile time in history – speaks to the gravity of the crime and its consequences for which responsibility lies single-handedly with the present parole applicant, Sirhan Sirhan.

3. The Facts Demonstrate Unequivocally Mr. Sirhan's Culpability for the Crime.
 - a. Mr. Sirhan's Premeditation and Preparation for the Assassination.

In January of 1968, George Erhard came into a possession of a .22 caliber Iver Johnson revolver, serial number H53725. Mr. Erhard was employed at Nash's Department Store, along with Munir Sirhan, Mr. Sirhan's brother. (Respondent's Brief, California Supreme Court, *People v. Sirhan*, Crim. No. 14026, May 4, 1971 ("RB") at 3-4.) Mr. Erhard spoke to Munir Sirhan about selling the weapon, and later that month, Mr. Erhard and a friend met the brothers on a street corner in Pasadena. Mr. Sirhan asked to inspect the weapon. After some dickering over the price, Munir obtained \$6 from his brother Sirhan, and paid \$25 for the weapon. The weapon was then handed over to Mr. Sirhan. (See RB at 4.)

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In April 1968, Mr. Sirhan had a conversation with Alvin Clark, a trash collector for the City of Pasadena, during which Mr. Sirhan asked Mr. Clark his opinion about the forthcoming elections. (*Id.*) When Mr. Clark stated that he was going to vote for Senator Kennedy, Mr. Sirhan responded:

“What do you want to vote for that son-of-a-b for?
Because I’m planning on shooting him.”

(*Id.* (emphasis added).)

On June 1, 1968, Mr. Sirhan signed the roster at the Corona Police Pistol Range. The next evening, Senator Kennedy made a speech at the Palm Terrace of the Ambassador Hotel in Los Angeles. (*See* RB at 5.) Prior to this speech, William Blume, who worked as a stock boy in a liquor store located next door to an organic health food store where Mr. Sirhan worked, observed Mr. Sirhan in the lobby area adjacent to the Palm Terrace. (*Id.*) Miriam Davis, a hostess for the event, was walking around the hotel with members of her family 20 or 30 minutes after the speech when she observed Mr. Sirhan seated in the kitchen area. (*Id.* at 6.) After his speech that night, Senator Kennedy passed through the kitchen area. (*Id.*)

On the morning of June 4, 1968 (election day), Mr. Sirhan signed in at the San Gabriel Valley Gun Club located on Fish Canyon Road in Duarte. (*See* RB at 6.) After he fired for a while on the shooting range, he told the range-master, Edward Buckner, “I want the best box of shells you have, and I want some that will not misfire.” (*Id.*) Mr. Buckner sold Mr. Sirhan a box of shells, and Mr. Sirhan resumed shooting. (*Id.*) Five other witnesses testified that they observed Mr. Sirhan engage in rapid fire that morning – one of whom noticed 300-400 empty casings on the stand where Mr. Sirhan was shooting. (*Id.* at 6-7.) Mr. Sirhan remained at the range for two to two-and-a-half hours. (*Id.*)

b. Mr. Sirhan’s Assassination of Senator Kennedy.

Later that day, it was decided that after Senator Kennedy observed the election returns at his suite in the Ambassador Hotel, he would descend to the Embassy Ballroom to address the crowd assembled there. (*See* RB at 8.) An hour or two prior to Senator Kennedy’s speech, Judy Royer, a member of his staff, observed Mr. Sirhan in the area to the rear of the Embassy Ballroom stage. (*Id.*)

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Because Mr. Sirhan was not wearing a press badge or staff badge, he was asked to leave, and he turned and walked toward the doors leading to the Embassy Ballroom. (*Id.*)

Shortly before midnight, Senator Kennedy took the service elevator down to the second floor kitchen area from which he walked to a pantry area located to the rear of the Embassy Ballroom. (*See* RB at 8.) From there, he proceeded to the platform in the Embassy Ballroom where he delivered his victory address. (*Id.*)

At this time, kitchen staff observed Mr. Sirhan in the pantry. Mr. Sirhan inquired whether Senator Kennedy would be "coming back through this way." (*See* RB at 9.) Two hotel employees replied that they did not know. Mr. Sirhan remained in the pantry. (*Id.*) Upon concluding his address at approximately 12:15 a.m. (June 5), Senator Kennedy was escorted off the platform and toward the Colonial Room where he was to meet the press. Karl Uecker, assistant maitre d' at the Ambassador Hotel, led the Senator through the pantry area behind the Embassy Ballroom. (*Id.*)

In the pantry area, Senator Kennedy stopped and shook hands with some of the kitchen staff. (*See* RB at 9.) At that time, Mr. Sirhan appeared, smirking, and began to fire the aforementioned .22 caliber revolver at the Senator. (*Id.*) Mr. Uecker attempted to wrest the weapon from Mr. Sirhan, and Senator Kennedy fell to the floor of the pantry.

A struggle ensued as those present attempted to immobilize and disarm Mr. Sirhan. (*See* RB at 10.) Roosevelt Grier, Rafer Johnson and other members of Senator Kennedy's entourage arrived seconds later. (*Id.*) Mr. Grier kept Mr. Sirhan immobile on top of a serving table, took the revolver from his hand, and handed the weapon to Mr. Johnson, who turned it over to the police. (*Id.*) While Mr. Sirhan was being held, Mr. Johnson asked him repeatedly, "Why did you do it?" Mr. Sirhan replied, "Let me explain," apparently also remarking: "I did it for my country." (*Id.* (emphasis added).)

Someone placed a coat beneath Senator Kennedy's head, from which he was bleeding. (*See* RB at 10.) Shortly thereafter, Dr. Stanley Abo, a physician summoned from the crowd at the Embassy Ballroom, examined Senator Kennedy. (*Id.* at 11.) The Senator was lying very still, his left eye closed and his right eye

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open and staring aimlessly. (*Id.*) His pulse was slow. Dr. Abo's examination revealed a small but penetrating wound behind the Senator's right ear. (*Id.*) Mrs. Kennedy also arrived at the scene and tended to the Senator. (*Id.*) An ambulance arrived 15 to 20 minutes later. (*Id.* at 12.) As a result of the shots fired by Mr. Sirhan, five other individuals were also wounded: Paul Schrade, Irwin Stroll, William Weisel, Elizabeth Evans and Ira Goldstein. (*Id.* at 11.)

Upon his arrival at Central Receiving Hospital that night, Senator Kennedy was inert and not breathing, although he did have an oxygen mask over his face. (*See* RB at 18.) The attending physician felt no heartbeat and administered an external cardiac massage. Senator Kennedy's breathing, pulse, and heartbeat resumed within a few minutes. (*Id.*) After an adrenalin injection, the Senator's condition improved. The medical staff then began to attend to the five other victims. (*Id.*) Half an hour after Senator Kennedy's arrival at the emergency hospital, his condition stabilized sufficiently to permit his transportation to Good Samaritan Hospital, two blocks away, where he could be examined by a neurosurgeon and chest surgeon. (*Id.* at 18-19.)

Upon his arrival at Good Samaritan Hospital, Senator Kennedy was still in "extremely critical condition" and placed in the intensive care unit, where a tracheotomy was performed. (RB at 19.) Surgery was performed between 3:10 a.m. and 6:20 a.m. "because there was still evidence of bleeding intercranially; there was blood oozing from the wound in the mastoid region of the skull; there was blood mingled with spinal fluid leaking out of the right ear." (*Id.*) The concern of the head of the surgical team, Dr. Henry Cuneo, was "that it might be a blood clot or some large vessel might have macerated." (*Id.*) The surgery stopped all the bleeding and removed bone and metal fragments and a blood clot. (*Id.*) Senator Kennedy then began to breathe on his own without any assistance. (*Id.*) Dr. Cuneo remained with Senator Kennedy thereafter, until the Senator's death at 1:44 a.m. on the following day, June 6, 1968. (*Id.*)

An autopsy was performed on Senator Kennedy's body by Dr. Thomas Noguchi, Coroner and Chief Medical Examiner of Los Angeles County, and two deputy medical examiners between 3:00 a.m. and 9:15 a.m., on June 6. (*See* RB at 20.) It disclosed that the gunshot wound to the head, in the right mastoid, had penetrated the brain and was the cause of death. (*Id.*) The bullet had fractured the skull and had then itself shattered. (*Id.*) Powder burns on the right ear indicated

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that the muzzle distance between the weapon and the ear at the time of the firing was one to one and a half inches. (*Id.*) Two other gunshot wounds were in the area of the right armpit and the right side. (*Id.*) These shots were fired at very close range, between contact and one half to one inch. (*Id.*) The location, alignment, and direction of the three wounds, in conjunction with the clothing worn, indicated to Dr. Noguchi that the three shots in question were fired in "rapid succession." (*Id.*)

c. Mr. Sirhan's Arrest for the Crime and Evidence Uncovered Thereafter.

Two Los Angeles police officers on patrol duty, Arthur Placentia and Travis White, answered the 12:20 a.m. all-units call on June 5 after the shooting. (*See* RB at 12.) The officers took Mr. Sirhan off the serving table, where he was being restrained, placed him in custody, and handcuffed him. He was transported through a hostile crowd to the officers' police car. Then-Speaker of the California Assembly and California Campaign Manager of Senator Kennedy's 1968 primary campaign Jesse Unruh also entered the vehicle, and the officers drove toward the Rampart station. (*Id.*) Officer Placentia several times asked Mr. Sirhan his name, but he did not reply. Mr. Sirhan was advised of his constitutional rights, and he replied that he understood his rights. (*Id.*)

The officers did not address any further questions to Mr. Sirhan during the trip to the station. (*See* RB at 12.) However, Mr. Unruh asked Mr. Sirhan "Why did you shoot him?" and Mr. Sirhan replied: "Do you think I'm crazy, so you can use it in evidence against me." (*Id.* at 12-13.)

During the five-minute drive, Officer Placentia did not smell any odor of alcohol on Mr. Sirhan. (*See* RB at 13.) Nor did Mr. Sirhan appear to Mr. Unruh to be under the influence of intoxicating liquor. (*Id.*) Upon their arrival at the police station, Mr. Sirhan was placed in an interrogation room, and within three or four minutes of their arrival, his eyes were subjected to a light test. (*Id.*) On the basis of that test, and Mr. Sirhan's appearance and movements, Officer White formed the opinion that Mr. Sirhan was not under the influence of alcohol or drugs. (*Id.*)

Mr. Sirhan's pockets were emptied and the items taken from his possession included an automobile key, two live .22 caliber bullets and an expended bullet, two newspaper clippings, and a printed verse. (*See* RB at 13-14.)

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One of the newspaper articles, clipped from the *Pasadena Independent Star News*, was a May 26, 1968 story by columnist David Lawrence, which in part noted that in a recent speech Senator Kennedy had "favored aid to Israel with arms if necessary." (See RB at 14.) The other newspaper clipping was an advertisement from an unidentified newspaper inviting the public "to come to see and hear Senator Robert F. Kennedy on Sunday, June 2, 1968, at 8:00 p.m., Cocoanut Grove, Ambassador Hotel, Los Angeles." (*Id.*) The printed verse was a Senator Kennedy campaign song entitled, "This Man is Your Man, This Man is My Man." (*Id.*)

Sergeant William Jordan, who was Watch Commander at Rampart Detectives that night, assumed custody over Mr. Sirhan at approximately 12:45 a.m. in one of the interrogation rooms of the station. (*Id.* at 14-15.) The property previously removed from Mr. Sirhan's pockets was then inventoried in his presence, and his person was searched more thoroughly. (*Id.* at 15.) At this time, Mr. Sirhan was able to identify an absent officer to Sergeant Jordan by the officer's badge number, 3949. (*Id.*) Sergeant Jordan formed the opinion at this time that Mr. Sirhan was not under the influence of either alcohol or drugs. (*Id.*) Mr. Sirhan was not given an intoxication test because Sergeant Jordan concluded there were no objective symptoms of intoxication and no reason to administer such a test. (*Id.*)

For security reasons, Mr. Sirhan was transported to police headquarters at Parker Center. (*Id.* at 16.) Mr. Sirhan was interviewed from 3:15 to 3:45 a.m. by Mr. Howard, a member of the district attorney's legal staff, and others; and from 4 a.m. to approximately 5:15 a.m. by Sergeant Jordan and George Murphy, an investigator from the district attorney's office. (See RB at 17.)

During Sergeant Jordan's various contacts with Mr. Sirhan, including the four to five hours he spent with him at the arraignment and immediately prior and subsequent thereto, Mr. Sirhan never appeared irrational. (See RB at 17-18.) While refusing to identify himself by name or place of origin, Mr. Sirhan engaged in banter regarding the officer's name, "Jordan." (*Id.* at 18.) Sergeant Jordan formed the opinion that Mr. Sirhan had a "very quick mind" and that Mr. Sirhan was "one of the most alert and intelligent" persons the officer had ever interrogated or attempted to interrogate during his 15 years' experience on the police force. (*Id.*)

At approximately 9:30 a.m. on June 5, Sergeant William Brandt of the Los Angeles Police Department met with Adel Sirhan, one of Mr. Sirhan's brothers, at

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the Pasadena Police Station. (*See* RB at 20-21.) At the conclusion of their conversation concerning Mr. Sirhan and the shooting of Senator Kennedy, Adel stated that he lived with his two younger brothers, Munir and Sirhan, and their mother, at 696 Howard Street in Pasadena. (*Id.* at 21.) Thereafter, Adel and Sergeant Brandt proceeded to the Sirhan residence accompanied by Sergeant James Evans of the Los Angeles Police Department's Homicide Division, and an Agent Sullivan of the F.B.I. (*Id.*)

Adel Sirhan admitted the officers to the house upon arriving with them at approximately 10:30 a.m., and gave them permission to search Mr. Sirhan's bedroom. (*See* RB at 21.) Sergeant Brandt searched the bedroom in the presence of the other officers and Adel Sirhan. (*Id.*)

Three of Mr. Sirhan's notebooks were recovered from this bedroom, excerpts from two of which were put into evidence during his trial. These notebooks read, in pertinent part:

- "May 18 9:45 AM--68 / My determination to eliminate R.F.K. is becoming more the more [sic] of an unshakable obsession . . . RFK must die RFK must be killed . . . Robert F Kennedy must be assassinated before 5 June 68 . . ." (*See* RB at 26 (emphasis added).) Notably, June 5, 1968 was the one-year anniversary of the commencement of the "Six-Day War," in which Israel defeated an Arab coalition of Jordanian, Syrian, and Egyptian military forces.
- "The socalled [sic] president of the United States of America must be advised of their punishments for their treasonable crimes against the the [sic] State more over [sic] we believe that the glorious United States of America will eventually be felled by a blow of an assassins [sic] bullet . . ." (*Id.* (emphasis added).)
- "Ambassador Goldberg must die . . . Ambassador Goldberg must be eliminated . . . Sirhan is an Arab" (*Id.* at 26-27.)
- "Kennedy must fall Kennedy must fall . . . Senator R. Kennedy must be disposed of We believe that Robert F. Kenedy [sic] must be sacrificed for the cause of the poor exploited people We believe that we can effect such

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action and produce such results -- the hand that is writing doing this writing is going to do the slaying of the above mentioned victim One wonders what it feels like to do any assassination that might be some illegal work --" (*Id.* at 27 (emphasis in original).)

• "Well, my solution to this type of government that is to do away with its leaders -- and declare anarchy, the best form of govt [sic] -- or no govt [sic]. I contend that what is more democratic than to shoot a president The President elect is your best friend until he gets in power they [sic] he is your most exploiting [sic] fucker suck every ~~on~~ drop of blood out of you -- just and if he doesn't like you -- you're dead --" (*Id.* at 27-28 (words stricken in original).)

That evening, Lieutenant Alvin Hegge of the Los Angeles Police Department employed the automobile key, which had been taken from Mr. Sirhan's pocket at the Rampart station, in a successful attempt to operate the lock on a door of a 1956 DeSoto car -- of which Mr. Sirhan was the registered owner -- that was parked in the vicinity of the Ambassador Hotel. (*Id.* at 22-23.) On this basis, Lieutenant Hegge obtained a warrant to search the vehicle in question. He returned to the location of the vehicle at approximately 12:30 a.m. (June 6) and conducted a search that recovered two spent bullets on the right front seat, and from inside the glove compartment: a business card from the Lock Stock & Barrel gun shop (located in San Gabriel); a receipt dated June 1, 1968, therefrom for the purchase of two boxes of Mini-Mag hollow point .22 caliber ammunition and two boxes of Super X .22 caliber ammunition (a total of 200 bullets); one live round of .22 caliber ammunition; and an empty carton labeled .22 caliber Mini-Mag. (*Id.* at 23-24.) Police fingerprint specialists obtained latent fingerprints that night from the glove compartment and from the Lock Stock & Barrel ammunition receipt and determined that the fingerprints were made by Mr. Sirhan. (*Id.* at 24.)

At 8 a.m. on June 6, Officer Thomas Young of the Pasadena Police Department arrived at the Sirhan residence, having been "assigned to security at the rear of the residence." (*Id.*) His duty was to guard the premises from unauthorized persons. At approximately 11 a.m., upon discarding a paper cup of coffee into the trash which lay inside several boxes and cans of trash and garbage in a "rear yard to the rear of the residence," he observed an envelope which bore on its face the return address of the Argonaut Insurance Company. (*Id.*) The trash area

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was located on the Sirhan property. (*Id.*) Officer Young retained possession of the envelope and brought it to the police station. (*Id.* at 25.)

Mr. Laurence Sloan, employed by the district attorney's office as a specialist in handwriting and questioned documents, determined that it was Mr. Sirhan who had placed the signature "Sirhan Sirhan" on the June 1, 1968, roster at the Corona Pistol Range, and that it was Mr. Sirhan who had placed the same signature and Mr. Sirhan's address on the June 4, 1968, roster of the San Gabriel Valley Gun Club range. (*See* RB at 25.)

Mr. Sloan also determined that it was Mr. Sirhan who had placed the following words (repeated several times) on the reverse side of the envelope recovered from the trash area at the rear of the Sirhan residence: "RFK must be . . . disposed of properly. Robert Fitzgerald Kennedy must soon die." (*Id.*) Mr. Sirhan also wrote the following on an envelope recovered from his dresser drawer: "RFK must be disposed of like his brother was," alongside the word "reactionary." (*See* RB at 25-26 (emphasis added).)

De Wayne Wolfer, a criminalist and ballistics expert assigned to the crime laboratory of the Los Angeles Police Department's Scientific Investigation Division, examined various bullets and bullet fragments. He found some to be so distorted as to preclude comparison, but was able to conclude that bullets removed from Senator Kennedy, Ira Goldstein, and William Weisel were all Mini-Mag ammunition fired from the .22 caliber revolver previously identified as belonging to Mr. Sirhan. (*See* RB at 28.) These Mini-Mag bullets were hollow-point ammunition, and the purpose of using such ammunition is to "make a bigger hole." (*Id.*)

d. Mr. Sirhan's Trial and Conviction.

In an indictment returned by the Grand Jury of Los Angeles County, Mr. Sirhan was charged with the murder of Senator Kennedy (Count I), and assault with a deadly weapon with intent to commit murder upon Paul Schrade, Irwin Stroll, William Weisel, Elizabeth Evans and Ira Goldstein (Counts II-VI). (*See* RB at 1.) Mr. Sirhan pleaded not guilty. (*Id.* at 2.)

After a 15-week jury trial, prior to which Mr. Sirhan's motions for pretrial discovery were granted in part, Mr. Sirhan was found guilty on all counts –

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including murder in the first degree, for which he was sentenced to death. (See RB at 2.)

Mr. Sirhan has appeared before the parole board 16 times since his conviction. In his most recent hearing on August 27, 2021, a two-person panel of the Board recommended parole be granted.

4. Mr. Sirhan Is Patently Unsuitable for Parole Under Those California Law Factors Relevant to a Parole Determination.

We have reviewed in detail each of the available transcripts, from 1982 to August 27, 2021, of hearings in which Mr. Sirhan appeared before and sought parole from the Board. His testimony is internally contradictory, neither credible nor sincere, and incompatible with that of a person who no longer poses a risk of danger to society if released from incarceration.

a. Legal Standard.

California's Supreme Court and appellate courts have accorded California's governor broad latitude in reviewing and rejecting a parole recommendation by the Board of Prison Terms. A governor's ability to deny parole is appropriate and will be sustained by the courts where based on "some evidence" demonstrating the inmate's current dangerousness. *In re Shaputis* (2008) 44 Cal.4th 1241, 1246 (affirming Governor's parole reversal where applicant "remains a threat to public safety in that he has failed to take responsibility for the murder of his wife").

As set forth below, Mr. Sirhan remains an ongoing threat to public safety because of his: (1) dishonest account and documented lack of insight concerning the crime (*see infra* Section (b)); and (2) numerous other factors evidencing his ongoing threat to public safety. (*See infra* Section (c).) Each of these considerations, separately and independently from the others, furnishes a basis for the Governor to deny parole to Mr. Sirhan.

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b. An Inmate's Dishonest Account of his Involvement in the Underlying Crime. Together with a Documented Lack of Insight, is Relevant to Assessing an Ongoing Threat to Public Safety.

Although a parole applicant need not admit guilt to be eligible for parole (Cal. Penal Code § 5011 (b)), a governor incontestably may deny parole where an applicant offers a dishonest account of his role in the underlying crime. *See, e.g., In re Butler* (2014) 231 Cal. App. 4th 1521, 1534 (inmate's account of the crime "indicates the inmate is hiding the truth and has not been rehabilitated sufficiently to be safe in society," thereby establishing the requisite "nexus to current dangerousness"); *In re Tapia* (2012) 207 Cal. App. 4th 1104, 1110 (finding a "rational nexus between the evidence and the Board's determination that [the inmate] was unsuitable for parole because his failure to take full responsibility for the crime made him an unreasonable threat to public safety"); *In re Smith* (2009) 171 Cal. App. 4th 1631, 1633 (upholding Governor's parole reversal, reasoning that inmate's assertion that she did not harm the victim, but simply did nothing to intervene, demonstrated a failure to take full responsibility for the crime – the death of her minor daughter – and thus her continued dangerousness); *In re Taplett* (2010) 188 Cal. App. 4th 440, 450 (affirming Governor's reversal of the Board's grant of parole, despite inmate's genuine remorse, good prison record, educational and self-help pursuits, lack of prior criminal record, and plan for work after parole, because inmate minimized her involvement in a drive-by shooting, maintaining that she did not think her friend would actually shoot the victim, despite evidence to the contrary).

Similarly, the California Supreme Court has held that the Governor is vested with discretion to deny parole because of an inmate's "lack of insight," and that to argue otherwise "flies in the face of reason." *In re Shaputis II* (2011) 53 Cal. 4th 192, 218-20 (lack of insight regarding commitment offense that bears on inmate's current level of dangerousness is proper basis for parole denial; "consideration of an inmate's degree of insight is well within the scope of the parole regulations"). California's Courts of Appeal, too, have acknowledged this consideration as an appropriate ground for parole denial. *See, e.g., In re Rodriguez* (2011) 193 Cal. App. 4th 85, 97; *In re Gomez* (2010) 190 Cal. App. 4th 1291, 1308; *In re Powell* (2010) 188 Cal. App. 4th 1530, 1539.

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There can be little question that, under these standards, Mr. Sirhan is unsuitable for parole. Fifty years of incarceration have proven insufficient for Mr. Sirhan to cease lying and dissembling about his premeditated and violent murder of Senator Kennedy.

Mr. Sirhan's continuing risk to public safety is established upon inquiry into "the inmate's 'past and present attitude toward the crime' and 'the presence of remorse,' expressly including indications that the inmate 'understands the nature and magnitude of the offense.'" *In re Shaputis II*, 53 Cal. 4th at 218.

Mr. Sirhan's representations to the Board over the past several decades demonstrate an ongoing pattern of lies and dissembling about his premeditated assassination of Senator Kennedy; an absence of remorse; and a lack of understanding about the nature and magnitude of his crime:

- "I don't know who was responsible for the pulling of the trigger." (Parole Hearing Transcript, June 26, 1985 at 51:17-21, 58:18-19 (after testifying "I want my liberty so that I'm . . . willing to please you . . . Just give me the answer that you want to hear . . .").)
- "I can't say there was any deliberateness to the killing." (YouTube, Inside Edition, *Sirhan Sirhan Reveals Why He Killed Bobby Kennedy in 1989 Interview*, YouTube (June 5, 2018), https://www.youtube.com/watch?v=Ma_RpEcm7NY ("Frost Interview"), at 3:35.)
- When asked if he wrote in his notebooks "RFK must die," Sirhan responded: "I must have, but I don't really remember doing that." (Parole Hearing Transcript, March 2, 2011, at 51:11-12.)
- "I was only responsible for the first shot that was fired." (Parole Hearing Transcript, June 26, 1990, at 11:10-13.)
- "I believe that I'm innocent of this crime and that I did not commit this crime." (Parole Hearing Transcript, June 18, 1997, at 7:25-27.)
- "Legally speaking, I'm not guilty of anything. . . I would say I'm not guilty of murder." (Parole Hearing Transcript, Feb. 10, 2016, at 69:24-25 (emphasis added), 102:14-15.)

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Most recently, at the Board's August 27, 2021, hearing, Mr. Sirhan steadfastly refused to accept unequivocal responsibility for his actions. He instead chose to lie and dissemble. In response to a question of the Board, Mr. Sirhan acknowledged he was "responsible for such a horrible deed, if I did in fact do that." (Parole Hearing Transcript, Aug. 27, 2021, at 92:23-24 (emphasis added).) This was no gaffe on Mr. Sirhan's part; his very next words were: "And whether I did or whether I did not" (*Id.* at 92:24-25.) In discussing what "took place that night," Mr. Sirhan felt obligated to add the words "whether I'm responsible for it or not." (*Id.* at 65:5-6.) Mr. Sirhan even complained about his prior attorney not having pursued a claim alleging his actual innocence. (*Id.* at 93:5-13.)

Mr. Sirhan's blatant denial and distortion of responsibility demonstrates, without more, that he continues to pose an unacceptable risk to public safety. Mr. Sirhan has responded with neither honesty nor contrition when confronted with overwhelming evidence establishing his premeditated murder. This evidence ranges from Mr. Sirhan's selection of hollow-point bullets intended for lethality; to visits to a range to train specifically to be more lethal; to unauthorized entry to Senator Kennedy's victory party with a concealed gun; to diary entries memorializing both his hatred of Senator Kennedy and a broader intention to terrorize. (*See supra* at pp. 6-14.) As thoroughly analyzed by Judge Beverly Reid O'Connell of the United States District Court for the Central District of California in rejecting Mr. Sirhan's petition for a writ of habeas corpus, and also his request for an evidentiary hearing, there is no basis whatever for Mr. Sirhan to deny his culpability for the assassination. *See Sirhan v. Galaza* (C.D. Cal. 2015) 76 F. Supp. 3d 1073, 1092, Case No. CV 00-05686 BRO (AJWx).

That Mr. Sirhan instead engages in lying and dissembling indicates not just a failure of rehabilitation, but also the possibility of recidivism since – under circumstances such as those present with Mr. Sirhan – California's courts have held that an inmate's failure to accept criminal responsibility is indicative of continued dangerousness. *See, e.g., In re Shaputis II*, 53 Cal. 4th at 218-20 (upholding parole denial); *In re Butler*, 231 Cal. App. 4th at 1534; *In re Tapia*, 207 Cal. App. 4th at 1111; *In re Smith*, 171 Cal. App. 4th at 1633; *In re Taplett*, 188 Cal. App. 4th at 450.

Undeniably, the foregoing responses by Mr. Sirhan refute any suggestion that he has offered insight for his crime. To the contrary, his lack of insight has

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been chronic and unevolved. His persistent expressions of allegiance to his "kindred" in the Middle East and his support for the Palestinian people (*see, e.g.*, Parole Hearing Transcript, Aug. 27, 2021, at 31:21-32:11, 33:3-7), coupled with his declaration that he is "not guilty of murder" (Parole Hearing Transcript, Feb. 10, 2016, at 102:14-15), evidence a belief that murdering a public official perceived as hostile to the interests of the Palestinian people is justifiable.

Mr. Sirhan offers a paradigmatic example of lack of insight meriting a parole denial. His present attitude towards the crime, and "lack of insight" into the factors that animated his anger stemming from the Israeli-Arab conflict, reflect an inability to recognize and control the circumstances that fueled his commitment offense. Such an inability can render the inmate vulnerable to the circumstances that led to the assassination, causing him to react violently if confronted by them again. Such a "lack of insight" as is evident here satisfies the California courts' standards for parole denial on the ground that it supports an inference of current dangerousness.¹

¹ Altogether different is the factual record underpinning the case of Hampig Sassounian – an Armenian-American paroled nearly 40 years after his assassination of a Turkish diplomat. Unlike Mr. Sirhan, Mr. Sassounian expressed unqualified remorse for his crime and demonstrated insight sufficient to establish that he no longer posed a threat to society. Indeed, the Board found that Mr. Sassounian had not only demonstrated a history of change and increased maturity while having given serious thought to how his actions are perceived by others, but that he possessed the tools necessary to avoid resorting to violence. (Parole Hearing Transcript (Sassounian), December 27, 2019.)

Similar conclusions cannot reasonably be drawn from the record of Mr. Sirhan, whose extensive parole record is devoid of any consistent and unequivocal acceptance of responsibility. Mr. Sirhan's purported "insight" appears to be the product of deliberate calculation and deceit. As enumerated throughout this brief, Mr. Sirhan has frequently dissembled and even minimized his *involvement* in the crime, despite overwhelming and proven evidence to the contrary. Nor is it clear that Mr. Sirhan has gained genuine "insight" into the behavior or the reasons that motivated his premeditated crime.

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c. Other Evidence is Relevant to Establishing an Inmate's Ongoing Threat to Public Safety.

Other evidence, too, underscores Mr. Sirhan's current dangerousness, rendering him unsuitable for parole. *See In re Shaputis II*, 53 Cal. 4th at 209 (denial of parole should be affirmed so long as "some evidence" supports the determination "that a prisoner remains a current threat to public safety").

First, the accompanying declaration of retired correctional officer Mikecal Mosher evidences an exchange that reveals why Mr. Sirhan retains the potential for violent behavior under circumstances in which the Middle East conflict is invoked. As Mr. Mosher testifies, when he asked Mr. Sirhan in 1986 (*i.e.*, a full 18 years after the assassination) whether he killed Senator Kennedy, Sirhan responded with a rhetorical question: "If you were Jewish and you had a chance to kill Hitler, wouldn't you do it?" (*See Exhibit C*, ¶ 5.) This exchange is revealing because (a) it puts the lie to Mr. Sirhan's own statement before the Board just one year prior that "I don't know who was responsible for the pulling of the trigger" (Parole Hearing Transcript, June 26, 1985, at 51:17-52:5; 58:18-19), and (b) Mr. Sirhan's proffered analogy is one by which he attempts to justify his crime, and does so on the basis of an inconceivable comparison of Senator Kennedy to Adolf Hitler. (*See also* Frost Interview, at 4:51 ("Imagine though, . . . if you were a Jew in Hitler's Germany, and if you had the opportunity to assassinate Hitler. . . . The principle seems to be similar.").)

As expert Barbara Turner, a retired Deputy District Attorney in the Parole Division of the Los Angeles District Attorney's Office, has explained in her accompanying report, attached hereto as Exhibit A:

"It was clear [during the August 2021 Board hearing] that Sirhan could not independently articulate his coping skills for management of his anger. Commissioner Barton asked leading questions throughout the panel's inquiries into anger, and Sirhan simply agreed with the Commissioner. Because Sirhan did not know the steps, he resorted to his fallback response, which is "you have my word, I won't reoffend." This was not insightful – it

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was pathetic. . . . This should be of great concern to the Governor.”

(Exhibit A, 25:2-8 (internal citation omitted).)

Second, Mr. Sirhan’s lies and dissembling to the Board establish an unacceptably high risk of future violence, given that political assassination is fundamentally different than other, often uniquely situational felonious conduct. Political assassination, by definition, may be triggered by ongoing political causes, for which the assassin has innumerable targets.

Precisely this consideration demonstrates the ongoing threat to public safety that Mr. Sirhan might pose if released. As a threshold matter, the Israeli-Arab conflict plainly remains a motivating force for Mr. Sirhan’s anger, thereby underscoring the continued threat his release on parole would pose to public safety. In responding to a question about the ongoing “conflicts in the Middle East involving the same parties,” the Board observed of Mr. Sirhan: “[y]ou obviously are – are still able to touch a nerve [be]cause you just got very emotional talking about it.” (Parole Hearing Transcript, Aug. 27, 2021, at 31:21-32:4.) During the course of Mr. Sirhan’s discussion of the difficulties faced by Palestinians, one of the two parole commissioners observed that “the inmate appears to be emotional” and advised Mr. Sirhan five times to “take a deep breath.” (*Id.* at 31:12-13, 31:21-32:4.) Plainly, Mr. Sirhan’s present emotionalism cannot be dissociated from his similarly-animated emotionalism in 1968.

In addition, just as there were persons other than Senator Kennedy whom Mr. Sirhan “hated” or wanted to “die” at the time of the assassination, there may now, too, be any number of individuals Mr. Sirhan would wish harm to befall as a result of their support for Israel. In 1968, in addition to Mr. Sirhan’s history of uttering statements expressing his anger at U.S. support for Israel (*see supra* at p. 12), he wrote in his diary about assassinating President Lyndon Johnson because Mr. Sirhan “hated his guts” due to the president’s Middle East policy. (*See RB* at 54.) Mr. Sirhan’s diary also proclaimed, with reference to Arthur Goldberg, U.S. Ambassador to the United Nations: “Ambassador Goldberg must die . . . Ambassador Goldberg must be eliminated . . . Sirhan is an Arab.” (*See supra* at p. 12.)

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Now, just as in 1968, a state of hostilities exists between Israeli and Palestinian forces, with the United States and many of its leaders remaining involved through the provision of military aid and other assistance.² This persistent situation could just as readily animate Mr. Sirhan to commit acts of violence in the future, as Mr. Sirhan claims it did in 1968. (The hearsay account of an examining doctor that “the political motive for the offense makes Sirhan’s potential for violence very low” (Parole Hearing Transcript, Aug. 27, 2021, at 113:15-17) – is either inaccurate or profoundly naive.) To answer Mr. Sirhan’s rhetorical question to correctional officer Mosher with another rhetorical question, what possibly is there to suggest that Mr. Sirhan – if released on parole and agitated by news of the latest skirmish in the ongoing Middle East conflict – would act with any more restraint, and any less violence, than he did when he planned and carried out the assassination of Senator Kennedy? Plainly there is evidence demonstrating that Mr. Sirhan’s release would pose an unacceptable risk to public safety.

Third, irrespective of his age, Mr. Sirhan is still well within his physical abilities to wield a .22 caliber firearm (the same weapon he used to assassinate Senator Kennedy). (See also Parole Hearing Transcript, March 2, 2011, at 37:2-3 (“I like guns. I like guns. I like weaponry.”).)

To begin with, as to Mr. Sirhan’s current level of dangerousness, expert Barbara Turner offered the following summary:

“Sirhan’s behavior while in prison was not that of a model prisoner. A close look at his rule violations, outbursts, refusals to participate in psychological evaluations and parole hearings are all reflections of how he reacts when he does not get his way; he is a manipulator. He has

² The United States maintains a strong alliance with Israel. See, e.g., *Remarks by President Biden and Prime Minister Bennet of the State of Israel Before Expanded Bilateral Meeting*, WHITEHOUSE.GOV (Aug. 27, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/08/27/remarks-by-president-biden-and-prime-minister-bennett-of-the-state-of-israel-before-expanded-bilateral-meeting/> (President Biden stating: “The U.S. will always be there for Israel. It is an unshakeable partnership between our two nations.”).

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continuously refused to abide by the rules of the prison; he views himself as exceptional. Therefore, it is unreasonable and irresponsible to believe that he will be able and willing to follow the rules and laws of the free society."

(Exhibit A, 21:7-12.)

Nor is there anything to suggest that Mr. Sirhan, at his current age and condition, would be incapable of approaching a public figure, removing a firearm from a pocket, and carrying out another shooting. Statistics regarding the low recidivism rate of incarcerated murderers may simply reflect the fact that a lengthy incarceration specifically deters an inmate from repeating the situational type of murder(s) underlying their conviction. This stands in contrast to the ongoing and unresolved motivation and opportunity provided to a political assassin.

Fourth, a review of the transcript of the August 27, 2021 Board hearing raises significant questions about the panel inquiry that led to its parole recommendation.

To begin with, only two of Senator Kennedy's nine living children were present for the hearing; nor were there present any law enforcement, or other members of the broader society who were also victimized by Mr. Sirhan's assassination of Senator Kennedy. (See Exhibit A, 37:11-42:11.)

Remarkably, too, the Board panel accorded Mr. Sirhan the dual benefits of his present age being older than 60 (Parole Hearing Transcript, Aug. 27, 2021, at 11:1-4), and of the "diminished culpability of youth" (25 or younger (Parole Hearing Transcript, Aug. 27, 2021, at 157:15-20)) at the time he assassinated Senator Kennedy, "as compared to that of adults." Cal. Penal Code § 3051 (f)(1), enacted in 2019.

Especially troubling, as is evident throughout the transcript, is that Board members gullibly indulged Mr. Sirhan's selective claims of lack of memory, conflicting explanations, and lack of insight, but took into account his "dysfunctional childhood" in war-torn Palestine (which was characterized as PTSD), his move to the United States at age 11, and losing his sister to leukemia. (Parole

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Hearing Transcript, Aug. 27, 2021, at 28:19-29:12, 117:19-119:19.) As aptly observed by expert Barbara Turner, unlike the classic youth offender fact pattern, in this instance:

“there were no negative peer influences, or powerlessness in affecting his home environment, and he did have the ability to extricate himself from the negative and criminally oriented setting outside of his home. The hallmark features of youth that are material to the youth offender analysis do not apply in this crime.”

(Exhibit A, 46:12-16.)

Perhaps most astounding in the Board's tendentious questioning of Mr. Sirhan was its acceptance and encouragement of the fiction that Mr. Sirhan was inebriated at the time of the assassination, and that alcohol somehow mitigated his culpability. Despite abundant contemporaneous evidence demonstrating that he was not intoxicated at the time of the assassination, Mr. Sirhan identified “liquor” in response to being asked at the most recent Board hearing to identify the “top two causative factors for the commitment offense.” (Parole Hearing Transcript, Aug. 27, 2021, at 64:20-22, 65:16-22.) One of the Board commissioners even suggested that Mr. Sirhan's tolerance for liquor – like that of the commissioner himself – was very low, and that Mr. Sirhan's claimed ingestion of four Tom Collins drinks shortly before his commission of the offense “impaired your judgment and ability to function.” (*Id.* at 38:14-39:1.) Mr. Sirhan agreed with the commissioner's assessment, and explained that he “couldn't find any, uh, sodas or drinks or Cokes or anything else to drink,” and that the Tom Collins “reminded me of a – of a cool – of, uh, lemonade instead of hard liquor [T]hat's how little I know about liquor . . . but it was easier for me to swallow.” (Parole Hearing Transcript, Aug. 27, 2021, at 39:22-40:11.)

This exchange is especially galling as there is no credible evidentiary basis suggesting alcohol mitigated Mr. Sirhan's responsibility for the underlying offense. To the contrary, despite Mr. Sirhan's testimony at trial that he ingested alcoholic beverages on the evening of the assassination (*see, e.g.*, RB at 59), numerous police officers testified at trial that when they observed Mr. Sirhan that evening he did not appear to be intoxicated and did not emit any odor of alcohol. One officer

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described Mr. Sirhan as “completely sober.” (*See* RB at 105. *See also supra* at pp. 10-11.) In fact, the watch commander detective who assumed custody over Mr. Sirhan at the police station shortly after the assassination decided not to administer an intoxication test because Mr. Sirhan did not exhibit any objective symptoms of intoxication and there was no reason to have him take the test. (*See supra* at p. 11.)

Mr. Sirhan also readily agreed, insincerely, with leading questions from the Board commissioners that church attendance in prison had “refined” his “spirituality.” (Parole Hearing Transcript, Aug. 27, 2021, at 52:17-23.) Mr. Sirhan informed the commissioners that he had “been born right next door [to where] Jesus was born and to where he preached, where he ministered.” (*Id.* at 54:21-55:1.)

Mr. Sirhan testified that he was “grateful to having had my life spared from the gas chamber” and described the “causative” factors in his commission of the assassination as “the Middle East situation,” “mixing guns and liquor,” and the “character defects” of being “impulsive” and “reckless.” (*Id.* at 60:10-12, 65:2-67:6.) With seeming gullibility, the commissioners described Mr. Sirhan as “a rare model inmate” (*id.* at 70:23) – despite necessarily acknowledging his involvement in an altercation in the prison kitchen, some negative prison reports, and a separate incident in which his throat was slashed by another inmate, although with no indication that Mr. Sirhan was at fault. (*See id.* at 77:13-79:19, 143:22-144:1.)

5. Conclusion.

The family members of Robert Francis Kennedy, including widow Ethel; children Joseph, Courtney, Kerry, Chris, Max, and Rory; and those other family members whose own testimonials will be submitted under separate cover, respectfully urge you to reverse outright the August 27, 2021, decision of the Board of Parole Hearings.

Denying parole to Mr. Sirhan is the only means by which to protect the public from the threat to public safety that his release would pose. Specifically, individually and collectively, that threat to public safety is evidenced by: (i) Mr. Sirhan’s dishonest account of, and documented lack of insight into, his involvement in the underlying crime; (ii) Mr. Sirhan’s statements to third parties that demonstrate his potential for violent behavior under circumstances in which the Middle East conflict is invoked; (iii) Mr. Sirhan’s lies and dissembling to the Board,

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coupled with the fact that political assassination is fundamentally different than other, often uniquely situational felonious conduct; (iv) the fact that Mr. Sirhan is still well within his physical abilities to wield a .22 caliber firearm (the same weapon he used to assassinate Senator Kennedy); and (v) significant questions about the Board panel inquiry that led to its parole recommendation.

For these reasons, we ask that you reverse outright the August 27, 2021, decision of the Board of Parole Hearings.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Eric M. George".

Eric M. George

EMG:cb
Enclosures