

**INDETERMINATE SENTENCE PAROLE RELEASE REVIEW**  
(Penal Code Section 3041.2)

**DAVID WEIDERT, C-39455**  
First Degree Murder

**AFFIRM:** \_\_\_\_\_

**MODIFY:** \_\_\_\_\_

**REVERSE:** \_\_\_\_\_ **X** \_\_\_\_\_

**STATEMENT OF FACTS**

David Weidert and Michael Morganti worked as janitors at a doctor's office. Mr. Morganti was described as "mildly retarded" and "easily manipulated." In June 1980, Mr. Weidert convinced Mr. Morganti to serve as a lookout while he burglarized the doctor's office. Mr. Morganti was arrested and confessed, implicating Mr. Weidert. The doctor wanted Mr. Weidert to be arrested and confronted Mr. Weidert on multiple occasions, eventually telling him that he knew Mr. Morganti was an eyewitness to the crime. According to the doctor, when Mr. Weidert heard this, "the whole tenure [*sic*]" of the conversation changed and Mr. Weidert became angry and said, "listen, nobody is going to believe that idiot in court. Nobody's going to believe him. I'll see to it that they don't."

Mr. Weidert decided that he wanted to eliminate the possibility of Mr. Morganti testifying against him, so convinced his friend, 16-year-old John A., to help him kill Mr. Morganti. On November 21, 1980, the two lured Mr. Morganti out of his apartment and made him get into Mr. Weidert's pickup truck. They tied his hands behind his back with telephone wire and Mr. Weidert drove them into the mountains. They eventually found a secluded location where Mr. Weidert took a shovel and aluminum baseball bat from the truck and had Mr. Morganti walk up a hill. Mr. Weidert untied Mr. Morganti's hands, gave him the shovel, and made him dig a grave. After he got tired, John A. dug for five minutes and Mr. Weidert dug for ten minutes, before making Mr. Morganti continue. Mr. Weidert ordered Mr. Morganti to get in the hole, lying on his back. Because the hole was too short for Mr. Morganti, Mr. Weidert ordered Mr. Morganti to continue digging until it was long enough to accommodate Mr. Morganti's entire body. Mr. Weidert finally made Mr. Morganti lie in the hole and slammed the baseball bat into Mr. Morganti's head four or five times. Mr. Morganti pled, "I won't tell on you Dave. Stop it. No, Dave." Mr. Weidert yelled at John A. for his buck knife and stabbed Mr. Morganti, who was then screaming. Mr. Weidert ordered John A. to hit Mr. Morganti with the baseball bat. John A. complied and hit Mr. Morganti on the head with the bat while Mr. Morganti was lying on his back. Mr. Weidert told John A. that Mr. Morganti was dead or almost dead and that he had to die so they would not go to jail. Mr. Weidert and John A. then shoveled dirt on top of Mr. Morganti until he was completely covered.

But Mr. Morganti was not dead, and he pushed his hand through the dirt to grab Mr. Weidert's leg. He pulled his head and upper body through the dirt, but Mr. Weidert put his foot on Mr. Morganti's head and forced him back down. Mr. Weidert wrapped the telephone cable around Mr. Morganti's neck and strangled him. As Mr. Morganti kicked, Mr. Weidert said, "You son of a bitch die, die. This son of a bitch won't die." Mr. Weidert and John A. watched until Mr. Morganti appeared to be dead and buried him again. Mr. Morganti suffocated to death and dirt was found in his lungs. After murdering Mr. Morganti, Mr. Weidert and John A. returned home, washed up, and then went to a party.

An anonymous tip led the investigation to focus on John A., who was granted immunity in exchange for his testimony against Mr. Weidert. Mr. Weidert was arrested on December 17, 1980. He was convicted of kidnapping and murder. Two special circumstances were found to be true: that the murder had occurred while Mr. Weidert had been engaged in a kidnapping, and that the murder was committed to prevent Mr. Morganti from testifying in a criminal proceeding. He was sentenced to life without the possibility of parole. On appeal, the California Supreme Court upheld the murder and kidnapping convictions, but struck both special circumstances. (*People v. Weidert* (1985) 39 Cal.3d 836.) The Court held that Mr. Morganti's kidnapping was "merely incidental" to his murder, and therefore could not support the special circumstance finding. The Court also held that Mr. Weidert had not killed Mr. Morganti to prevent him from testifying in a "criminal proceeding" because he could only face juvenile charges, which would not be considered a "criminal proceeding." Therefore, Mr. Weidert was given life with parole.

### **GOVERNING LAW**

The question I must answer is whether Mr. Weidert will pose a current danger to the public if released from prison. The circumstances of the crime can provide evidence of current dangerousness when the record also establishes that something in the inmate's pre- or post-incarceration history, or the inmate's current demeanor and mental state, indicate that the circumstances of the crime remain probative of current dangerousness. (*In re Lawrence* (2008) 44 Cal. 4<sup>th</sup> 1181, 1214.)

### **DECISION**

The Board of Parole Hearings found Mr. Weidert suitable for parole based on his participation in self-help classes, length of incarceration, lack of other violence in his juvenile and adult life, current age, age at the time of the offense, lack of serious institutional misconduct since 1986, and psychological evaluation.

I acknowledge Mr. Weidert had just turned 18 when he committed this crime and that he has now been in prison for over 34 years. He has made efforts to improve himself while incarcerated. He earned his GED, completed vocational training, and received positive ratings from his supervisors. Mr. Weidert has completed self-help programs including the Substance Abuse Program, Anger Management, and Victim Awareness. He has not been disciplined for serious misconduct since 1986. I commend Mr. Weidert for taking these positive steps. But they are outweighed by negative factors that demonstrate he remains unsuitable for parole.

Mr. Weidert committed a premeditated, vicious murder of a friend. He kidnapped Mr. Morganti, made him dig his own grave and savagely attacked him without provocation. As Mr. Morganti pleaded for his life, Mr. Weidert stabbed him, beat him with a bat, strangled him, and buried him alive. In planning and carrying out this cold-blooded and brutal murder, Mr. Weidert showed a particularly callous disregard for Mr. Morganti's life and suffering. Mr. Morganti's family and friends have spoken movingly about their loss and pain, continuing since Mr. Morganti was taken from them nearly 35 years ago.

It is shocking that Mr. Weidert, even after all these years, still insists that he did not set out to kill Mr. Morganti. He told the Board at his recent hearing that he knew killing Mr. Morganti "could be the result" that day, but "the act of killing him was the impulsive act." He claimed that he and John A. "had a discussion about killing him and we also had a discussion about breaking his legs and we also had a discussion about hiring somebody to deal with him." He continued, "we talked about a lot of things, but actually deciding on what we were planning on doing really didn't happen until that day." Mr. Weidert clarified that the intention to kill Mr. Morganti was formed by "the rage when we were up there," but that he only intended to intimidate and scare Mr. Morganti before he began to beat him with the baseball bat.

These claims are not believable. The California Supreme Court struck the special circumstance that would have justified a term of life without the possibility of parole precisely because Mr. Weidert's "avowed purpose was to kill Morganti in order to prevent him from testifying, not to kidnap him," that his "primary goal was not to kidnap but to kill," and because the kidnapping was "merely incidental" to the murder. Mr. Weidert and his friend planned to kill Mr. Morganti. They brought a bat, shovel, knife, and telephone wire with them when they went to lure Mr. Morganti into the truck, and Mr. Weidert took the bat and shovel out of the car when they arrived in the mountains. Mr. Weidert forced Mr. Morganti to continue digging his own grave even after he promised not to "tell on" Mr. Weidert. Mr. Weidert's continued insistence that killing Mr. Morganti was an unplanned and impulsive act minimizes his culpability and shows that he has not yet acknowledged the true horrific nature of his crime.

I am also troubled by Mr. Weidert's explanations for his callous and violent acts. He blamed his family's frequent moves for his father's jobs, the fact that he did not communicate well with his parents, and that he felt like "a piece of furniture essentially that was taken like property from one place to another." Mr. Weidert claimed these moves, along with his parents' high expectations of him, their rules about his hair and his clothing, and the fact that they "groomed him to be a politician," led him to feel a need for control over his own life. He admitted that he had poor judgment, made bad choices, and that he made a "very poor choice of peers." He told the Board that he committed the burglary, "To do it. To get away with it. A little excitement in your life. And, you know, complacency in your life when you're a teen, those are the kinds of bad ideas kids come up with. And that was one of the things that we did." He claimed that he wanted to regain the control over his life that he lost after the burglary, because his friends were pressuring him to "deal with that guy," because he didn't want to lose his parents' respect when they discovered he was involved in the burglary, and because he didn't want the burglary to "reflect negatively" on his father. Mr. Weidert told the 2014 psychologist that if he could go back and

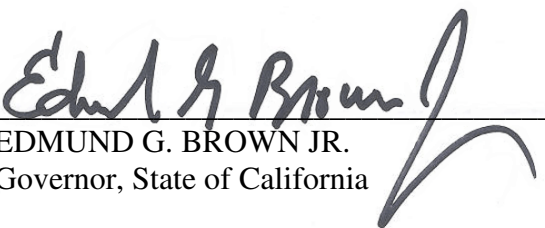
change things, “he would ask his parents to communicate with him more and raise him in a stable situation” because “it would’ve cushioned the landing so I didn’t do the crime.”

These reasons are superficial and inadequate. Nothing about multiple family moves as a child or wanting control explains Mr. Weidert’s extreme rage and callous murder. Neither do feelings of neglect and anger justify Mr. Weidert’s intent to kill his friend. The 2011 psychologist concluded that “Mr. Weidert’s most salient risk issue appears to be his lack of insight into his anger at the time of the commitment offense, his sense of entitlement, as well as his lack of empathy for the victim.” Until Mr. Weidert demonstrates a more substantial understanding of his reasons for committing this crime, I do not believe he is prepared to be released.

### CONCLUSION

I have considered the evidence in the record that is relevant to whether Mr. Weidert is currently dangerous. When considered as a whole, I find the evidence shows that he currently poses an unreasonable danger to society if released from prison. Therefore, I reverse the decision to parole Mr. Weidert.

Decision Date: June 26, 2015

  
EDMUND G. BROWN JR.  
Governor, State of California