Application for Executive Clemency

Submitted on Behalf of

Joseph Ernest Atkins

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to

The Honorable Jim Hodges
Governor of the State of South Carolina
Columbia, South Carolina

Pursuant to S.C. Const. § 14

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INTRODUCTION

Joseph Ernest Atkins is a fifty-one year old Vietnam veteran. In November 1969, Joe received a brief letter from then-Governor Robert E. McNair, who wrote to welcome Joe home from his service in Vietnam. "[W]e shall look forward," wrote Governor McNair, "to your joining with us in leading South Carolina into the bright and promising future which lies ahead . . .."[1] But Joe's service in Vietnam, combined with the circumstances of his life before and after, left his future far from bright.

Joe was condemned to death for killing his father and a little girl who lived with her family in a small house behind that of his father. Because the proceedings leading to his convictions and sentence were far from perfect, the jury concluded, based on what it knew, that the punishment he deserved was death. Joe acknowledges and accepts that judgment. He now seeks your mercy.

The jury's job was to impose the punishment it believed Joe justly deserved. But mercy is different than justice. Mercy is an act of grace, which speaks as much to the gentleness and virtue of the mercy-giver as it does to the character and culpability of the mercy-seeker. Without in any way diminishing the gravity of his crimes, we will try to explain in what follows why we ask for your mercy, not only for Joe, but for those who love him and for ourselves, who have over the years become his friends and who see in him a man who is

[1] *See* Exhibit A.

more than his worst act.

One often hears of criminal defendants who recount the anguished conditions of their childhood, or of other circumstances in their lives, in an effort to excuse their wrongdoing and deny any responsibility for it. One also often hears of criminal defendants who are quick to claim that the courts denied them a fair hearing.

We too will recount the conditions in which Joe grew up and the events in his life that culminated in the crimes for which he was condemned. Likewise, we too will tell you how in our professional judgment the courts were too quick to reject constitutional claims that should have lead to a new trial for our client. But we do so not to excuse Joe's crimes, nor to deny him the dignity of accepting responsibility for what he's done. We do so simply to try to place them in context. Joe does not ask you to excuse him for his crimes. He asks instead for your mercy.

Nothing Joe can do can ever enable him to fully atone for the crimes for which he was condemned. Yet the man who is guilty of those crimes is also a man whose life was forever changed by the suffering he endured as a child, and by the time he spent as a soldier in Vietnam. The man who is guilty of those crimes is a man who, then and now, lives with a something known as Post-Traumatic Stress Disorder—PTSD for short. The man who is guilty of those crimes had at the time of those crimes drunk himself into a stupor. Moreover, the man who is guilty of those crimes was at the time of those crimes—in his own mind—back in Vietnam.

Nor is the man guilty of those crimes the same man scheduled to be executed on January 22. None of the facts we will recount below is meant to, nor can they, excuse Joe's crimes. Nor do any of the things that have changed since the time of Joe's crimes serve to undo them. Nonetheless, we hope that together they will move you to exercise the prerogative of mercy vested in you by the Constitu-

tion of South Carolina.[2]

I. GROWING UP WITH CHARLES AND B.F.

Joe was born in June 1947. His biological mother was a prostitute. Joe and his half-brother Charles shared the same mother, but different fathers. Charles was the son of B.F. Atkins, who reluctantly adopted Joe. Joe never knew who his biological father was. Indeed, he never knew he was adopted until he was eleven. B.F. resented having to adopt Joe, who he considered his "bastard, nigger child."[3] In contrast, Charles could do no wrong in his father's eyes. This basic conflict set the stage for Joe's entire life. He became the family scapegoat, who bore the brunt of both his father's and his brother's anger at the failings in their own lives.

Joe's only real source of love, and the sole source of security and comfort, came from his stepmother Gladys, who always showed

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[2]The undersigned are prepared to substantiate the factual claims made herein. Accordingly, we would request that you submit this application to the Probation, Parole, and Pardon Services Board pursuant to S.C. Code Ann. § 24-21-910, or alternatively, that you hold a hearing that meets the requirements of S.C. Code Ann. § 24-21-50. At the very least, we respectfully request a chance to meet with you or with one of your representatives, such that we might have a fair chance to present our plea for mercy on Joe's behalf.

[3]Joe's biological father was non-Caucasian.

Joe the love and kindness he never received from his father. Joe was only fifteen when she died of a brain tumor, and her death left him alone and insecure. With his stepmother gone, nothing stood between him and the combined anger of his father and step-brother.

Joe was the regular target of B.F.'s and Charles' abuse, both verbal and physical. The often-intense beatings were a fact of everyday life for Joe. Relatives recounted how Joe would plead for mercy, but he seldom received any. The beatings were usually administered with a leather strap, which left Joe bruised and embarrassed to attend school. Joe always expected his father would sooner or later kill him. Often absent from school as a result of these beatings, Joe's emotional and educational development was stunted, and he was twice held back, which caused him yet more shame and embarrassment.

From the age of seven 'til the age of twelve or thirteen, B.F. beat Joe for wetting his bed. Every morning his father would come into Joe's bedroom to inspect his sheets. If they were wet, Joe would be beaten. Adding insult to injury, Joe's father would rub his adopted son's face in the sheets. Gladys would later recall the sheer terror that Joe would feel each morning when he awoke with wet sheets, knowing that his father would soon beat him.

B.F.'s temper would flare without notice, and for no apparent reason. He once threw a wrench at Joe out of the blue. When B.F.'s temper erupted during dinner, he would often hurl plates and dinnerware at Joe, or push Joe's head into his food. When Joe was about seven, B.F. slapped Joe so hard on the side of the head that he broke Joe's eardrum.

Once, when Joe was a teenager, he returned home after his curfew. B.F. was waiting. After Joe had gotten undressed, B.F. began beating him with the leather strap. The blows numbered at least thirty, leaving Joe writhing in pain, with large welts and bruises

covering him from head to toe. Gladys found B.F. kicking Joe, who was lying naked on the floor. The humiliation was unbearable: not only the pain and humiliation of being beaten, but also of being seen as a teenager helpless and naked by the only person he believed cared for him. Gladys tried to comfort Joe, and she tended to his wounds, which she cleaned with the only antiseptic she had: rubbing alcohol. Joe still remembers the agonizing sting.

Yet Joe was not the only victim of B.F.'s abuse. B.F. often beat Gladys, and Joe was just as often a witness to this abuse. On one occasion B.F. repeatedly slammed Gladys' head into the wall. Joe became convinced that it was this attack that ultimately led to Gladys' untimely death from a brain tumor. On another occasion Joe returned home at night to see B.F. on top of his mother, who in tears was struggling to break free. Only later did Joe understand the horror of what his father had done that night.

Despite the beatings, despite the abuse of his beloved stepmother, Joe desperately wanted the love and respect of his father. A report produced by the South Carolina Office of Juvenile Authorities shortly after Charles and Joe had been picked up for one of the petty offenses Charles had orchestrated, noted that Joe "felt remorse and was close to tears" and "has deep feelings for his parents." As for Charles, the report noted that he demonstrated no remorse and had "ambivalent feelings toward his parents." Indeed, the week before Charles' death, he nearly strangled his father to death during an argument.

Joe's father was not the only source of abuse. Charles too used Joe as an outlet for his anger and rage. Neighbors and relatives alike attested to Charles's brutality, which even extended to the mistreatment and torture of small animals. Like his father, Charles was an alcoholic with a legendary temper, which was all too well-known among family, friends, and neighbors. And, just a few years

before his death, Charles would be charged with "a lewd act upon a child," which resulted in his commitment to the South Carolina State Hospital.

Charles began abusing Joe when Joe was a child, often after Charles had been drinking, which he began doing at the age of ten. When Joe was just seven, Charles threw a beer bottle at his half-brother that caused a gash "nearly to the bone." Because Joe's father didn't believe in "unnecessary medical expenses," Gladys was forced to sew the wound with a needle and some fishing wire. Joe still has the scar. Similarly, Charles would often take shots at Joe when he went hunting, and he once hit Joe over the head with a tire iron, causing Joe to suffer frequent and regular migraines.

At the height of one of his rages, Charles nearly took Joe's life. Returning home late one evening, Charles became convinced that Joe had stolen money from him, and stabbed Joe with a paring knife, seven times. Joe managed to stop his half-brother before Charles succeeded in striking a fatal blow. Joe was left to pull the knife out himself. After bleeding heavily for at least twenty minutes, Joe finally convinced Charles to take him to the hospital. When he arrived at the emergency room, with portions of his intestine distended, Joe would only tell the police that he landed on the knife while peeling potatoes—a claim which his father, who was home at the time, pressured Joe into making because he was afraid that Charles, who by that point had a growing criminal record, would be sent to jail.

Charles was also the leader in the petty juvenile crimes that ultimately landed both Charles and Joe in the Florence School for Boys. The Florence School was notorious for its unchecked use of physical and emotional "discipline." At one point, Joe was locked for four days in the "sweat box," a contraption only big enough to squat in. Ritual humiliation was another often-used form of dis-

cipline. Adding to the day-to-day torment, Joe's beloved mother Gladys was diagnosed with a brain tumor; she died while Joe was in Florence. He never had a chance to say goodbye. Indeed, no one even told Joe his mother had fallen ill. He thought his unanswered letters meant that Gladys too had abandoned him. Only later did he learn the truth.

Eventually, Joe was released from the School on probation, largely because the juvenile authorities recognized that "he was a follower, and not a doer." The authorities also recommended that Joe not be returned home, partly because Gladys was no longer there to stand between Joe and the full force of her husband's fury. But Joe was sent home anyway—to B.F. and the on-going cycle of abuse.

II. JOE'S VIETNAM EXPERIENCE

Joe was inducted on January 24, 1968. During his Advanced Infantry Training at Fort Lewis, Washington, Joe earned high scores on the "Elite Training Test," which was designed to measure the combat abilities of new inductees. As a result, Joe was assigned to the so-called "500 Club," an elite rank among combat soldiers. Joe was assigned to the 1st Infantry Division (nicknamed the "Big Red One"), 125th Infantry Light Brigade, 36th Signal Battalion, A Company, Bravo Platoon, Delta Squad.

Joe arrived in Vietnam late in 1968, immediately following the First Tet Offensive. He was in Vietnam for nearly all of 1969, a period that witnessed the heaviest and most intense fighting of the war. For three months of his tour of duty Joe served in the signal corps. He was attached to a unit located near the Cambodian border, where fire fights and heavy artillery fire were routine. In fact, Joe entered Cambodia and Laos on at least six occasions on covert missions. His assignment on these missions was to strike at

Vietcong units and supply camps set up near the Vietnam border.

Joe was not accompanied during these missions by other men from his platoon. Instead, men from different units would simply be assigned with other men—all strangers to one another.[4] Indeed, missions into Cambodia were called "black box" missions, because the soldiers who conducted them wore black VC uniforms, removed their dog tags, and filed the serial numbers off their weapons. Understandably, Joe was careful never to befriend any of these men: It didn't pay to get to know someone too well when the odds were that they wouldn't survive the next day's mission. Conversations between the soldiers were impersonal, focusing usually on the mission and the enemy's activity. Joe remembers where a lot of the

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[4]The Vietnam War also marked the first time the U. S. Military adopted a policy of assigning and rotating soldiers into and out of the war on an individual basis under a system known as the "Date Estimated Return from Overseas" (DEROS). The idea was to provide soldiers with a sense of motivation by providing them with a certain date on which they could return home, but the system's real impact was quite different. Assigning troops on an individual, as opposed to a group, basis is often cited as, "the key to the prevalence of PTSD amongst Vietnam Veterans," because as a result of the DEROS policy soldiers typically never knew the names of most of the men with whom they served. The real effect of this policy was to DEROS made the soldiers feel very much isolated and alone.

men came from—that was a safe subject—but he remembers few of their names.

Joe was sent on his first covert mission to Cambodia in early 1969. The men were moved into bunkers, which were later blown up so as to leave no trace of their presence behind. The Americans outnumbered the North Vietnamese Army about five to one, and the mission was counted a success. Joe's unit took the enemy camp by surprise, recovered some tactical plans, and inflicted between three and four hundred enemy casualties, with only two Americans killed and twenty-five wounded.

The next mission, code name "Operation Eagle," was not so successful. With a company of only about 180 men and no air support, the young and inexperienced captain in command had not done his intelligence work. His dereliction left his men totally unprepared when they were ambushed by an entire VC battalion. Scores of men in Joe's platoons were mowed down the minute they left the choppers. Joe recalls hearing the whistle of the Vietcong artillery. All he could think was: "I'm dead." Joe spent the night in the jungle, hiding out in a pile of elephant dung known among the men as an "elephant bunker."

Joe was also in Vietnam for the Tet Offensive of June 1969, and for the battle that has come to be known as "Hamburger Hill," two of the bloodiest engagements of the conflict. The Tet Offensive was a week of intense fighting, where an hour or two of sleep was a luxury. A typical day during the offensive involved four hours on-duty, four hours setting up communications , and the rest of the time at the "greenline" protecting the base camp. The intensity of the combat was "unbelievable."

Two months later Joe was sent to Hamburger Hill to support the Marines of the 101st Airborne. The name "Hamburger Hill" attests to the savagery of the fighting and the suffering endured by

the combatants. Joe's mission, together with the other members of his platoon, was to flush "Charlie" out. Although Joe's company lost only ten men, hundreds were killed, many before Joe's eyes.

Battles in Vietnam had no "front" or "rear." Indeed, soldiers often never knew who the enemy really was: men, women, even children, could all bring danger. Joe saw booby-trapped babies, children carrying submachine guns on the backs of their bikes, and the heads of babies placed atop poles as a warning from the Vietcong. Joe recalled how one washer women, who had been hired from the local village to wash the men's clothes at Joe's base camp, was later interned on suspicions of being a member of the VC after she was caught pacing off the distance from the front gate.

Joe can still recall the war's atrocities—now a part of his psyche—in vivid detail. He remembers one day, for example, coming across the bodies of two villagers that had been out in the sun for days. They had been tortured before death: their eyelids had been cut off; wounds covered their bloated and grotesquely contorted bodies.

But Joe's most haunting memory involves the slow and unimaginably painful death of a young man with whom Joe served. Trapped by the Vietcong in a bamboo pit during a field mission, the man was captured and tortured. The enemy slowly forced a bamboo shoot through his rectum, eventually causing it to rupture through to his internal organs. Joe and a few other soldiers hiding in the bush nearby could see their fellow soldier and hear his cries, which became louder and louder as the night wore on, until finally they stopped. The enemy was using the young man as a lure to try to force Joe and the others to reveal their locations. Joe still can't erase the image of the man's death.

III. POST-TRAUMATIC STRESS DISORDER

Veterans who, like Joe, grew up in abusive families are especially likely to develop Post Traumatic Stress Disorder, or PTSD.[5] Joe's propensity for PTSD was created long before he set foot in Vietnam. Joe's chaotic and abusive childhood already rendered him vulnerable to PTSD. His experience in Vietnam assured its onset.

A direct and well-established relationship exists between

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[5]A CAT scan of Joe's brain taken in 1988 revealed further evidence of his PTSD. In June 1988 Dr. Bachman, the director of Behavioral Neurology at MUSC, testified that Joe exhibited severe brain atrophy, which causally contributed to the 1985 crimes. This diagnosis is consistent with recent studies indicating that people who experience a severe stress reaction following military combat usually experience some shrinkage of parts of the brain. Moreover, excessive use of alcohol by someone who, like Joe, has demonstrated hyper-alert tendencies, has been found to exacerbate pre-existing brain damage.

Vietnam veterans with low self-worth as adolescents and the subsequent development of PTSD. Joe's childhood included all the factors that predispose vets to PTSD. In the extremely violent household in which Joe was raised, verbal and physical abuse were common, producing in Joe a decidedly diminished sense of self. From the time he was barely able to walk Joe's father told him he was "dumb" and "worthless." Kicks and punches were just a part of growing up.

Moreover, the nature of the conflict in Vietnam itself increased the likelihood that veterans like Joe would not return home the same as when they left. The soldiers serving in the war were on average nineteen years old, younger than any soldiers who had gone before them. As one expert on PTSD has observed, "[c]oncepts of duty, patriotism, trust, their individual morality, self-worth, sexuality and peer acceptance [were] formulated [in Vietnam] not in the gradual, selective manner conducive to normal development, but in the highly intensified, highly emotional and formative stages of military sociology." As a result, many Vietnam veterans experienced an almost immediate loss of identity.

Similarly, the reality of guerrilla warfare made it difficult for soldiers to develop any sense of trust, forcing them instead to become vigilant to the point of paranoia. Hyper-vigilance and unthinking, reflexive self-defense were keys to survival. Lack of trust in others is a common characteristic of veterans suffering from PTSD. Compounding Joe's problems was the profound guilt he experienced at having had to leave his comrades to die at the hands of the Vietcong. Several psychiatrists who examined Joe over the years have noted the deep and long-standing connection between this guilt and his persistent depression.

Although PTSD is now well-accepted, the disorder was not officially recognized by the American Psychiatric Association until

1980, well after the war in Vietnam had ended, and much too late to assist Joe and other veterans in presenting the diagnosis as a mitigating factor for sentencing in crimes committed after returning home. As we explain below, the jury that sentenced Joe to death never knew he was suffering from the syndrome.

PTSD if difficult to diagnose for a variety of reasons. First, many PTSD victims are completely unaware of the disorder. Second, the symptomatic behavior of PTSD is often episodic; consequently, PTSD sufferers may appear quite normal most of the time. Third, PTSD sufferers often experience memory lapses that render them unable to remember the original traumatic experience that subsequently triggers their aberrant behaviors. In Joe's case, a diagnosis was only made *after* his trial, and only *after* the examining psychiatrists had finally received full information about Joe's family life and military service.

What makes PTSD so debilitating is the regular reliving of the trauma that originally brought on the disorder, i.e., the so-called "flashback." In order to numb or drown out these flashbacks, PTSD patients typically resort to drugs or alcohol. They seek to still the memories that fill their mind's eye. On the surface, therefore, PTSD victims often look no different than any other addict or drug abuser. But that surface appearance is deceptive.

The memories can intrude at any and all times of the day and night. Sleep therefore comes only with difficulty. Joe's longtime girlfriend, Linda Walters, testified that Joe rarely had a restful night's sleep. Instead, he would frequently have nightmares, jumping awake in a cold sweat. Hyper-vigilance, constantly being on edge, is the ordinary state of being for sufferers of PTSD. Joe would constantly patrol the same route around the neighborhood on his motorcycle, as if on patrol in Vietnam. His step-mother (B.F. had remarried following Gladys' death) also noticed the change. Joe, she

said, couldn't sit still for any period of time, constantly going to the window to see if anyone was approaching.[6]

Joe drowned out the memories with alcohol. Already an alcoholic by the time he left Vietnam, Joe's alcoholism only grew worse after he got home. Between 1980 and 1985, Joe's drinking worsened dramatically. Meant to quiet the memories, Joe's heavy drinking only made them worse. Joe moved in a never-ending downward spiral: flashback, drink, flashback, drink . . . .

IV. AFTER VIETNAM

The young man who left for Vietnam was not the same man who returned home. The man who had left for Vietnam had never shown any sign of violence. The man who returned from Vietnam was an alcoholic suffering from PTSD who had been trained to kill.

Joe may have changed, but his brother and his father had not. The abuse and torment Joe thought he had left behind remained to greet him when he returned. Just one week before Charles' death, for example, Charles hit Joe with a pool cue, leaving a large welt on his head, and earlier in the year, Charles had stuck Joe with the butt of a rifle. Moreover, no one in Joe's family seemed to care about what happened to him in Vietnam. They never asked him about his

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[6]Several interviewers, including Dr. Ouzts who examined Joe in 1986, observed first-hand that Joe demonstrated symptoms of hypervigilance during the short duration of their interview or examination.

experiences, which Joe preferred to drown with alcohol anyway.

A. NewYear's Eve 1969

Charles' death on New Year's Eve 1969 was the culmination of the years of abuse, Vietnam, and an evening of drinking and violence. Joe was ultimately convicted of first-degree murder for his brother's death, but no one who understood what happened that night really believed he was guilty of first-degree murder.

Both brothers were drinking heavily on New Year's Eve 1969 at the home of Charles and Lula Mae Simpson. As the night wore on and the drinking continued, tension between Charles and Joe began to grow. Charles eventually struck Joe in the head with the butt of his loaded revolver. The blow left a swollen and bloody mark on Joe's forehead. Charles laughed. Joe demanded an explanation, but Charles ignored him. Joe eventually got away and returned to his father's home, where he grabbed a .22 rifle from his father's bedroom. He then returned to the Simpson's. Joe never intended to harm his brother. He only wanted an explanation, and the rifle provided him with protection. But when Joe asked his brother why "he wanted to hit me for nothing," Charles responded by reaching for the pistol with which he had beaten Joe earlier in the evening. Joe fired, hitting his brother twice.

Under the circumstances no one—not even the prosecutor—thought that Joe was guilty of anything greater than voluntary manslaughter. Joe acted in what he sincerely believed was self-defense, even if his belief in the need to resort to self-defense was unreasonable. Accordingly, Joe was guilty of manslaughter, not murder, and he was fully prepared to enter a plea of guilty to voluntary manslaughter and to accept his punishment. But the plea, which the prosecutor was fully prepared to accept, did not happen.

Why? Because Joe's lawyer bungled it.[7] When Joe tried to

explain how he'd acted in self-defense, the trial court refused to accept his plea. At that point a competent lawyer would have explained to Joe that his fear that Charles would shoot him on that night did not by itself give him a valid claim of self-defense. Unless Joe's subjective fear was also reasonable, Joe was still guilty of manslaughter, which was what he had intended to plead guilty to all along. Instead, Joe's lawyer let the plea collapse.

Moreover, Joe's lawyer—who was clearly not prepared for trial since he'd been expecting all along to have Joe enter a plea to manslaughter—never asked for any time to prepare for trial. Instead, he allowed the case to proceed directly to trial, which was over in *one day*. As a result of his lawyer's failings, Joe ended up convicted of first-degree murder and sentenced to life imprisonment. This might have been the first time that Joe's fate turned on incompetent lawyering, but it was not the last.

Joe spent the next ten years in prison, where he was a model prisoner. Like most men who suffer from alcoholism and PTSD, Joe does fine when he's institutionalized. When his daily life is given structure and routine, the flashbacks are less common and his alcoholism is brought under control. Accordingly, Joe was paroled in 1980. But without the structure and routine of prison, his memories of Vietnam and his futile efforts to fight those memories with alcohol returned. After five years, the old pattern had returned: flashback, drink, flashback, drink . . . .

B. October 29, 1985

In the early morning hours of October 29, 1985, Joe Atkins was back in Vietnam. He had been drinking heavily.[8] He was dressed in combat fatigues. A bandana was around his head. He had cut the phone wires, and neighbors said it looked like he was "scouting out" the backyard, as if searching for the enemy. Joe was having a

"disassociative" reaction, reverting back to the survival instinct he'd learned in Vietnam—but the only enemy was in Joe's mind. In the end, Joe killed both his father and Karen Patterson.

The 1985 deaths were even more clearly a product of Joe's PTSD and his experiences in Vietnam than was the killing fifteen years earlier of his brother. According to the American Psychiatric Association, crimes involving victims of PTSD usually share common characteristics. Joe's actions on October 29 exhibit them all:

> *Spontaneity*. PTSD crimes are usually spontaneous. The facts surrounding the crime generally indicate no forethought or planning.

The killings occurred in broad daylight in a residential neighborhood. Likewise, Joe riddled the side of his father's house with bullets, all the while yelling and cursing at an unseen enemy. Joe was back in Vietnam on that morning. He was attacking the enemy, not his father and certainly not the innocent little girl.

> *General non-violence*. PTSD crimes are usually committed by men with little or no previous history of violence.

Joe is of course a violent man, *but only when he experiences a flashback, or when he is threatened*, as he was by his brother in 1970. Joe is otherwise subdued and mild-manner. For the nearly 22 years that he has spent in prison, Joe has not once been written up for violent misbehavior of any sort.

> *Alcohol abuse*. PTSD crimes usually involve alcohol.

Joe's blood alcohol level on the day of the killings was 0.21, twice what it takes to get convicted of DWI. Since his days in Vietnam, alcohol was Joe's avenue of escape. Indeed, on several occasions since his return, Joe drank to the point of blacking out. Often Joe drank to help him sleep, but the drinking only made matters worse, accentuating the memories and nightmares.

> *Opacity*. Men who commit PTSD crimes usually can't give any explanation for their behavior.

The most remarkable thing about the 1985 killings is their utter irrationality. No rational explanation exists for why Joe would suddenly act in such a violent manner. The killings only "make sense" if you put yourself in Joe's shoes, back in Vietnam fighting an unseen enemy and trying to survive.

> *Triggers*. PTSD crimes typically result from some "triggering event" that transports the perpetrator back to the original trauma and sets off the associated behavior.

Joe's disassociative state—his break with reality—on the night of October 29, 1985 could have been triggered by any number of events. Many Vietnam vets jump at the sound of a car back-firing, or find themselves back in the jungles of Vietnam while in reality simply walking though a park. All the old responses—the fear, the hyper-vigilance, the reflexive firing—kick in.

What it was about October 29 that transported Joe back to Vietnam is impossible to say. Joe himself can't say. It might have been the time's hot and humid weather, which was reminiscent of Vietnam's jungles. It might have been something as simple—but for Joe as profound—as the date: the very morning of the crimes marked seventeen years to the date that Joe arrived in Vietnam. Or it might have been the smell of gasoline, or the sight of a tree line.

Joe was tried for capital murder. The proceeding that eventually resulted in the death sentences upon which he is scheduled to be executed on January 22 was far from perfect, and Joe's lawyers have tried, though without success, to convince the courts to order a new trial. We do not ask you to second-guess the courts' judgments,[9] but for the sake of full disclosure we nonetheless present an abbreviated account of the legal errors but for which we believe

Joe would not have been sentenced to death:

> No one can be sentenced to death in South Carolina unless his actions fall within the scope of a statutorily enumerated aggravating factor. In Joe's case that factor was that Joe had previously been convicted of murder, i.e., the murder of his brother Charles. But as we have explained, Joe was not really guilty of murder. He was only guilty of, and should only have been convicted of, manslaughter. In other words, if Joe had received fair legal representation in 1970—if he had simply been allowed to plead guilty as he had wanted to—he could not have been sentenced to death at all.
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> The jury was never allowed to decide for itself whether or not Joe was in fact guilty of murdering his brother. They were simply told to assume that he was guilty of murder. They were never told the full story.
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> The lawyers who represented Joe in defense of his life did their best, but inexperience, lack of money, lack of time, and the general disarray of the public defenders office at the time conspired against them—and so also against Joe. "[O]ne of the places that I really failed Ernest Atkins," one of his lawyer's later recalled, "was that I did not tell his story. I did not tell what he had experienced and what it had done to him."
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> Consequently, although the jury knew that Joe had served in Vietnam, they were never told exactly what PTSD is and how it can affect the lives of veterans, especially veterans who grew up in circumstances like those in which Joe grew up. If the jury *had* been given the full story, we submit that they would have sentenced Joe to life imprisonment. We have tried to

> give the barest sketch of that story for you here, but welcome the chance to present it more fully in-person. The jury that sentenced Joe to death was initially hung, with two jurors believing for religious reasons that Joe should be sentenced to life imprisonment. In response, one of the jurors brought notes of passages from the Old Testament into the jury's deliberations. She had transcribed those passages the night before and then used them to persuade the two other jurors to vote for death. As a result of the one juror's actions, neither Joe nor the other two jurors got a chance to respond to the Old Testament passages with passages from the New Testament. The jurors heard Leviticus' unrelenting demand of an "eye for an eye," but they never heard Jesus' words that "[b]lessed as the merciful: for they shall receive mercy" (Matthew 5:7), or his admonition to Peter to forgive not "[u]ntil seven times, but until seventy time seven." (Matthew 18:21-22).

These are only some of the problems with the legal proceedings that lead to Joe's death sentence. There are more, and there's more that can be said about those we have mentioned. But we will stop here. We are fully prepared to describe these problems at greater length as you wish.

CONCLUSION

Mercy requires no reason. You are vested with the authority to commute Joe's sentence to life imprisonment without any possibility of parole for any reason or for no reason at all. We nonetheless summarize the reasons why we—Joe's counselors and friends—ask you to extend him mercy, both for his sake and for ours:

Joe accepts responsibility for his crimes. We nonetheless ask you to understand how the circumstances under which Joe was raised and his experiences in Vietnam contributed to the events leading up to those crimes. Those circumstances and experiences do not and cannot excuse Joe's crimes but, we submit, they should mitigate his punishment from death to life imprisonment.

Joe served his country honorably in Vietnam.

Joe believed he was back in Vietnam at the time of the killings. He never meant to kill his father or the Karen Patterson, and he is profoundly remorseful for his crimes.

Joe is dangerous to no one. For the many years in which Joe has been in prison, he has been tranquil and cooperative.[10] He believes in God, regularly attending services and witnessing to his fellow inmates. He keeps to himself, and troubles no one.

We realize that granting clemency to death-row inmates is not an easy thing to do. We realize too that it requires an uncommon act of political courage. But we pray you find yourself moved toward mercy, and we ask you to follow your heart. Five men have been executed in South Carolina in the past two months. On Joe's behalf and ours, we ask that you begin your new administration with a courageous sign that South Carolina is a state where justice is tempered by mercy.

Respectfully submitted,

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