

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2014-0674
Plaintiff-Appellee,	:	On Appeal from the
v.	:	Ninth Appellate District,
	:	Summit County, Ohio
DAVID M. ANDERSON,	:	Court of Appeals
Defendant-Appellant.	:	Case No. CA-26640

**BRIEF OF AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER
IN SUPPORT OF APPELLANT DAVID M. ANDERSON**

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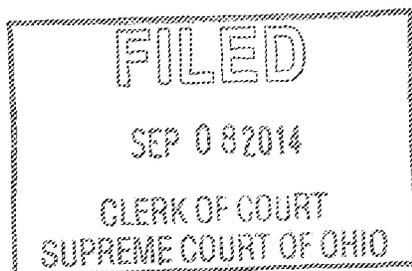


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STATEMENT OF THE CASE AND FACTS

Appellant David M. Anderson, and the opinion of the court of appeals, have adequately set forth the procedural and factual history of this case.

STATEMENT OF INTEREST OF AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER

The mission of the Office of the Ohio Public Defender (OPD) is to represent indigent defendants in criminal cases and to coordinate criminal defense efforts throughout Ohio. The OPD also plays a key role in the promulgation of Ohio statutory law and procedural rules. A key focus of the OPD is on the post-trial phase of criminal cases, which includes direct appeals and collateral attacks on convictions. The OPD aspires to provide exemplary legal representation with the goal of protecting the individual rights guaranteed by the state and federal constitutions. In addition, the OPD seeks to promote the proper administration of criminal justice by enhancing the quality of criminal defense representation, educating legal practitioners and the public on important defense issues, and supporting study and research of, and in, the criminal justice system.

As amicus curiae, the OPD offers this Court the perspective of practitioners who routinely handle significant criminal cases in the Ohio appellate courts and consistently review cases for postconviction and other post-trial issues. The OPD has an interest in the present case insofar as this Court may address the legality of a trial court prohibiting a person convicted of an offense from contacting the victims of the offense.

The OPD urges this Court to reverse the decision of the Ninth District Court of Appeals. Permitting trial courts to prohibit convicted persons sentenced to prison from contacting victims and victims' families will have the unwanted effect of preventing desirable and just outcomes in many situations. Upholding the ruling of the Ninth District

would greatly diminish, or even wholly foreclose legal avenues employed by the OPD in pursuing relief for its clients. Two of those legal avenues, relief through evidence not offered at trial and relief through clemency, are discussed below.

ARGUMENT

Proposition of Law

Recognizing the authority of trial courts to prohibit convicted persons sentenced to prison from contacting victims and victims' families would preclude the legitimate pursuit of relief, would prevent desirable outcomes, and would be detrimental to the overall administration of justice.

I. Relief Through Exculpatory Evidence Not Offered at Trial

When the OPD discovers exculpatory evidence not offered at trial, two legal avenues that it may use to pursue relief for an individual are postconviction petitions and motions for a new trial. *See* R.C. 2953.21; Crim.R. 33; Crim.R. 35. These avenues were made available to protect constitutional rights by providing individuals convicted of criminal offenses with a mechanism to challenge their convictions through the offering of evidence that was not presented at trial. *See e.g.*, R.C. 2953.21 et seq. Most often, this evidence is in the form of testimony from witnesses who were not called to testify at trial. But it can also take the form of a recantation of inculpatory trial testimony.

State of Ohio v. Mark A. Hall

Mark A. Hall was convicted of two counts of rape by a Sandusky County jury on the false testimony of his daughter, Melissa Hall, and was sentenced to ten years to life in prison. At the time Ms. Hall claimed that her father raped her, she was eight years old. Thirteen years later, Ms. Hall came forward and admitted that her allegations were fabricated. After interviewing Ms. Hall and obtaining an affidavit from her, the OPD filed a motion for new trial, which ultimately resulted in Mr. Hall's release from prison.

Mr. Hall's case demonstrates the importance of a convicted person's ability to communicate with victims. If the trial court in Mr. Hall's case had been able to prohibit contact between Mr. Hall and his daughter, Mr. Hall might have remained in prison, falsely convicted, for many more years. A "no contact" order would have prevented the OPD from speaking with Ms. Hall on Mr. Hall's behalf, and would have precluded the filing of Mr. Hall's new-trial motion.

II. Relief Through Clemency

The OPD reviews cases of persons convicted of murder and sentenced to death to determine whether there are grounds to support an application to the Ohio Parole Board for a recommendation to commute a death sentence to a sentence of life imprisonment. These reviews include feedback from the the family-member victims of the deceased victim, if they are willing to provide it. Additionally, dialogue between family members of the deceased and the offender can be beneficial to the family members. (*See* ODRC Office of Victim Services – Victim Offender Dialogue Brochure, Ex. A.)

In Re Joseph Murphy, OSP #A199-042

A Marion County jury found Joseph Murphy guilty of the aggravated murder of 72-year-old Ruth Predmore and he was sentenced to death. Following a review of Mr. Murphy's background, history, upbringing, mental health, and other factors, the OPD determined that sufficient grounds existed for the filing of an application for clemency. In the process of gathering information for the clemency application, the OPD attorneys learned that Ms. Predmore's niece, Peg Predmore-Kavanaugh, had participated in a Victim-Offender Dialogue with Mr. Murphy. An interview with Ms. Predmore-Kavanaugh revealed that she had been moved by her meeting with Mr. Murphy and that she wished for

his death sentence to be commuted to life without parole. Ms. Predmore-Kavanaugh's video-taped statement was presented during the clemency hearing and the Board's report acknowledged the profundity and significance of her statement:

A video-taped statement of Peg Predmore-Kavanaugh was presented next. Ms. Kavanaugh stated that she is the victim's niece. The victim was a church going lady and participated in several charitable organizations. Ms. Kavanaugh was shocked by her aunt's murder, and indicated that the process has been horrible, leaving the victim's family held hostage and forgotten over the past 25 years. On July 25, 2011, Ms. Kavanaugh participated in a Victim-Offender Dialogue with the applicant. The meeting lasted three hours and during the meeting, she looked for a hardened criminal. The applicant would not initially make eye contact with her, but eventually did, and began to answer her questions about the murder. Ms. Kavanaugh stated she came away from the meeting with a different view of the applicant than when she entered the meeting and believes the system let him down. Ms. Kavanaugh stated that she has been conflicted because she promised her father that she would see this through, but after meeting with the applicant, she can no longer support the execution. She believes that if her father had known the whole story of the applicant's life, he would not be supportive of execution either. Ms. Kavanaugh informed the Board that the applicant advised her of the abuse he received at the hands of his parents and others, and that he set fires as a youth in order to receive protection. She went on to note that the applicant was not given the tools he needed in order to succeed in life, and that he should have been placed in foster care. Ms. Kavanaugh expressed her displeasure, stating "it's awful" that the applicant's mother and family members have not supported him while incarcerated, which demonstrates that they are still letting him down. Ms. Kavanaugh believes applicant is truly remorseful and should be granted a commutation to life without parole.

(Joseph Murphy Clemency Report, Ex. B.) Following the hearing, the Parole Board unanimously recommended commutation of Mr. Murphy's death sentence to life without parole and Governor Kasich adopted the recommendation.

Mr. Murphy's case demonstrates the importance of a death-sentenced person's ability to communicate with victims. If the trial court in Mr. Murphy's case had been able to prohibit contact between Mr. Murphy and Ms. Predmore-Kavanaugh, Mr. Murphy may have been executed. It also demonstrates the value that victims can obtain through

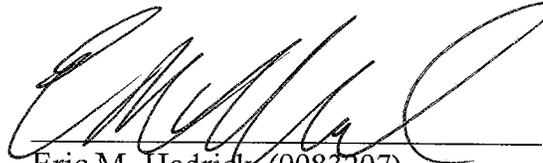
communicating with offenders. Had the trial court prohibited contact, any catharsis and healing that Ms. Predmore-Kavanaugh was able to derive from her dialogue with Mr. Murphy would have been foreclosed.

CONCLUSION

Recognizing the authority of trial courts to prohibit convicted persons sentenced to prison from contacting victims and victims' families would preclude the legitimate pursuit of relief, would prevent desirable outcomes, and would be detrimental to the overall administration of justice. Accordingly, the Office of the Ohio Public Defender, as amicus curiae, urges this Court to reverse the decision of the Ninth District Court of Appeals.

Respectfully submitted,

OFFICE OF THE OHIO PUBLIC DEFENDER



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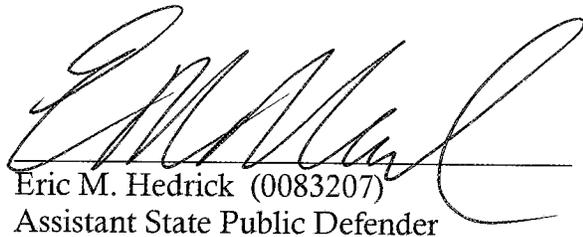
COUNSEL FOR AMICUS CURIAE,
OHIO PUBLIC DEFENDER

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing BRIEF OF AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER IN SUPPORT OF APPELLANT DAVID M. ANDERSON was forwarded by regular U.S. Mail, on this 8th day of September, 2014, to:

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Life After Death

Elaine was killed by a drunken driver and nothing can bring her back.

But her family found hope by facing the offender.

"The day after the mediation session, I could feel that a lot of tension I had been carrying around vanished. I had a sense of relief and realized it was because I had to let go of feelings of vengeance and despair. The mediation had allowed me to turn my thoughts back to constructive direction and to feel optimistic about the future".

"But I harbor no bitterness or hate toward her. I respect her for having the conscience and the courage to face us, express her remorse and take responsibility for what she had done. I rejoice at each of her accomplishments on the job of repentance and repair, and sincerely wish her well in making a better life for herself and her family".

*Elizabeth S. Menkin, sister of Elaine
San Jose Mercury News
September 4, 1994*

Mission of Victim Services

To work in partnerships to make a positive difference in the lives of crime victim, by affording them meaningful participation throughout the Ohio corrections process.

Some additional services provided by the office are:

- ⊗ Crisis intervention and advocacy throughout the correction process
- ⊗ Addressing victim concerns regarding inmates and parolees under our jurisdiction
- ⊗ Providing information regarding inmate or parolee status
- ⊗ Victim notification
- ⊗ Notification and support for surviving family members throughout the execution process
- ⊗ Community education
- ⊗ Referrals to other state and local community services

Office of Victim Services

770 W. Broad Street
Columbus, Ohio 43222

Office: (614) 728-1976
Victim Line: (888) 842-8464
Fax: (614) 728-1980

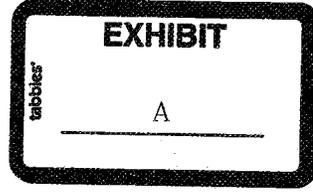
DRC.Victim.Services@odrc.state.oh.us
www.drc.ohio.gov

Ohio Department of
Rehabilitation and Correction



Office of Victim Services

Victim Offender Dialogue



John R. Kasich
Governor

Gary C. Mohr
Director

Why would a victim want to meet with an offender?

Historically, victims of crime have been left out of the justice process and were not afforded the same rights as offenders in their cases. There are many reasons a victim might have interest in meeting with the person who harmed them.

- ② They often have questions only an offender can answer. Questions we have heard include: "What actually happened?" "What were my loved one's last words?" "Why did you pick me?"
- ② Victims may want to tell the offender about how their lives have been affected by the offender's criminal behavior and how they feel about the crime.
- ② Victims often want to know about the offender's life inside the institution or what kind of person they are.

Why would an offender want to meet with a victim?

- ② Offenders may want the opportunity to apologize to the victims and to express remorse for their actions.
- ② Answering questions is one way the offender can attempt to make amends to victims.
- ② When an offender looks into the eyes of the person(s) they've harmed, they often feel true remorse and can begin to turn their own lives around.

What is Victim Offender Dialogue?

Victim Offender Dialogue is a process in which the victim of a violent crime and the offender who committed the offense meet. The focus is on the harm done to the victim and the offender's responsibility in the reparation of that harm.

The Dialogue Process

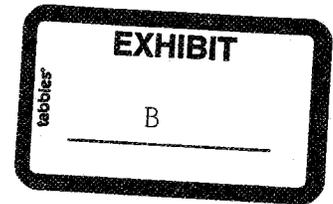
- ② Requests for Victim Offender Dialogue must be made through the Office of Victim Services.
- ② All dialogues are victim initiated; offenders cannot initiate a dialogue.
- ② Dialogue preparation can take anywhere from several weeks to years before an actual meeting takes place.
- ② Offenders must agree to participate; they cannot be forced into the process.
- ② Because Victim Offender Dialogue is not for everyone, each case is carefully reviewed by the Office of Victim Services.
- ② We do not conduct dialogues involving domestic violence.
- ② Each case is assigned to one or two trained facilitators who will meet with both the victim and offender individually to prepare for the dialogue.
- ② It is recommended that both the victim and offender have a support person with them throughout the process.
- ② The Victim Offender Dialogue process cannot be used by offenders in an attempt to obtain an early release from prison or supervision.

If you are a victim and are interested in the Victim Offender Dialogue Process:

- ② Contact the Office of Victim Services at 1-888-842-8464.
- ② You will be asked to provide background information about your interest in dialogue.
- ② Keep in mind that determination of the appropriateness of a dialogue is at the discretion of the Office of Victim Services and the managing officer where the offender is located.
- ② The Victim Offender Dialogue program cannot be utilized to circumvent the Department's policy limiting visitation between victims and their offenders.



DATE TYPED: September 21, 2011
DATE PUBLISHED: September 23, 2011



IN RE: JOSEPH MURPHY, OSP #A199-042

**STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO**

Date of Meeting: September 15, 2011

Minutes of the **SPECIAL MEETING** of the
Adult Parole Authority held at 770 West Broad Street,
Columbus, Ohio 43222 on the above date.

IN RE: Joseph Murphy, OSP #A199-042

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with 2 death penalty specifications, Aggravated Robbery, Extortion.

DATE, PLACE OF CRIME: February 1, 1987 in Marion, Ohio

COUNTY: Marion

CASE NUMBER: 87CR36

VICTIM: Ruth Predmore (Age 72)

INDICTMENT: February 11, 1987: Count 1, Aggravated Murder with 2 death penalty specifications; Count 2, Aggravated Robbery; Count 3, Aggravated Burglary; Count 4, Extortion.

TRIAL: August 28, 1987: Found guilty by Jury as indicted.

DATE OF SENTENCE: September 14, 1987

SENTENCE: Count 1: DEATH
Counts 2 & 3 Merged: 10-25 years
Count 4: 5-10 years

ADMITTED TO INSTITUTION: October 1, 1987

JAIL TIME CREDIT: N/A

TIME SERVED: 24 years

AGE AT ADMISSION: 22 years old

CURRENT AGE: 46 years old

DATE OF BIRTH: March 22, 1965

JUDGE: Honorable William Wiedemann

PROSECUTING ATTORNEY: Prosecutor Jim Slagle

FOREWORD:

Clemency in the case of Joseph Murphy, A199-042 was initiated by the Ohio Parole Board, pursuant to Sections 2967.03 and 2967.07 of the Ohio Revised Code and Parole Board Policy #105-PBD-01.

On September 6, 2011, Joseph Murphy was interviewed via video-conference by the Parole Board at the Ohio State Penitentiary. A Clemency Hearing was then held on September 15, 2011 with eight (8) members of the Ohio Parole Board participating. Arguments in support of and in opposition to clemency were then presented.

The Parole Board considered all of the written submissions, arguments, information disseminated by presenters at the hearing, as well as judicial decisions and deliberated upon the propriety of clemency in this case. With eight (8) members participating, the Board voted eight (8) to zero (0) to provide a favorable recommendation for clemency in the form of a commutation to a sentence of Life without the Possibility of Parole to the Honorable John R. Kasich, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (87CR36): The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided December 30, 1992:

Ruth Predmore, seventy-two years of age and in frail health, resided alone at 887 Davids Street in Marion, Ohio. Applicant, Joseph D. Murphy, resided with his parents at 1049 Davids Street, was acquainted with Mrs. Predmore and had performed yardwork for her in the past.

Mrs. Predmore was a member of a philanthropic organization known as the "Kings Daughters and Sons". Since approximately 1983, the organization had collected pennies to support its charitable activities. As treasurer of the organization, Mrs. Predmore maintained custody of the pennies and other funds of the organization (which exceeded \$100) at her home. The pennies were not in rolls but were instead retained loose by Mrs. Predmore.

In mid-January 1987, applicant told his girlfriend, Brenda Cogar, that he intended to write a note to Mrs. Predmore demanding money and threatening her with death if she did not comply. On January 27, 1987, Mrs. Predmore visited a Lawson's store in her neighborhood near the intersection of Davids Street and Bellefontaine Avenue. While at the store, she talked to Janice Colby, a sales clerk, and displayed to her a note which she had received. The note stated as follows:

"You dont have no phone. I want your money. put it in a bag and put it in your yard or i'll kill you tonite.

"No money

"No life

"Tonight at 8:00"

On February 1, 1987, at approximately 7:00 p.m., applicant left his parents' home, clad in a blue tee-shirt, blue jeans, tennis shoes, maroon vest and brown jacket with white fleece lining. He went to the Sohio gasoline station on the corner of Davids Street and Bellefontaine Avenue and requested penny wrappers. A clerk provided used penny wrappers. At approximately 9:00 p.m., applicant telephoned his mother and informed her that he had found a credit card.

The same evening, between 9:00 p.m. and midnight, Mrs. Predmore was killed by a five-inch knife wound to her neck. The knife severed the trachea, the esophagus, and the right and left carotid arteries and jugular veins.

At approximately 10:30 p.m., applicant returned home. Although his hands and face were covered with blood, he displayed no cuts or bruises on his body. There was no blood on his clothing. He explained that the blood was the result of a fight. Thereafter, he went to the bedroom of his brother Michael where they counted pennies and placed them in paper rolls. The next morning, applicant had a black bag of pennies in paper rolls, some of which he offered his mother to purchase cigarettes.

On February 3, 1987, applicant entered the Lawson's store, showed the manager some rolled pennies in a dark bag and asked whether she would exchange the coins for currency. The manager declined.

Jackie Valentine was a supervisor for the Homemaker and Chore Program of the Marion County Department of Human Services, which delivered meals to the elderly who were unable to leave their homes. On February 2, 1987, Valentine received a telephone call informing her that Mrs. Predmore had not responded when a meal was delivered to her home. Upon arriving at the home of Mrs. Predmore, Valentine entered the unlocked front door and discovered the lifeless body of Mrs. Predmore. Valentine thereafter summoned the Marion city police.

The first officer to arrive, Detective Sammie L. Justice, discovered footprints in blood on the front porch and blood splattered on the screen door and wooden front door. Thereafter, Agents Robert D. Setzer and David Barnes of the Ohio Bureau of Criminal Identification and Investigation ("BCI") searched the Predmore residence. They discovered in the living room the note that Ruth Predmore had previously shown to Janice Colby. Agent Setzer also took blood samples from the shoeprints found on the porch of the Predmore house. Subsequent analysis revealed that the blood was of Ruth Predmore's type.

Meanwhile, as some of the members of the Murphy family were preparing to travel to West Virginia, they noticed the police activity at the Predmore home down the street. Applicant appeared agitated and ventured the opinion that Mrs. Predmore must have been murdered. Thereafter, applicant placed a telephone call to Cynthia Nichols, his aunt, and

asked her whether he could stay with her for a while at her residence at the Wood Valley Trailer Park in Caledonia, Ohio. After she agreed, applicant and Brenda Cogar departed for Caledonia at approximately 8:00 p.m. After their arrival, applicant admitted to Cogar that he had killed Mrs. Predmore by slashing her throat with a knife he had taken from a collection of his brother.

On February 3, 1987, Detective Wayne J. Creasap discovered a wallet belonging to Mrs. Predmore underneath a shrub, approximately fifty yards south of the Murphy residence.

Thereafter, police searched the Murphy residence and found a pair of gloves, a brown windbreaker jacket with white fleece, a woman's purse, penny wrappers, rolled pennies and writing paper of the type upon which the note found in the Predmore home was written. A subsequent search of the residence revealed a pair of blood-stained blue jeans.

Police then travelled to Caledonia, arrested applicant and advised him of his rights to remain silent and to have the assistance of counsel.

At approximately 8:06 p.m., BCI agents searched the house trailer of Cynthia Nichols. Among the items recovered were a pair of tennis shoes and a maroon blood-stained vest. Subsequent analysis of the tennis shoes, the gloves, the jacket, the purse and blue jeans revealed the presence of Type A blood. While both applicant and Mrs. Predmore had Type A blood, Mrs. Predmore had blood containing a PGM 1+ enzyme factor while the applicant had a PGM 2+ enzyme factor. Sixteen percent of the population have blood of the type and enzyme factor of Mrs. Predmore's. The blue jeans recovered from the home of applicant had blood stains of those characteristics.

Meanwhile, applicant was transported to the Marion police station. Upon arrival, applicant was again advised of his constitutional rights and acknowledged that he understood them. Following both oral and written instructions regarding his rights, applicant executed a written waiver prior to any conversation with police detectives. The subsequent interview was taped and a transcription thereof produced. During the interview, Sergeant John Gosnell of the Marion County Sheriff's Department alluded to prior criminal acts of applicant involving arson and breaking and entering. Applicant acknowledged that he had written the note found in the home of Mrs. Predmore, which she had previously shown to Janice Colby.

On February 4, 1987, applicant sent word from jail that he wished to continue the interview.

This second interview was likewise taped and transcribed. At approximately 11:13 p.m., applicant was again advised of his rights and again executed a waiver form. During this interview, applicant denied any involvement in the death of Mrs. Predmore and implicated Alvie Coykendall, his brother-in-law, in the crime. Applicant volunteered to submit to a polygraph examination.

On February 8, 1987, police again searched the Murphy residence, and recovered a knife

lodged in the concrete foundation of the home. It was part of the collection belonging to David Murphy, the brother of applicant. Analysis of the knife revealed traces of blood. Shortly after this search, Murphy's mother discovered a plastic bank card bearing the name of Ruth Predmore under a mattress in a basement bedroom of her home.

On February 11, 1987, applicant was indicted by the Marion County Grand Jury on one count of aggravated murder with two death penalty specifications, one count of aggravated robbery, one count of aggravated burglary and one count of extortion.

PRIOR RECORD

Juvenile Offenses: Joseph Murphy has the following known juvenile arrest record:

<u>DATE</u>	<u>OFFENSE</u>	<u>LOCATION</u>	<u>DISPOSITION</u>
02/3/1980 (Age 14)	Unruly / Habitually Disobedient	Marion, Ohio	Temporary commitment to Ohio Youth Commission Child Study Center
09/1/1981 (Age 16)	Delinquent/Breaking & Entering	Marion, Ohio	Indefinite Probation with curfew.
07/7/1982 (Age 17)	Delinquent/Petty Theft (3 counts)	Marion, Ohio	Unknown
02/22/1983 (Age 17)	Delinquent/Grand Theft (3 counts), Receiving Stolen Property, Violation of Court Order	Marion, Ohio	Placed in detention; jurisdiction terminated - applicant attained the age of 18.

Supervision Adjustment: On 5/19/1980 to 12/8/1980, applicant was voluntarily admitted to the Dayton Children's Psychiatric Hospital.

Adult Offenses: Joseph Murphy has the following known adult arrest record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
06/13/1984 (Age 19)	Grand Theft (MV) 84-CR-199	Mansfield, Ohio	1/11/1985: 1 year cc/w Marion County cases.
06/27/1984 (Age 19)	Theft 84-CR-113	Marion, Ohio	7/13/1984: 6 months suspended, to serve 90 days & costs.
08/17/1984 (Age 19)	Vandalism	Marion, Ohio	Dismissed

11/7/1984 (Age 19)	Breaking & Entering, Marion, Ohio Auto Theft 84-CR-202		11/29/1984: 6 months cc/w 1 year
11/7/1984 (Age 19)	Shoplifting	Marion, Ohio	Unknown
11/21/1984 (Age 19)	Unauthorized Use of Motor Vehicle	Marysville, Ohio	6/14/1985: 1 ½ years cc/w Marion County Case.
03/8/1985 (Age 19)	Arson (3 counts) 84-CR-220	Marion, Ohio	3/14/1985: 1 ½ years each count concurrent and cs/w 84-CR-202
02/7/1987 (Age 21)	Aggravated Murder, Marion, Ohio Aggravated Robbery, Extortion (87CR36)		INSTANT OFFENSE

Institutional Adjustment:

Joseph Murphy was admitted to the Department of Rehabilitation and Correction on October 1, 1987. His work assignments while incarcerated at the Mansfield Correctional Institution included Laundry Attendant, Material Handler, Porter, Recreation Worker, and Student. Since his transfer to the Ohio State Penitentiary, his work assignment has been as a Porter. Murphy has participated in community service programs and religious service activities while at the Ohio State Penitentiary. He did complete a Stress Management program in 12/2008.

Since his admission, Murphy has accumulated the following disciplinary record which resulted in placement in disciplinary control:

- 01/24/1991: Giving false information or lying to departmental employees. Murphy made false or unproven statements to the Rules Infraction Board indicating other inmates were assaulting and extorting him. He did so to obtain a cell move. He received 10 days in disciplinary control for this rules infraction.
- 10/01/1993: Disrespect to an officer, staff member, visitor or other inmate. Murphy made disrespectful comments to staff. He received 4 days in disciplinary control for this rules infraction.
- 12/13/1993: Destruction, alteration, or misuse of property. Murphy broke a cabinet shelf and made threats to destroy other state property. He received 3 days in disciplinary control for this rules infraction.
- 04/27/1994: Disobedience of a direct order. Murphy refused a cell move. He received 6 days in disciplinary control for this rules infraction.

- 07/11/1994: Throwing any other liquid or material on or at another. Murphy threw a liquid substance on another inmate. He received 2 days in disciplinary control for this rules infraction.
- 04/09/1995: Causing, or attempting to cause, serious physical harm to another. Murphy, and 2 other inmates, assaulted another inmate with weapons. Murphy struck the inmate in the face with a sock filled with pop cans. The inmate's injuries included 24 facial stitches and numerous puncture wounds. He received 15 days in disciplinary control and was released from local control on 10/1995 for this rules infraction.
- 06/25/1997: Causing, or attempting to cause, serious physical harm to another. Murphy assaulted a Corrections Officer by striking him on the wrist with a pair of handcuffs. Murphy had refused previous orders to go to his cell and made verbal threats to staff. He received 15 days in disciplinary control and was released from local control on 12/1997 for this rules infraction.
- 05/14/1998: Fighting – with or without weapons, including instigation of, or perpetuating fighting. Murphy was involved in a fight with another inmate and was found to have a weapon at his disposal. He received 15 days in disciplinary control and was released from local control on 9/1998 for this rules infraction.
- 01/23/2002: Giving false information or lying to departmental employees. Murphy made false/unproven accusations that two staff members were propositioning him for sexual favors and were also knowingly allowing other inmates to cause physical harm to him. He received 15 days in disciplinary control for this rules infraction.
- 04/01/2003: Threatening bodily harm to another, with or without a weapon. Murphy sent a letter to ODRC Director Wilkinson that contained threats including, "Die Bitch, Die, Die, Die, Die, Die, Die." Murphy was tested and found to be untruthful and the handwriting was very similar to his. He received 15 days in disciplinary control and was released from local control on 11/2003 for this rules infraction.
- 07/24/2004: Possession or manufacture of a weapon, ammunition, explosive or incendiary device. Murphy was in possession of a "shank" made from a broken ruler. He received 15 days in disciplinary control for this rules infraction.
- 07/24/2006: Possession of contraband, including any article knowingly possessed which has been altered or for which permission has not been given. Murphy was found in possession of contraband that included one razor hidden under his door handle and written notes containing codes and information concerning assaults and unauthorized relationships. He received 7 days in disciplinary control for this rules infraction.
- 01/13/2007: Possession of contraband, including any article knowingly possessed which has been altered or for which permission has not been given. Murphy was in possession of a sketched diagram of his death row housing block. He received 15 days in disciplinary control for this rules infraction.
- 05/14/2010: Gambling or possession of gambling paraphernalia. Murphy admitted to owing gambling debts to another inmate. He received 11 days in disciplinary control for this rules infraction.

Murphy has numerous conduct reports that did not result in placement in disciplinary control. They include: Possession of contraband in 1989 (2), 1990, 1991, 1993 (2), 1997, 2007 (2); Disobedience of a direct order(s) in 1989, 1991, 1994 (3); Destruction of state property in 1993 (2), 1998; Threats to staff in 1989, 1994; Violation of mail/visiting rules in 1990, 1991, 2002; Disrespect to staff in 2000, 2002, 2007; Misuse of authorized medications in 1989; Dealing in 2000; and Destruction, alteration or misuse of property and Giving false information, or lying to departmental employees in 2011.

APPLICANT'S STATEMENT:

On September 6, 2011, an interview was conducted by eight (8) Board Members with the applicant via video conference from the Ohio State Penitentiary. The applicant told the Board that he is requesting clemency in the form of a commutation to life without parole. The applicant explained that he would be appreciative, worthy and comply with all institutional rules and regulations. He concluded his initial statement to the Board stating "I don't want to die."

The applicant explained that he committed the offense due to the need to raise money to assist his sister Drema with medical bills incurred as a result of her involvement in a recent train accident. Applicant reported he was very close to his sister and admits to writing a threatening note to Ms. Ruth Predmore on January 27, 1987, in an attempt to scare her and possibly obtain money in order to assist his family with paying for Drema's medical bills. When he returned later on his bicycle in the evening of January 27, 1987 at 8:00 p.m, Ms. Predmore had not responded to his request. The applicant stated on February 1, 1987, his brother-in-law, Alvie Coykendall suggested they enter Ms. Predmore's home in order to steal items to sell. Applicant states he tried to jimmy the door and later tried to cut the telephone wire, cutting a ground wire instead. At this time, Ms. Predmore came to the front door and inquired as to what the applicant was doing. As she turned to reenter her home, the applicant followed her. When Ms. Predmore turned around applicant requested money at which time, Ms. Predmore stated that she did not have any and informed the applicant to leave her home. Applicant reports he became scared and swung the knife, striking her throat. The applicant explained Alvie Coykendall did not enter Ms. Predmore's home. He further stated that he returned to Ms. Predmore's home after killing her two to three times in order to remove several items to include her coat, purse with credit cards and several hundred pennies. Applicant admits to attempting to utilize Ms. Predmore's credit card and leaving a trail of pennies from Ms. Predmore's home to his Mother's home. Applicant stated after committing the offense, he obtained wrappers from a local store.

The applicant stated that during his time in prison he has received visits from priests, completed stress management, participated in Kairos and learned how to read and write. Applicant also noted his family visited initially, approximately 6 times in the past 25 years, and that they do not correspond or provide financial assistance. Applicant reported receiving a visit from his family once an execution date was set.

The applicant was then questioned regarding his prior criminal history. The applicant advised prior to committing the offense, he was previously incarcerated with the Ohio Department of Rehabilitation and Correction 18 months for theft and arson related offenses and that he served 9 months at the Ohio State Reformatory and 9 months at the Southern Ohio Correctional Facility. Applicant explained his intention for committing the offense was to obtain money in order to transport his sister to a Columbus hospital and that his brother-in-law's uncle was going to buy the stolen property. Applicant states he never really had a job, and has always received social security for being mentally retarded. He went on to note the only individuals who worked within their home were his mother and younger brother. Applicant explained he resided with his parents, three brothers, and sister with her three children, brother-in-law, his girlfriend and their daughter.

Applicant stated he knew Ms. Predmore and would visit her at times in order to cut her grass and shovel her snow. He reports being paid for his services and that on occasion he would receive a sandwich and lemonade.

The applicant was asked why he chose Ms. Predmore to victimize. The applicant advised he selected her because he could get in and out of her home "real quick". The applicant explained his brother in law Alvie Coykendall attempted to enter Ms. Predmore's home through the back door which was locked. He reports being arrested 2-4 days after the offense. The applicant stated after committing the offense he traveled to Caledonia, Ohio with his girlfriend, Brenda Cogar, in order to live with his aunt, Cynthia Hodges.

Applicant reports he was not receiving mental health counseling at the time of the offense. When questioned as to his participation in mental health services while incarcerated, applicant reported he received services while incarcerated at Southern Ohio Correctional Facility and the Mansfield Correctional Institution. However, when he chose to transfer to the Ohio State Penitentiary, he declined all mental health services. The applicant states his adjustment without mental health services has been good, with no significant problems. The applicant reported he experienced a seizure early during his incarceration at the Ohio State Penitentiary.

When questioned about a recent conduct report received on June 5, 2011, applicant stated he was trying to learn how to work the computer and accidentally pushed the wrong button. When questioned about his May 2010 conduct report for gambling, applicant stated other inmates were teaching him how to play poker and he owed them \$97.00.

When the applicant was questioned in regards to his violent institutional conduct over the years, applicant stated he was known as a snitch, which resulted in being assaulted by other inmates and that he would refuse to comply with rules and regulations in order to be removed from general population in order to avoid certain inmates. When questioned by Board Members if he would be a threat to staff and general population inmates if granted a commutation, applicant stated he would adapt and that he has learned to associate with others. Applicant went on to note that in the past, inmates would manipulate him. Applicant went on to state he believes he can assist correctional officers as he did while being involved in the death row riot at Mansfield Correctional Institution.

When questioned as to how many fires he has set in his life, applicant reported he has set a lot of fires ever since he was "real small", to include fires to his school, parents home several times, and also his grandmother's home. Applicant admits to coming up with the idea when his mother was going to punish him and that when he started fires, the police and fire departments would come and it would deflect the attention from him.

The applicant stated he did not receive a fair trial and that his attorneys should have called in more experts to explain more about his childhood to the jury. When questioned as to the worst memory of his past, applicant noted the incident was hard to talk about. Applicant then advised all present that when his family resided in West Virginia, no one in his family was employed. Applicant stated his father traded their food stamps for alcohol and that his mother would tie him to the bed when she left the home. Applicant stated he was institutionalized at age 10 and resided in various treatment facilities in West Virginia, Pennsylvania, Ohio and Colorado up until to the age of 17. Applicant states his last placement was at the Dayton Children's Psychiatric Center, where he was eventually removed by his father due to being sexually assaulted. Applicant reports his worst memory of his childhood was at 6 years old, the day his father allowed the local moonshine salesman to rape him for a gallon of moonshine, and that during his cries for help, his father refused to assist him. Applicant admits to killing several pets and assaulting others during his youth. Applicant went on to report his conduct eventually resulted in him being placed in several treatment facilities in West Virginia, Pennsylvania, Ohio and Colorado. Applicant stated his siblings did not experience the same treatment due to being considered normal. Applicant reports he was not allowed to play with his siblings or other children because according to his parents "he was not normal."

Applicant reported the best memory of his life was when he was afforded the opportunity to participate in the Victim Dialogue in July of this year. According to applicant, it was at this time he met with several of Ms. Predmore's family members who accepted his pleas for forgiveness. Applicant stated he regrets the offense and thinks about it all the time and that he always wanted the family to know he was remorseful. Applicant states he misses Ms. Kavanaugh because she reached out to him during the dialogue interview and gave him a hug, the first one he has received in his life. In closing, applicant stated to the Board he would be very appreciative of clemency.

ARGUMENTS IN SUPPORT OF CLEMENCY:

A written application with exhibits outlining the arguments in support of clemency was provided to the Parole Board. On September 15, 2011, a hearing was conducted to further consider the merits of the application. Attorneys Pamela Prude-Smithers, Kathy Sandford and Greg Hoover of the Ohio Public Defender's Office represented the applicant at his clemency hearing. Ms. Prude-Smithers advised the Board that she and Ms. Sandford have represented the applicant for 10 and 14 years respectively. Ms. Prude-Smithers advised the Board that they are requesting a clemency in the form of life without parole for the

applicant. Ms. Prude-Smithers further argued that the 1992 dissenting opinion authored by former Ohio Supreme Court Justice Tom Moyer was one of the most powerful dissents she has ever read, and is a testament to the strength of the mitigation in this case. Chief Justice Moyer was joined by two other Justices in the dissent. The vote upholding the applicant's death sentence was a mere one vote. The mitigation presented for clemency is not an excuse for the crime; rather it explains the applicant's behavior.

Former Supreme Court Justice Herbert Brown then presented to the Board. Former Justice Brown stated that this is the first time he has appeared before the Board to urge a favorable clemency recommendation regarding an inmate whose case he was involved in deciding. In addition, he is the only surviving dissenting justice from this decision. Former Justice Brown stated that he is urging a favorable recommendation for clemency because the applicant's background could not have been any worse, and is the most tragic he has ever seen. Former Justice Brown stated that the record indicated that the applicant never went beyond the third grade and that his I/Q is in the lowest 6-7th percentile. The applicant was basically a child left without shelter and was starved. Applicant was sexually abused, sold for sex, and as an infant was left in a burning home. The state should not execute such a deprived individual. Former Chief Justice Moyer was not an easy vote on a death penalty case to find that mitigating factors outweighed aggravating factors. He believes this was the only case in which former Chief Justice Moyer found that mitigation outweighed the aggravating factors. Justice Brown states former Chief Justice Moyer wrote a very powerful dissenting opinion and that the 4-3 vote is a thin thread by which to execute someone. In addition, since his incarceration the applicant informed authorities of a riot plan on death row, and two members of the victim's family are in support of clemency. These are factors that should also be taken into consideration. The Board should consider all factors, and should consider the mitigation based on current understanding of low cognitive functioning and the effects of child abuse.

Attorney Prude-Smithers then stated that she is not interested in re-litigating applicant's claims of ineffective counsel or mental retardation. Rather she is requesting for the Board to review the mitigation under today's standards, keeping in mind what we know today about low cognitive functioning and the effects of child abuse. The applicant's life was so outside the boundaries of normal that it is shocking. His own family members do not support him and have tried to urge the one family member who does support him, his aunt Cynthia Hodges to not attend the clemency hearing. His family members do not value his life, but rather value family secrets not being exposed.

Ms. Cynthia Hodge, applicant's aunt then presented before the Board. Ms. Hodge informed Board Members she personally witnessed applicant's mother beating him on numerous occasions while they resided together after the family moved to Ohio. According to Ms. Hodge, applicant was made to eat last by his parents, if there was any food left at all, and many times he was not fed anything. Ms. Hodge reported applicant's family in West Virginia lived in a 3 room home with no running water, filthy conditions and that Stella, her sister and applicant's mother would spend 2 hours daily attempting to remove cock roaches from her hair prior to beginning her day. Ms. Hodge went on to inform the Board that applicant's mother refused to support clemency efforts. He only

experienced negative and horrible events in his childhood, and his life was akin to that of the main character in "A Boy Called It." The applicant's father told her about trading the applicant to "Al" for sex as a child, and laughed about it as if it were normal. Her mother tried to take the applicant on several occasions, but always received opposition from her sister and brother-in-law. The applicant never had a chance in life, and she believes he is deserving of mercy.

Linda Pudvan and Rick Ruffin, former investigators with the Ohio Public Defender's Office then presented to the Board, and described their mitigation investigation for applicant in preparation for the mitigation phase of the trial. Ms. Pudvan reported to the Board that she investigated the applicant's case and family history in Clay County West Virginia over a 7-10 day period. According to Ms. Pudvan, the record was replete with information regarding the extreme poverty that the Murphy family lived in. The conditions were "so far afield" of anything she had ever experienced, that it is difficult to describe. Amongst this very poor community, the Murphy family was viewed as the worst by the community in terms of family relationships, poverty level and resources. Ms. Pudvan described applicant's mother Stella as quiet, and a person who had not experienced an easy life, and who was ill-equipped to manage her life and family. Applicant's father, Jerry was an alcoholic who due to his intoxicated state was unable to complete the interview. Family members were not willing to give up or admit to family secrets, such as the extensive physical and sexual abuse, to help save the applicant's life because they did not value it. Ms. Pudvan argued that no child at five years old chooses to be raped for alcohol and that the applicant was raised by an alcoholic father and an emotionally abusive mother. Ms. Pudvan stated that both parents failed to provide treatment or support and that the applicant's lack of adequate treatment precluded him from making good choices in life. He needed years of psychiatric treatment to overcome the significant and constant abuse he suffered. Ms. Pudvan stated that it never occurred to her that the jury would not believe that he was sexually abused. Her lack of foresight prevented them from calling a sexual abuse expert, who could have explained the effects of child sexual abuse. She continues to regret that decision, and urged the Board to recommend clemency.

Mr. Ruffin reported to the Board that the applicant's case was his first mitigation investigation for a death penalty trial. He currently works as an Investigator for the Federal Public Defender's Office in Philadelphia, Pennsylvania, and now has 24 years experience. Based on the experience he has gained, he now recognizes the mistakes he made in his investigation, which caused the jury to not hear the whole story. According to Mr. Ruffin, applicant was physically and sexually abused from a very young age, and the applicant's family refused to divulge family secrets and refused to participate in delicate conversations. At the time, he was not experienced or skilled enough to give family members a good reason to divulge their secrets in order to save the applicant's life. These secrets included the extent to which sexual practices went on in the household and in front of the children. The applicant's father would routinely have homosexual relations with other family members in front of the children. In addition, the family benefited from applicant's maladjustment by blaming him for the other children's behavior, such as stealing for the family, and receiving his SSI benefits. Mr. Ruffin continues to struggle

with the fact that he did not consult with a sexual abuse expert who may have been able to work with the family, and make them comfortable with divulging information that could have been presented to the jury. Mr. Ruffin also advised that Ms. Marlene Johnson, a social worker from Clay County West Virginia provided them with strong mitigation information regarding the Murphy family's living situation. However, she was also good friends with Stella Murphy. The night before testifying at the mitigation phase of applicant's trial, Ms. Johnson requested to have dinner with Mrs. Murphy. At the time, Mr. Ruffin reports he did not see a problem with the request. However, when Ms. Johnson testified, her testimony was not nearly as compelling as her prior statements to him. He realized then that granting Ms. Johnson permission to have dinner with Mrs. Murphy likely resulted in her backing off her prior statements. Now, he would never let that happen during a trial. Ultimately, the applicant's unsworn statement was the only evidence presented to the jury regarding the sexual abuse suffered by the applicant, and it was insufficient. Due to these "rookie" mistakes, Mr. Ruffin urged the Board to make a favorable recommendation regarding clemency.

Attorney Bob Wilson, co-counsel for the applicant at his trial, next presented to the Board. He has practiced in Marion, Ohio for the past 43 years. Mr. Wilson agrees that the applicant received incompetent representation during the mitigation phase of trial. Attorney Wilson states he was asked to co-counsel the applicant's trial due to his acquaintance with the family in juvenile court proceedings. Co-counsel Michael Grimes had not tried a murder case, let alone a death penalty case. He met with the applicant for two hours before deciding to become co-counsel. According to Mr. Wilson, the applicant reminded him of his 11 year old son, and it was shocking to realize that he had the maturity and ability of a child. When he went to the applicant's home to interview his parents, he was overwhelmed by an unbelievable stench when he entered. In addition, the home was in horrible condition, as they could hardly move due to the hoarding and clutter. Children were running throughout the home. The applicant's father was unresponsive, due to being intoxicated at 9:00 a.m. When they went into the basement, the wall appeared to be moving due to the amount of cockroaches crawling over it.

Regarding the trial, the applicant's case was not an issue regarding guilt, but solely rested on the issue of mitigation versus aggravating factors. Although he had tried death penalty cases previously, the applicant's case was the first under the new death penalty statute tried in Marion County. The new statute required a mitigation hearing, which had previously been within the discretion of the judge. Although he met the qualifications at the time of the applicant's trial to represent a defendant facing death penalty specifications, one month after the applicant's trial, the rules changed and the qualifications became more stringent. He did not meet those new qualifications. He eventually became certified to represent death penalty defendants, and during that training, he learned what he should have done in the applicant's case. Mr. Wilson stated he called a juror after trial to inquire as to why they recommended death. He reported the juror informed him that is was the only way that they could ensure that the applicant would not be released from prison because he was so bad. Mr. Wilson then realized what he and co-counsel had done wrong. They had not given the jury the adequate tools to properly weigh the mitigation. They should have presented evidence of sexual abuse that

was prevalent throughout the record, and should have called a sexual abuse expert, as well as a mental retardation expert. That evidence could have explained the applicant's behavior. They presented a bad picture of the applicant to the jury, but failed to explain why he was bad and connect that to the new mitigating factors in the new statute. He further stated that they failed to adequately explain what a sentence of 30-life meant, as the jury apparently thought he could be released in 4-10 years. He believes that the jury would have recommended Life Without Parole, if it had been an option, as it would have satisfied their need to keep him incarcerated. Since the applicant's trial, there have been cases in Marion County with much more egregious facts that were indicted with death penalty specifications, but plead down to a life sentence. For all these reasons, Mr. Wilson urged the Board to make a favorable recommendation to the Governor.

A video-taped statement of Peg Predmore-Kavanaugh was presented next. Ms. Kavanaugh stated that she is the victim's niece. The victim was a church going lady and participated in several charitable organizations. Ms. Kavanaugh was shocked by her aunt's murder, and indicated that the process has been horrible, leaving the victim's family held hostage and forgotten over the past 25 years. On July 25, 2011, Ms. Kavanaugh participated in a Victim-Offender Dialogue with the applicant. The meeting lasted three hours and during the meeting, she looked for a hardened criminal. The applicant would not initially make eye contact with her, but eventually did, and began to answer her questions about the murder. Ms. Kavanaugh stated she came away from the meeting with a different view of the applicant than when she entered the meeting and believes the system let him down. Ms. Kavanaugh stated that she has been conflicted because she promised her father that she would see this through, but after meeting with the applicant, she can no longer support the execution. She believes that if her father had known the whole story of the applicant's life, he would not be supportive of the execution either. Ms. Kavanaugh informed the Board that the applicant advised her of the abuse he received at the hands of his parents and others, and that he set fires as a youth in order to receive protection. She went on to note that the applicant was not given the tools he needed in order to succeed in life, and that he should have been placed in foster care. Ms. Kavanaugh expressed her displeasure, stating "it's awful" that the applicant's mother and family members have not supported him while incarcerated, which demonstrates that they are still letting him down. Ms. Kavanaugh believes applicant is truly remorseful and should be granted a commutation to life without parole.

Attorney Kathy Sandford next spoke of the applicant's low cognitive functioning. The applicant was born with cognitive dysfunction, something no one would choose. He is a concrete thinker who has trouble with abstract thinking. He has consistently tested lower than his age throughout his life. For example, at age 15, he was 7 years behind and at age 18, he was functioning at the second to third grade level. She went on to note, that in his thirties, the applicant possessed an I/Q score of 74.

Next, a video-taped statement of Dr. Michael Gelbort, a Neuropsychologist was presented. Dr. Gelbort informed the Board that he has tested and interviewed the applicant both at the time of trial and just recently. Dr. Gelbort described the applicant as never really having a chance in life, and that the applicant's history of fire setting is the most significant that he

has ever seen. Dr. Gelbort stated that based on exams he administered, the applicant's IQ is 74, which could possibly earn a diagnosis of mild mental retardation. The applicant's cognitive deficits indicate that he has difficulty learning and taking in information, particularly when it is abstract. According to Dr. Gelbort, the applicant suffers from an impaired frontal lobe, testing in the first or second percentile, which prevents him from using proper inhibitors. He cannot prevent himself from engaging in maladaptive behavior. Dr. Gelbort went on to state the applicant has very impaired interpersonal interactions and that criminal behavior is often linked to frontal lobe defects. The applicant's intelligence deficits are organic, and the family was not in the average range of genetic intelligence. The applicant displays the intellectual and emotional development of a 12-15 year old. As is evident in the offense, people with brain deficits such as the applicant find themselves in situations where things just happen without much forethought. In some cases, lying about a crime would suggest higher functioning, but that is not the case with the applicant. His actions are more comparable to when a child gets caught doing something wrong and lies. During his recent interview with the applicant, he described significant changes in his life occurring approximately 5-6 years ago, when he realized he would not have the support of his family. He now focuses on what he can do to improve his condition. Structure is a key element to his treatment. Dr. Gelbort indicated that he is now institutionalized and understands how the system works. He needs a consistent, predictable environment. In closing, Dr. Gelbort states the applicant is academically testing at the 2nd grade level, has worked on his reading skills and is currently closer to the 6th grade reading level. He reiterated the applicant has a defective nervous system through no fault of his own, and is functioning with 80% brain capacity. He does not have the same ability as the average person to demonstrate good judgment, even though he is culpable. He does not have the same ability to adapt appropriately.

Clinical and Forensic Psychologist Dr. Robert Stinson presented a power point explaining the genetic and biological makeup that predisposed the applicant to maladaptive behavior, and that the total lack of a nurturing environment contributed to the inability of the applicant to overcome these factors. He described the applicant as different as a baby. He was excessively needy, yet detached, and his needs were unmet by his family. The various social service agencies were ineffective, all of which led to his maladjustment. Dr. Stinson described numerous multi-generational family dysfunctions present in the Murphy family. These include a mother who married at the age of 15 and became a "parentified child"; an alcoholic father who engaged in homosexual relations with other family members in front of the applicant; parents who divorced and remarried on three occasions; a father who was hospitalized on fifteen occasions for alcoholism and mental illness. According to Dr. Stinson, the applicant became a scapegoat for his family which led to a cycle of dysfunction and violence involving the applicant being verbally, emotionally, physically and sexually abused.

Dr. Stinson shared that children need structure and healthy parents, and that the applicant was denied food, and lived in extreme poverty, rendering him more likely to commit a violent crime. Dr. Stinson explained that present in the applicant's history are genetic and biological deficiencies, multi-generational family dysfunction, inadequate parenting, extreme poverty, interpersonal rejection, cognitive limitations and abuse which leads to

unhealthy development, emotional disturbance and mental illness. The applicant began to display maladaptive behavior at the age of 3. Dr. Stinson stated that few people have experienced abuse as severely and chronically as the applicant. Under today's standards and protocol, the applicant would have been admitted to long-term treatment and removed from his family and ultimately placed in foster care. He would not be placed back with his abusive family over and over. Dr. Stinson urged the Board to consider a favorable recommendation to the Governor, as the applicant was truly "destined for disaster" as described in the Ohio Supreme Court's dissenting opinion.

Attorney Greg Hoover addressed the issue of the applicant's prison adjustment. He argued that the vast majority of infractions were for minor incidents, and in light of the psychological testing, those conduct reports can be understood. The applicant eventually learned more effective ways of adjusting. He is capable of learning, it just occurs more slowly than other inmates. Sergeant George Scott from the Mansfield Correctional Institution reported that the applicant acted like a teenager, and warned correctional staff prior to the death row riot. The applicant has improved his conduct, has severed ties with his family, has become active in church and Kairos activities, and has learned to read better. He is very remorseful for his crimes and has the support of individuals and organizations outside of the institution.

A video-taped statement of friend Jeanne Heath was then presented. Ms. Heath stated that her late husband, Attorney John Heath represented applicant during his Court of Claims case after the Death Row riot. According to Ms. Heath, applicant considered Mr. Heath a father figure and that she has remained in contact with him through phone calls and visits. Ms. Heath stated applicant reminds her of a little boy and calls her "mom." When her husband was ill, he told her that calls from the applicant made his day. Ms. Heath informed the Board that she would like to see the applicant receive life without parole.

Attorney Sandford then addressed the issue of Life Without Parole (LWOP) as a sentencing option. LWOP was not a sentencing option at the time of the applicant's trial. The members of the applicant's jury were told by the prosecutor that the only way the jurors could protect society was to recommend death. Two jurors have now provided affidavits indicating that if LWOP had been an option at the time, they would not have recommended death. These jurors have further advised that if the wishes of Ms. Predmore's daughter, Helen Napper, were known to them, they would have voted for a life sentence.

A video-taped statement of Virginia King, friend of Ms. Predmore's daughter Helen Napper was next presented. She described moving to Marion Ohio in 1960, being friends with Ms. Napper for 38 years and that their friendship was more like sisters who spent a lot of time together. According to Ms. King, Ms. Napper opposed the Death Penalty for the applicant, and believed it was "God's work" whether the applicant should die. Ms. King went on to note that Prosecutor Slagle was informed prior to applicant's trial that Ms. Napper opposed the Death Penalty for the applicant on at least two occasions, but was not persuaded to accept an alternate sentence.

Attorney Prude-Smithers concluded by arguing that the applicant's treatment as a child and the failure of the system to rescue him from the abuse and neglect he suffered is strong mitigation and supports a favorable recommendation for clemency. Applicant's first evaluation at Lakin State Hospital indicated that he "needs considerable structure". He was medicated and placed on a behavior modification plan. However, after 6 months of treatment, he was returned to his parents' home and had no chance of improving. Attorney Prude-Smithers stated that the cycle of institutionalized treatment and return to his abusive family should never have happened. At the point when the applicant was admitted to the Dayton Psychiatric Hospital, his father should not have had the right or ability to remove him. He should have had no say in the applicant's treatment. The applicant was not afforded an opportunity for foster care placement, and that due to his dysfunctional home environment he was unable to attend school or respond positively to structured treatment. The Marion County Caseworker assigned to applicant's family noted that they were too dysfunctional to benefit from services, and closed the case on the family once applicant turned 18 years of age. Attorney Prude-Smithers reiterated the family's refusal to participate on the applicant's behalf during the clemency hearing and that they do not value his life. Due to the extensive mitigation presented, Attorney Prude-Smithers argued the applicant is worthy of a commutation to Life Without Parole.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

In addition to the written response to the application for clemency, arguments in opposition to clemency were presented by Marion County Prosecutor Brent Yager and Assistant Attorney General Brenda Leikala at the clemency hearing.

Prosecutor Yager argued that in 1987, the Judge and Jury decided the applicant deserved to be executed. The applicant does not deserve clemency due to the brutal nature of Ms. Predmore's execution by him that was a violent and senseless act. The applicant selected Ms. Predmore due to her advanced age and frail condition. The jury decided that the applicant's deeds were so repugnant that he deserved to die. The jury heard the unsworn statement of the applicant and saw that the applicant expressed a total lack of remorse. Prosecutor Yager urged the Board to not let the jury decision be made in vain, and to reject any request for clemency.

Prosecutor Yager also shared with the Board, that while serving in the capacity of Marion County Assistant Prosecutor in 1987, the applicant confessed to committing the crimes to him, and described the gruesome act in a matter of fact nature, expressing no remorse. He also noted that although the dissenting opinion of the Ohio Supreme Court may be considered compelling, it is simply a dissenting opinion. The majority of the Ohio Supreme Court upheld the decision based on the aggravating factors outweighing the mitigating circumstances. The appellate review is based on a majority vote, and sometimes that majority is a difference of one vote. That should not be a reason to recommend clemency.

Prosecutor Yager argued that the applicant's siblings lived in the same household as he did, but none of them committed murder, therefore, although his childhood was bad, it

does not excuse the offense. The claims of ineffective assistance of counsel are also unsubstantiated as Mr. Wilson is one of the best trial attorneys in Central Ohio, and the reviewing courts have rejected this claim. The fact that a witness at trial backed off a prior statement is also not unusual. Frequently, when witnesses are under oath, they do not swear to facts that they are not certain of. Regarding any mental retardation claim, an Atkins hearing was conducted and the result was a determination that the applicant was not mentally retarded. When interviewed after his arrest, the applicant was explained each one of his rights as he executed a waiver, and clearly understood them. During the applicant's interview with the Board he answered questions appropriately, and used terms such as "illiterate" and "discreetly." He also reverted back to his initial statements to police when he spoke with the Board when he stated that Ms. Predmore rushed him, which is not consistent with the evidence. Further, up to two weeks prior to the clemency hearing, Peg Kavanaugh supported the death penalty. However, she changed her mind after meeting with him, at which time he became humanized to her. Other family members still support the death sentence being carried out.

Prosecutor Yager further argued that there was never any evidence that the applicant's sister needed financial assistance. There was evidence that the money received from the crime was used to gamble. In his experience, most criminals do not have sophisticated plans, therefore, the applicant's lack of a sophisticated plan is not suggestive of any mitigating characteristic. Ms. Predmore was in her golden years, in her own home and lost her life due to the selfish act of the applicant. There has been nothing presented that supports a favorable recommendation for clemency.

Brenda Leikala, Assistant Attorney General spoke to the issues of premeditation and the applicant's truthfulness. Two weeks prior to the crime, the applicant left a life-threatening note for Ms. Predmore, which she showed to a convenience store clerk who testified that she was scared. Further, the applicant has told several different stories as to why he wrote the note and committed the crime. He first stated that he needed money for coffee and cigarettes for his mother, and was going to write a note but did not. He later stated that the note was actually meant for his girlfriend Brenda's mother to scare her so she would stop getting custody of Brenda's child. The applicant was also not truthful when he informed the Board that he always carried a knife. The evidence actually revealed that he stole the murder weapon from his brother. Finally, in his statement to police, he made no mention of the fact that he got scared when she came after him and swung at her with the knife, as he told the Board. Attorney Leikala also argued that this case is absolutely appropriate for the death penalty. The applicant entered Ms. Predmore's home in the middle of the night, and killed her for pennies. He returned between 3 to 5 times to steal items of value.

Regarding his childhood, Attorney Leikala emphasized that the applicant displayed the "triage of sociopathy." By age 14, he had set multiple fires, and was first institutionalized at age six for setting his school on fire. The applicant has a history of mutilating animals, such as cutting the heads off chickens, throwing cats in wells and poking goldfish with needles, all classic signs of sociopathy. Not to discount his horrible childhood, but it should be pointed out that not everybody from Clay County West Virginia who lived in

impoverished conditions turned out to be murderers. In addition, the applicant's siblings experienced the same upbringing as he did, and did not murder anyone. It is likely that the applicant received the worse punishment because his behavior was worse. Children's services stepped in, but the applicant did not respond to interventions. He manipulated treatment since childhood. When he did not like what was happening, he would set fires to take the attention away from other bad acts, and as a teenager, claimed sexual abuse at a treatment center so his father would get him out. Those claims of sexual abuse were unsubstantiated.

Attorney Leikala further argued that the fact that the applicant hid evidence of his crime and lied to police demonstrates that he understood and appreciated the criminality of his acts. Regarding the need for additional experts at trial, Attorney Leikala argued that all of the mitigation presented at the clemency hearing was presented at trial. Any additional experts would have been cumulative and may not have been permitted to testify.

Regarding the victim's families wishes as to the punishment, the fact that the sentencing Judge may have had his decision made prior to receiving an affidavit from the victim's daughter is not error. The judge had testimony and evidence on all the statutorily required mitigating and aggravating factors, and was not required to consider the victim's families' wishes. The victim's wishes are not dispositive. Furthermore, Ms. Kavanaugh favored the death penalty until she participated in the Victim-Offender Dialogue with the applicant. Several other family members are still in favor of the Death Penalty.

Attorney Leikala further argued that the Ohio State Penitentiary is the most structured correctional facility within the state of Ohio, and that the applicant has committed violations even within this structured environment, an indication he cannot conform to rules. He does what he wants to get what he wants and the "rules be damned." If he is incapable of conforming to the rules of death row, it is likely he will not conform to the rules of general population.

Regarding any organic brain impairments, Attorney Leikala argued that Dr. Gelbort's diagnosis is based largely on unverified information and psychological tests performed. However, at the time of trial, an actual brain scan was administered to the applicant and no evidence of any organic disorder was revealed. The Board should be suspect of Dr. Gelbort's presentation and diagnosis, particularly since he is not subject to cross-examination during the clemency hearing. Attorney Leikala argued that reviewing courts have upheld this death sentence and that nothing new was presented during the clemency proceedings. The applicant has presented no good reason to commute his sentence and an unfavorable clemency recommendation should be provided to the Governor.

VICTIM'S REPRESENTATIVE:

Attorney Leikala read the written statement of Tonya Kardosh, another niece of the victim. The statement indicated that at the time of her aunt's murder, Ms. Kardosh was a sophomore in college and didn't know her. However, Ms. Predmore's death has deeply affected her family. Family members informed her how they never wish to re-live the pain they felt when they were informed of her death. The damage is done and is obviously irreversible. Ms. Kardosh opposes clemency for the applicant and believes it is now time for the applicant to pay the punishment rendered at trial.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Board reviewed and considered all information submitted both in support of and in opposition to clemency. Board Members reached a unanimous decision to make a favorable recommendation for a commutation to Life Without Parole based on the following:

- The mitigation presented at trial, which is more fully understood today, coupled with the information presented during the clemency proceeding reveal that the applicant suffered abuse that was chronic and consistent from his own family. The applicant's history, as noted by former Justice Brown, could not have been worse and is more tragic than any before seen. As indicated in the dissenting opinion from the Ohio Supreme Court, the applicant was "destined for disaster." His significant psychological, emotional and intellectual deficiencies, many of which were manifested from infancy, were not treated properly, and ultimately provided his family with reasons to treat him as the scapegoat and continue to abuse him. Few people have suffered this type of extensive abuse.
- There was a total lack of any positive influence in the applicant's life that could have countered the significant dysfunction and abuse he had to endure. There is no evidence of consistent or meaningful love or support shown to this applicant throughout his entire existence. Most of his family continues to show little regard for him and refuses to support him in any manner.
- Members of the victim's family, both at the time of trial and now support clemency. In addition, two jurors have indicated that had Life Without Parole been an option at the time, they would have voted for it instead of death. Life Without Parole will satisfy the jury's concerns of the applicant someday being released from prison.
- In sum, the extent of the applicant's deprived history is one not previously seen, and warrants a favorable recommendation for clemency.

RECOMMENDATION:

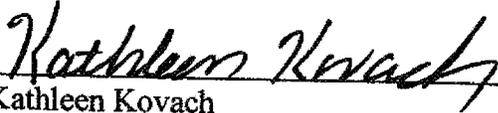
The Ohio Parole Board with eight (8) members participating, by a vote of eight (8) to zero (0) recommends to the Honorable John R. Kasich, Governor of the State of Ohio, that executive clemency in the form of a commutation be GRANTED in the case of Joseph Murphy A199-042 to Life Without the Possibility of Parole.

Adult Parole Authority
Ohio Parole Board Members
Voting Favorable

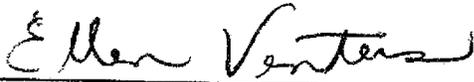
Ohio Parole Board Members
Voting Unfavorable



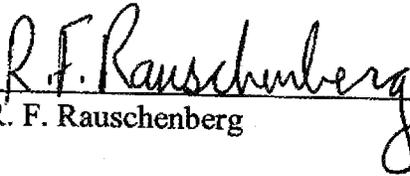
Cynthia Mausser, Chair



Kathleen Kovach



Ellen Venters



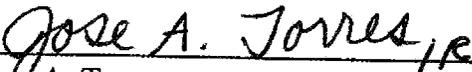
R. F. Rauschenberg



Bobby J. Bogan, Jr.



Trayce Thalheimer



Jose A. Torres



Cathy Collins-Taylor