

Date Typed: November 20, 2006
Date Published: November 21, 2006

IN RE: JEROME HENDERSON
OSP - #186-271

STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO

Date of Meeting: November 15, 2006

Minutes of the SPECIAL MEETING of the
Adult Parole Authority held at 1030 Alum Creek Drive,
Columbus, Ohio 43205 on the date indicated above.

IN RE: JEROME HENDERSON #186-271

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with Specifications
(2 counts), Aggravated Burglary
Attempted Rape

DATE, PLACE OF CRIME: March 3, 1986 – Cincinnati, Ohio

COUNTY: Hamilton

CASE NUMBER: B850996

VICTIM: Mary Acoff, age 26

INDICTMENT: February 2, 1984: Counts 1 & 2: Aggravated Murder
with 2 Specifications; Specification 1: Principle
Offender while Committing or Attempting to
Commit Aggravated Burglary; Specification 2:
Principle Offender while Committing or Attempting
to Commit Rape, Count 3: Aggravated Burglary &
Count 4: Rape

VERDICT: July 17, 1985: Found guilty by Jury of Counts 1-3
and Count 4 Attempted Rape

SENTENCE: August 5, 1985: Counts 1 & 2: Sentenced to DEATH
Count 3: 7-25 years; Count 4: 8-15 years

ADMITTED TO INSTITUTION: August 12, 1985

TIME SERVED: 257 months

AGE AT ADMISSION: 26 years old

CURRENT AGE: 47 years old

DATE OF BIRTH: January 29, 1959

PRESIDING JUDGE: Honorable Fred Cartolano

DEFENSE COUNSEL: Fred Shea

PROSECUTING ATTORNEY: Arthur M. Ney, Jr.

FOREWORD:

Clemency in the case of Jerome Henderson #186-271 was initiated by the Honorable Bob Taft, Governor of the State of Ohio, and the Ohio Parole Board, pursuant to Sections 2967.03 and 2967.07 of the Ohio Revised Code and Parole Board Policy #105-PBD-01. An application requesting clemency was then submitted on Mr. Henderson's behalf by Attorney David C. Stebbins and Richard J. Vickers of the Ohio Public Defender's Office.

On November 7, 2006, Parole Board Member Dr. Sandra Mack interviewed Mr. Henderson at the Ohio State Penitentiary in the presence of Richard J. Vickers of the Ohio Public Defender's Office.

A Clemency Hearing was then conducted on November 15, 2006, with nine members of the Ohio Parole Board participating. Mr. Henderson was represented by David C. Stebbins who presented the application for and testimony in support of clemency. Richard J. Vickers of the Ohio Public Defender's Office was also present at this hearing. Arguments in opposition to clemency were presented by Ronald Springman, Hamilton County Assistant Prosecutor and Michael Collyer, Assistant Attorney General. Testimony in opposition was also provided by JoAnn Acoff, daughter of the victim, Kellie Bass, niece of the victim, and Shirley Acoff, sister of the victim.

After careful review and deliberation concerning the documentary evidence and testimony provided, the Parole Board, with nine (9) members participating, voted and reached a unanimous decision to provide an **unfavorable** recommendation to the Honorable Bob Taft, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE:

The following information was obtained from the Supreme Court of Ohio's opinion, which was decided September 28, 1988.

On March 2, 1985, at around 10:45 p.m., Mary Acoff left her basement-level apartment at 1944 Highland Avenue in Cincinnati, Ohio and went to the apartment of her boyfriend, James Martin, who lived in the same building. Martin and Ms. Acoff engaged in sexual intercourse. Ms. Acoff left around midnight and returned to her apartment.

Tony Nixon, who lived in the apartment above Ms. Acoff, testified that around 4:50 a.m. on March 3, 1985, he heard sounds "like a commotion" coming from below. After Nixon stepped into the hallway of the building to await his ride to work he heard a downstairs door open. However, he did not see anyone downstairs.

Cheryl Turner testified that as she drove toward the building about 6:00 a.m. to pick up Nixon, she saw Jerome Henderson standing on the street a little way up from the building. She stated that the subject was wearing a dark, knee-length coat.

Delrick Johnson testified that as he approached the Highland Avenue area around 5:30

a.m., he saw the subject, whom he knew from school. Johnson honked his horn at the subject, who responded by pulling his coat up around his ears. Johnson stated that the subject was wearing a long leather coat with a shorter coat underneath.

About 4:15 p.m., March 3, 1985, ten-year-old Joann Acoff, Mary Acoff's daughter, and Sandra Simmons, a neighbor, found Ms. Acoff's body on the living room floor of the apartment. The front door was unlatched and a kitchen window was closed but unlocked.

The police found latent fingerprints, mud on the kitchen and living room floors, and bloodstains on the outside kitchen windowsill. A blood-stained rock and fallen leaf were found on the ground outside the kitchen window. The ground beneath the kitchen window was muddy.

Mary Acoff died as a result of hemorrhage due to multiple stab, incised and blunt injuries to the head, chest, neck and upper extremities. In addition to at least four fatal stab wounds, Ms. Acoff had been cut with the point of a sharp knife numerous times and her throat had been slashed at least thirteen times. Ms. Acoff's left hand had been cut and was wrapped in a towel.

Ms. Acoff's body was found nude, lying face up with legs spread apart. Semen was found in her vagina. The deputy coroner testified that the general pattern of bloodstains over the upper torso indicated that Ms. Acoff was killed while she was lying in a horizontal position.

The front door of the apartment building was kept locked. To gain entry without a key, one had to ring the doorbell of an apartment and have the occupant open the front door. On the day of the murder, Ms. Acoff's doorbell was not working.

Apparently nothing was stolen from the apartment: Ms. Acoff's purse was undisturbed, a gold chain was found lying in a pool of blood on the floor and the stereo and television set were in place.

Upon learning of subject's presence in the neighborhood, police called him and he went to the police station to be interviewed. The subject denied being in the vicinity of Ms. Acoff's apartment at the time of the murder. He was permitted to leave the police station.

Shortly thereafter, police were told that a latent fingerprint lifted from the kitchen wall of Ms. Acoff's apartment had been identified as Jerome Henderson's. Police arrested the subject and informed him of the fingerprint, but the subject insisted that he had never been inside Ms. Acoff's apartment and that he did not know her.

Police searched the subject's residence pursuant to a warrant and seized a damp pair of gym shoes, a long black leather coat, a short black leather jacket, and an eight-inch paring knife discovered inside the pocket of the jacket. The soles of the shoes contained human blood but in an insufficient amount to determine its type. A bloody shoeprint from the floor of Ms. Acoff's apartment was consistent with the characteristics of the soles of the

seized gym shoes. Bloodstains found on the coat were consistent with Ms. Acoff's blood type (type AB) and inconsistent with subject's (type O). A piece of unidentifiable human tissue was discovered on the long coat. Semen stains, consistent with a type O secretor, were also found on the coat.

The rock found outside the kitchen window was stained with type AB blood and the fallen leaf with human blood, type unknown.

Jerome Henderson was charged with two counts of aggravated murder with specifications that: (1) appellant, as the principal offender, purposely caused Ms. Acoff's death while committing or attempting to commit aggravated burglary; and (2) appellant, as the principal offender, purposely caused Ms. Acoff's death while committing or attempting to commit rape. The third and fourth counts charged appellant with aggravated burglary and rape.

Appellant pled not guilty. The jury found appellant guilty of both counts of aggravated murder and the accompanying specifications. The jury also found appellant guilty of aggravated burglary and not guilty of rape but guilty of attempted rape. The jury recommended a penalty of death; the trial court followed the recommendation and imposed a death sentence. The court further sentenced appellant on counts three and four to consecutive terms of imprisonment.

The Court of Appeals affirmed the convictions and sentence of death.

APPLICANT'S STATEMENT

Jerome Henderson was interviewed by Parole Board Member Dr. Sandra Mack on November 7, 2006 at the Ohio State Penitentiary. Also present were Richard Vickers of the Ohio Public Defender's Office and Parole Board Parole Officer Ted Morrison. The interview was witnessed via teleconference at the Department of Rehabilitation and Correction's Central Office in Columbus by the inmate's counsel David C. Stebbins, Assistant Attorney General Michael Collyer, Senior Deputy Attorney General Heather Gosselin, and Executive Assistant to the Ohio Parole Board Chair Judy Coakley.

Mr. Henderson requested that his sentence be commuted to Life with the Possibility of Parole. In questioning Mr. Henderson regarding the instant offense, he advised that he did not wish to answer any questions regarding this crime as the Public Defender's Office was currently investigating the matter. He did state that he pled not guilty at trial. Mr. Henderson did not recall refusing to provide a written statement or polygraph at the time of the instant offense. He stated that he would have had no problem doing so, if asked.

Mr. Henderson stated that he did not know the victim, Mary Acoff, but that he knew of her because they all lived in the same neighborhood. Mr. Henderson stated that he was sorry for "whoever's loss", but doesn't really know how he feels when asked about his feelings about the death of victim Mary Acoff.

Mr. Henderson did offer information regarding his family, institutional conduct, and his views on capital punishment during the interview.

PRIOR RECORD:

JUVENILE:

<u>DATE</u>	<u>OFFENSE</u>	<u>PLACE</u>	<u>DISPOSITION</u>
4/6/1975 (Age 16)	Robbery (Case #75-03780)	Cincinnati, Ohio	6/25/1975: Placed on probation; 8/8/1977: released from probation.
4/8/1975 (Age 16)	Aggravated Robbery (Case #75-03781)	Cincinnati, Ohio	6/25/1975: Placed on probation and ordered to pay restitution; 8/8/1977: released from probation.
12/20/1975 (Age 16)	Robbery (Case #75-12649)	Cincinnati, Ohio	1/22/1976: Placed with the Ohio Youth Commission.

ADULT:

<u>DATE</u>	<u>OFFENSE</u>	<u>PLACE</u>	<u>DISPOSITION</u>
9/7/1981 (Age 26)	Gross Sexual Imposition (B184033)	Cincinnati, Ohio	1/6/1982: 2 days jail 5 years probation and costs.
3/6/1985 (Age 26)	Aggravated Murder (2 counts) Aggravated Burglary Attempted Rape (B850996)	Cincinnati, Ohio	8/5/1985: Counts 1 & 2: DEATH; Count 3: 7-25 years; Count 4 8-15 years Instant Offense

OTHER CONVICTIONS:

The subject was arrested on 10/13/1983 and charged with Menacing, for which he was confined for three (3) days and ordered on probation for one (1) year.

The subject was convicted on 8/27/1984 of Obstructing Official Business for which he was sentenced to six (6) days in the workhouse, fined \$250.00 and placed on one (1) year's probation. The subject was also cited and fined for three (3) traffic violations.

INSTITUTIONAL ADJUSTMENT:

Mr. Henderson was admitted to the Department of Rehabilitation and Correction on August 12, 1985. His adjustment to incarceration at the present time appears satisfactory. His current work assignment is that of a Library Aide. Mr. Henderson is attending religious service programs and is enrolled in the GED program at the Ohio State Penitentiary.

Since his admission in 1985, he has participated in AA & NA meetings, an Anger & Stress Management program, and Community Service Projects while at SOCF or ManCI. His previous work assignment was as a Recreation Worker in 8/2005 through 2/2006.

In 1991, the subject was involved in a fight with another inmate, for which he spent four (4) days in disciplinary control. He has also received approximately 10 minor conduct reports since his admission in 1985. Mr. Henderson's last recorded conduct report was in 1999.

PROPOSERS TO CLEMENCY:

Mr. Henderson was represented by attorney David C. Stebbins at the clemency hearing on November 15, 2006. Richard J. Vickers of the Ohio Public Defender's Office was also present at this hearing. Mr. Stebbins indicated that Jerome Henderson is requesting clemency in the form of a commutation to Life without Parole or Life with Parole eligibility. In the alternative, he is requesting a Reprieve to allow time for him to participate in pending litigation, and so that the Office of the Ohio Public Defender can investigate his claims of innocence. His oral argument focused on the following:

- 1) The state's theory at Mr. Henderson's trial that there was a sexual motivation in the offense is unsupported by and contrary to the evidence:
 - The state proposed the theory that Henderson's underlying motive in entering the victim's apartment was to rape her, burglarize the apartment and then murder her. The state invited the jury to "speculate" about what occurred based on the circumstantial evidence. There is nothing other than assumption that a rape occurred or was attempted. This assumption was based on the time of night that the offense occurred, the fact that the victim's apartment was broken into, the position of the victim's body and the fact that her body was nude.
 - Subsequent DNA testing does not support a sexual motivation to the offense. The results of DNA testing performed post-trial indicated that there was no sexual contact between Henderson and the victim. Semen located in the victim's body was determined to be exclusively from her boyfriend. Semen found on Henderson's coat was found to belong to Henderson. If Henderson had raped the victim, there

should have been epithelial cells from the victim or semen from her boyfriend on the coat that was confiscated from Henderson. Without this definitive DNA evidence, the jury was left to speculate whether the semen found in the victim was from Henderson or her boyfriend, as they both had the same blood type. The jury did not have the DNA results that conclusively showed that Henderson was not the depositor of the semen in the victim. It is possible that the jury would have acquitted Henderson of Rape and Attempted Rape if the DNA results were known to them.

- Removing the sexual motivation theory as advanced by the state clearly precludes this case from the “worst of the worst” category. Had the jury acquitted Henderson on the sex offense, it is likely that the sentence of death would not have been recommended by the jury, as the additional aggravating factor would not have been considered in their deliberations during the penalty phase.
- 2) This case is also not appropriate for the death penalty, as Mr. Henderson is not the “worst of the worst” offender.
- Henderson’s prior criminal record is minimal. As an adult, he was placed on probation for Gross Sexual Imposition, Menacing, and was on probation for Obstructing Official Business when the instant offense was committed. He has no prior institutional commitments.
 - Henderson has been essentially a model prisoner since he has been incarcerated in 1985. He has received only minor conduct violations while on death row at Lucasville, Mansfield, and the Ohio State Penitentiary. Henderson keeps to himself and does not cause problems.
 - Henderson did not participate in the riot that occurred at SOCF or the disturbance at ManCI. He was subsequently treated for depression and PTSD (post traumatic stress disorder) as a result of these incidents.
 - Henderson’s mother died while giving birth to him. Henderson has a son with whom he would like to reunite. Henderson’s aunt, Lillie Drummer, is very supportive of Henderson and has expressed her love for him.
- 3) A reprieve is appropriate in this case in order to permit Henderson the ability to participate in current litigation to its conclusion, and to permit the Ohio Public Defender’s Office to conduct an investigation regarding Henderson’s claims of innocence.
- Henderson has been recently permitted to join a pending lawsuit initiated by fellow death row inmate Richard Cooley, regarding Ohio’s lethal injection protocol. However, the same court that permitted Henderson to join the suit, denied his request for a stay of execution. It is highly unlikely that the litigation will be concluded or resolved prior to Henderson’s execution date of December 5, 2006. Therefore, a reprieve is the only mechanism that will allow Henderson to litigate the merits of the lawsuit to its conclusion and is appropriate since he was permitted to intervene.

- Henderson recently sent a complaint to the Office of the Ohio Public Defender requesting an investigation and claiming his innocence. The Ohio Public Defender is conducting an investigation. However, that investigation will not be complete prior to the execution date of December 5, 2006. A reprieve is also appropriate to allow the Ohio Public Defender's office adequate time to conduct their investigation.

OPPONENTS TO CLEMENCY:

Assistant Hamilton County Prosecutor Ronald Springman and Assistant Attorney General Michael Collyer appeared at the clemency hearing and presented oral arguments in opposition to clemency. In addition, members of the victim's family also spoke in opposition to clemency.

Assistant Hamilton County Prosecutor Ronald Springman stated that there was an enormous amount of evidence presented to the jury to prove sexual motivation in this crime, as well as Henderson's guilt, including the following:

- The victim's body was found lying on her back with her legs spread, and was nude with a robe nearby.
- A witness who lived above the victim heard commotion in the victim's apartment.
- A witness saw Henderson near the apartment wearing a long leather coat.
- There were at least 13 stab wounds found over the victim's body, some of which were defensive wounds inflicted while the victim was lying on her back.
- A witness who stated he went to school with Henderson identified him as being near the victim's apartment in the early morning hours wearing a long leather coat with a short leather jacket beneath it. This witness honked his horn at Henderson after recognizing him as someone he knew, but Henderson did not acknowledge him and pulled his collar up around his ears.
- A knife was found in the pocket of Henderson's long leather coat.
- A friend of the victim stated that she and the victim knew Henderson well, as they all went to school together. She recalled a prior incident wherein the three of them were in a car together at which time Henderson began talking to them in a sexual manner, and then exposed himself.
- Henderson continues to deny knowing the victim or being inside her apartment, despite being confronted with fingerprint evidence.
- Henderson continues to deny the offense and continues to fail to express remorse or sympathy for the victim's family.

Assistant Attorney General Michael Collyer advanced the following points as to Henderson's application for clemency and indicated that he is representing the state in Henderson's habeas and lethal injection claims:

- Henderson's most recent filing in the habeas action to the United States Supreme Court is not permitted by statute, therefore, it is unlikely to be heard. In addition, Henderson did not attempt to intervene in the Cooley lethal injection litigation until he had exhausted all other legal avenues to delay his execution. His motion to

intervene was an attempt to delay the current execution date, as he knew when he attempted to join that the matter would not be heard prior to his execution. Nothing precluded Henderson from previously filing his own suit regarding Ohio's lethal injection protocol. He was not required to join the Cooley suit. It is simply a tactical error to delay the execution. Neither of these legal issues should persuade the Parole Board to recommend a reprieve.

- Henderson's case differs greatly from Jerome Campbell's case where the Parole Board previously recommended commutation of Campbell's death sentence. The post-trial DNA evidence in Henderson's case is distinguishable from the DNA evidence obtained in Jerome Campbell's case. In Campbell's case, no other blood evidence was presented by the prosecutor other than that found on Campbell's shoe. However, in Henderson's case, other blood evidence was presented and was not a primary focus for the prosecution or the defense. There is no affidavit from any juror in Henderson's case that the subsequent DNA evidence would have made a difference in the verdict, as there was in the Campbell case.
- The federal courts determined that the DNA evidence was only inculpatory. Henderson has made no attempt to present this evidence back to the state court. Henderson was advised by one of his own attorneys that the jury's finding of guilt on Attempted Rape was already proof that there was no inculpatory evidence of Rape. That attorney further warned Henderson that if he sought DNA testing, it could produce more harmful evidence than exculpatory evidence, which did in fact occur. The DNA testing confirmed that the victim's blood was located on Henderson's coat.
- Henderson's case has been reviewed for 21 years, which has previously included involvement by the Ohio Public Defender's Office. That office could have conducted an investigation into Henderson's claims throughout the many years this case has been reviewed by the courts. The Parole Board should not now recommend a reprieve to allow the Ohio Public Defender's Office to conduct an investigation, as this request is simply another attempt to delay the execution.
- Regarding his prison record and whether that should be a factor in considering clemency, Henderson was not sentenced to death because of any perceived threat he posed while incarcerated, but because of the crime he committed. Good institutional conduct should not be considered as mitigation. His lack of involvement in two riots should be given little weight.
- Henderson's interview with Parole Board Member Dr. Sandra Mack further exemplifies why clemency should be denied. Henderson's prior record refutes the claim he made during his interview that he is a "good guy" and "means no harm", as he was previously convicted of Gross Sexual Imposition, which was a reduced charge from Rape. Henderson lied to Dr. Mack when he stated that he did not know the victim.

Both Mr. Springman and Mr. Collyer indicated that clemency should be denied to Jerome Henderson.

Joann Acoff, daughter of the victim, spoke on behalf of her mother at the clemency hearing. She stated that since her mother's life was not spared, Henderson's life should not be spared. She was only 10 years old when she found her mother almost decapitated and she is still traumatized.

The victim's niece, Kellie Bass, confirmed that Henderson did know the victim. He lived across the street and would always speak to her aunt, although she would never speak back to him. Ms. Bass knew that her aunt had attended school with Henderson and her aunt had warned her not to trust him. She expressed to the Parole Board that she had seen Henderson beat other women in the past and people were afraid of him. In fact, he was standing on her grandmother's porch laughing at them when the police were called to the crime scene. She does remember Henderson making threatening statements to her aunt in the past.

Shirley Acoff, the victim's sister, read a prepared statement from the family and spoke of the emotional drain that the crime has had on all of the family members. She stated further that the anguish and pain have not healed and that she knows executing Henderson will not bring their loved one back, but it will help with bringing closure. She wanted this hearing to end with dignity and respect.

COMMUNITY ATTITUDE

Friends and family of the victim, Mary Acoff are opposed to clemency for Jerome Henderson. Jerome Henderson's aunt, Lillie Drummer is supportive of her nephew in this matter.

CONCLUSION:

The Ohio Parole Board deliberated extensively on the documentary and testimonial evidence provided. The Board finds that the aforementioned mitigating factors do not outweigh the many aggravating factors present in the murder of Mary Acoff. Jerome Henderson still maintains his innocence in the death of Mary Acoff, despite the presence of forensic evidence (latent fingerprint on the wall of the victim's apartment) proving the contrary. The Board finds the recent DNA results distinguishable from the Campbell case. These results are more inculpatory of guilt due to the fact that the victim's blood was found on Henderson's coat, than proof that the crime was not sexually motivated. Substantial and sufficient circumstantial evidence existed to support the jury's finding, beyond a reasonable doubt, that Henderson did attempt to rape Mary Acoff, and the subsequent DNA evidence does nothing to discredit that verdict. Moreover, substantial and sufficient evidence still exists to support a finding by any reasonable juror that the aggravating circumstances of the Aggravated Burglary alone outweigh the mitigating factors beyond a reasonable doubt, and that the death penalty was an appropriate sentence.

The Board further finds Henderson's request for a reprieve lacking in merit. The Board does not deem a reprieve as an appropriate remedy in this case as it was a tactical choice by Henderson to join current litigation as opposed to litigating this issue on his own earlier,

knowing it would not be completed prior to his execution date in hopes of further delaying the execution. In addition, his request for an investigation by the Ohio Public Defender's Office is a further last minute attempt to delay the pending execution date.

It is the opinion of the Ohio Parole Board that Jerome Henderson's conviction and sentence present no manifest injustice nor reason for clemency to be granted in the form of a commutation or reprieve.

RECOMMENDATION

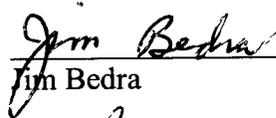
The Ohio Parole Board with nine (9) members participating, by a vote of nine (9) to zero (0) recommends to the Honorable Bob Taft, Governor of the State of Ohio, that Executive Clemency be denied in the case of Jerome Henderson.

Ohio Parole Board Members
Voting **FAVORABLE**

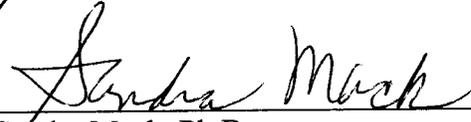
Ohio Parole Board Members
Voting **UNFAVORABLE**



Cynthia Mausser, Chairperson



Jim Bedra



Sandra Mack, Ph.D.



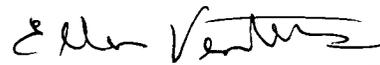
Peter Davis



Robert Maszczyński



Kathleen Kovach



Ellen Venters



R.F. Rauschenberg



Trayce Thalheimer, Acting Board Member