

DATE TYPED: November 14, 2005
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IN RE: JOHN R. HICKS, MANCI #189-423

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

Date of Meeting: November 8, 2005

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

IN RE: JOHN R. HICKS, MANCI #189-423

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with Specifications cs/w
Aggravated Robbery cs/w Aggravated Murder with
Specifications

DATE, PLACE OF CRIME: August 2, 1985-Cincinnati, Ohio

COUNTY: Hamilton

CASE NUMBER: B852809

VICTIMS (S): Maxine Armstrong, Age 56
Brandy Green, Age 5

INDICTMENT: 8/29/1985: Count 1: Aggravated Murder with
Specifications; Specification #1 - While Committing
Aggravated Robbery; Specification #2 - Purposeful
Killing of 2 or more persons; Count 2: Aggravated
Robbery, Count 3: Aggravated Murder with
Specifications; Specification #1 - Committed for
purpose of Escaping detention; Specification #2 -
Purposeful killing of 2 or more persons.

VERDICT: Found Guilty by Jury as charged in Counts 1-3.

SENTENCE: 2/21/1986: Count 1: Life consecutive with Count 2;
Count 2: 10-25 years consecutive with Counts 1&3;
Count 3: Death

ADMITTED TO INSTITUTION: March 3, 1986

CURRENT AGE: 49 years old

DATE OF BIRTH: July 31, 1956

PRESIDING JUDGE: Honorable Simon Leis, Jr.

PROSECUTING ATTORNEY: Arthur M. Ney, Jr.

FOREWORD:

Clemency in the case of John R. Hicks #A189-423 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-05. A prior Clemency Report was submitted to the Honorable George V. Voinovich on May 20, 1996. That report contained a unanimous Parole Board recommendation for denial of clemency.

On November 1, 2005, Parole Board Member Betty Mitchell interviewed Mr. Hicks at the Mansfield Correctional Institution in the presence of his counsel, Marc D. Mezibov.

The Clemency Hearing was then held on November 8, 2005. Mr. Hicks was represented by Marc D. Mezibov who presented the application for and testimony in support of clemency. Mr. Mezibov also submitted videotaped testimony of Theodore V. Parran Jr. M.D. Dr Parran is the Director of the Clinical Science Program and Director of the Fellowship Program for the Case Western Reserve University School of Medicine. Ricardo Hicks, the applicant's brother also presented testimony in support of clemency.

Arguments in opposition to clemency were presented by Hamilton County Assistant Prosecutor, Ronald Springman, Principal Assistant Attorney General Charles Wille, and Pamela Hughes who is the eldest daughter of victim Maxine Armstrong and the aunt of the 5 year old victim Brandy Green.

The Parole Board considered all of the testimony provided by the applicant, the information disseminated by presenters at the hearing, prior investigative findings as well as judicial decisions. With these, the Board deliberated upon the propriety of clemency in this case. With eight members participating, the Board came to unanimous agreement and voted to provide an UNFAVORABLE recommendation for clemency to the Honorable Bob Taft, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE:

The following account of the instant offense was obtained from the Ohio Supreme Court opinion decided May 17, 1989:

On August 2, 1985, Ghitana Hicks brought her five-year-old daughter, Brandy Green, to spend the night with Ghitana's mother, Maxine Armstrong. Armstrong lived at the Alms Hill Apartments in Cincinnati, Ohio. At about 10:45 p.m., Brandy fell asleep on her grandmother's couch.

The next day, Armstrong's sister entered the apartment and found Brandy, her mouth and nose covered with tape, lying dead in a bedroom. The sister searched the apartment and found Armstrong's body in the bathtub. The police were summoned. The coroner determined that Brandy had been smothered and that Armstrong had died of ligature strangulation.

On August 4, 1985, Brandy's stepfather, the subject, John R. Hicks, surrendered to police in Knoxville, Tennessee. There, Hicks confessed that he had murdered Armstrong and Brandy in Cincinnati. On August 5, 1985, he was returned to Cincinnati, where he made further statements to Cincinnati homicide detectives Robert Hennekes and Joe Hoffmann.

Subject told Knoxville detective Thomas Stiles that "just a couple of hours" before going to Armstrong's apartment, he bought some cocaine from a man named "Ray" in Walnut Hills. However, he told the Cincinnati detectives that he got the cocaine at about 4:00 p.m. from someone known as "G Man." Later that day, at an unspecified time, Hicks felt a renewed craving for cocaine. He took a videocassette recorder (VCR) from his home and gave it to Ray as security for a fifty-dollar cocaine purchase. However, Hicks had no money with which to redeem the VCR. He realized that failure to get it back would cause trouble with Ghitana. Hicks decided to rob Armstrong, knowing that "if [he] robbed her he would have to kill her."

Subject telephoned Armstrong to tell her he would "stop in." When he arrived, he found Brandy asleep on the couch, woke her, and put her to bed. He took some time to build his courage. At about 11:00 p.m., Hicks said to himself: "Either you go do it or you don't." He came up behind Armstrong as she stood over a birdcage and choked her with his hands. He then tried to smother her with a pillow, but doubted whether she had stopped breathing. To "make sure she was dead," he strangled her with a length of clothes line he had brought with him from his car. He then searched the bedroom, stealing approximately \$300 and some credit cards.

Hicks went back to Walnut Hills, redeemed the VCR from Ray, and made another fifty-dollar cocaine purchase. At 12:30 a.m., after injecting the cocaine, subject "got to thinking again." Knowing that Brandy could identify him as the last person to visit the Armstrong apartment that night, Hicks decided to go back and kill her.

Hicks returned and tried to smother Brandy with a pillow. Because she was "bucking" and "fighting," he decided that the pillow "wasn't doing the work." He tried to choke her with his hands. She continued to make gurgling sounds, so he taped her breathing passages shut with duct tape he had brought with him.

After killing Brandy, subject moved Armstrong's body to the bathroom. Intending to dismember the body for easier disposal, he nearly cut her leg off before abandoning the effort. He then returned to the bedroom, where he took off Brandy's underpants and inserted his finger into her vagina. He searched the apartment again, finding and taking a checkbook, a ring, a .32 caliber pistol, and a box of ammunition. At 3:00 a.m., he returned to his apartment. At 6:00 a.m., he fled Cincinnati.

APPLICANT'S STATEMENT:

Mr. Hicks was interviewed by Board Member Betty Mitchell on November 1, 2005 at the Mansfield Correctional Institution. Also present were Mr. Hicks' counsel, Marc D.

Mezibov, 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 Public Defender John Lee, Assistant Attorney Generals Heather Gosselin, Chuck Wille and Steve Maher, Hamilton County Assistant Prosecutor Ronald Springman, and Parole Board Quality Assurance Analyst Stephanie Starr.

During the interview, Mr. Hicks reiterated the details of the crime and voiced statements of remorse, as the victims trusted him as a friend and as a stepfather. He shed tears as he discussed the closeness of his relationship with them. He blamed cocaine abuse as the culprit in his crime and stated that if it were not for cocaine he would not be incarcerated today. There were tears shed for the victims as he voiced remorse. He provided a detailed report of his crimes just as he had previously. He admitted that he killed the victims, but attributes his actions to his abuse of cocaine.

PRIOR RECORD:

JUVENILE: The subject has no known juvenile arrest record.

ADULT: The subject has the following known adult arrest record:

| <u>Date</u> | <u>OFFENSE</u> | <u>LOCATION</u> | <u>DISPOSITION</u> |
|-----------------------|-----------------------|------------------------|---|
| 7/11/1983 (Age 26) | Assault | Cincinnati, Ohio | 7/18/83: 60 days jail (50 days suspended); placed on 1 year probation; 7/17/84: Probation terminated. |

Details: This offense involved the subject striking an ex-girlfriend Brenda Davis – stating he struck her several times following an argument while both of them were abusing alcoholic beverages.

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|----------------------|--|------------------|-----------------|
| 8/2/1985 (Age 29) | Aggravated Murder Aggravated Robbery Aggravated Murder | Cincinnati, Ohio | INSTANT OFFENSE |
|----------------------|--|------------------|-----------------|

INSTITUTIONAL ADJUSTMENT:

A review of his institution files, reveal ongoing acceptable performance in job assignments. These have varied from Porter to Unit Librarian. He attended AA in 1988 and has committed no significant rule infractions to warrant isolation from his usual housing site. Overall his pattern of adjustment to the institution appears satisfactory.

COUNSEL'S ARGUMENT FOR CLEMENCY:

In his opening statements Attorney Marc Mezibov acknowledged this to be a horrible crime, one which John Hicks confessed to within 48 hours of committing the crime after turning himself in to police in Knoxville, Tennessee. John Hicks admits his responsibility for the death of these two individuals. During his interview at Mansfield Correctional Institution he continued this admission of guilt. The basis for the clemency request centers exclusively on mercy and fairness. He is seeking clemency for the capital murder of Brandy Green. Attorney Mezibov's contentions are these:

- The jury did not meaningfully consider Mr. Hicks' lack of moral culpability for his actions due to the gross incompetence and ineffectiveness of his trial counsel.
- That Mr. Hicks' mental processes were severely impaired from the effects of cocaine when he committed the crime. There is, however, no contention that he is now or was mentally ill at the time he committed these crimes.
- That Mr. Hicks' trial counsel failed to obtain an expert on cocaine to explain the pharmacological, physiological and psychological effects upon the body so that jurors could fairly appreciate and appropriately measure the level of Mr. Hicks' moral culpability.
- That Mr. Hicks' trial counsel erred by utilizing the court appointed psychologist who was originally obtained to assess competency and insanity. He characterized the testimony of Dr. Schmidtgosling as not only inadequate and uninformed but also inaccurate.
- That information concerning the social and psychiatric history was not included. Suggestions of learning disability were not explored and family dysfunctions were not disclosed satisfactorily as mitigation. The allegation of sexual molestation by an older cousin was not disclosed and this he believed to be a significant omission.

Testimony was then provided by Dr. Theodore V. Parran Jr. via videotape. Dr Parran is the Director of the Clinical Science Program and Director of the Fellowship Program for the Case Western Reserve University School of Medicine. Dr. Parran suggested that Mr. Hicks had a pattern of binge behavior in which paranoid ideation and "schizophrenic-like" manifestations occur during the period that follows an acute intoxication phase of cocaine use. During that phase, the uncharacteristic behavior that can occur is more likely to be of the criminal amplitude of that exhibited by Mr. Hicks. Though he did not interview Mr. Hicks at the time of the crime, he reviewed the files and assessed the applicant's reported memories of the events surrounding his murdering both victims. Though Mr. Hicks has had a significant reported addiction, there had been a 6 month period of cessation of drug use that he believed might have heightened this reaction which he described as cocaine psychosis.

Ricardo Hicks, the applicant's brother, also provided testimony to indicate that the conduct of his brother was unusual and could only be attributed to his cocaine abuse. He indicated his on-going support for his brother.

OPPONENTS TO CLEMENCY:

Assistant Hamilton County Prosecutor Springman first attested to the credibility of Dr. Schmittgosseling and noted that Hicks was reported to be rational, oriented and goal directed when assessed. Dr. Parren characterized Hicks as being able to "put actions together in a straight line and hypothesized that he was likely to have been experiencing cocaine psychosis. Mr. Springmen said "Hicks is asking for mercy but he gave no mercy to the victims." Prosecutors noted that:

- John Hicks referred to his 5-year-old stepdaughter Brandy as his daughter. He claimed to have the same birthday. On the date of the crime she had been shopping for a parakeet for her birthday. He used the day to go to the Alms Hotel to buy \$50 in cocaine.
- He sold Maxine's VCR for \$50 more in cocaine and later grabbed Maxine from behind and choked her while she was looking at the bird. He used a cord to stop the gurgling sounds and left her on the floor while Brandy lay asleep in the bedroom.
- He paid to get the VCR back with money he robbed from Maxine. He did not want his wife to know he had taken it.
- He thought he had to "take care of" Brandy because she knew he was at her grandmother's (Maxine) apartment.
- He put a pillow over Brandy's face to smother her but she started "Bucking and kicking". He put his hand on her windpipe but remembered the gurgling sound Maxine had made when he choked her. He then used the duct tape he had brought with him.
- He told police that he had digitally penetrated Brandy's vagina in order to make it appear as if it were a sex crime.
- He decided to cover up the crime by cutting up the body of Maxine Armstrong but abandoned the idea when he thought it was going to take too long.
- He had sex with his wife and thinks "I gotta get out of here" and has the presence of mind to return to the victim's apartment to take a gun, ammunition and credit cards before leaving town. He took his wife's car and left.

Assistant Attorney General Wille noted that the argument for cocaine psychosis was indeed argued to Federal courts, as well as State courts and was denied. The Jury heard a description of Mr. Hicks' behavior and premeditation in the death of Brandy. Voluntary intoxication is not relevant unless it destroys the ability to act and is not mental disease or defect. Dr. Schmidtgossling noted that he had the ability to act purposefully and did.

No expert examination of the mental state of Mr. Hicks was presented as a singular glaring failure by the defense counsel. In videotaped testimony, Dr. Theodore Parran described cocaine psychosis and opined that the description of Mr. Hick's thoughts and behaviors on the day of the murders was consistent with what he believed to be cocaine psychosis. The interview with Mr. Hicks and the evaluation of the events together with the review of Hicks' behavior occurred years after the crimes occurred. Thus it represents an expert opinion or supposition rather than a diagnosis.

The victim's survivors in this case were represented by Pamela Hughes. Ms. Hughes is the eldest child of Maxine Armstrong and the aunt of Brandy Green. She spoke eloquently though succinctly about the betrayal of trust and the feelings of guilt associated with having welcomed Hicks into their family. Ms. Hughes brought with her the message from her Grandmother that she has been waiting to see justice done. Though it may not bring them peace, the death of John Hicks will close this chapter in their lives.

CONCLUSION:

The Parole Board discussed the issue of mitigation and could concede the following as mitigation:

- That Mr. Hicks experienced a dysfunctional home environment during his formative years, which were plagued by alcoholism, familial discord and the self reported sexual abuse by a cousin.
- That Mr. Hicks' significant use of drugs on August 2, 1985 did affect his judgment though it did not deter his ability to act purposefully and with premeditation in carrying out the merciless death of Brandy Green.
- The board stopped short of accepting any causal relationship between his drug use and two entirely unprovoked attacks which resulted in two needless deaths. Psychosis (a mental disorder) was not diagnosed at the time of the crimes. Hicks was found to have no mental illness. The collection of physical manifestations, which followed the period of intoxication, might not have been severe enough to rise to the level of warranting the diagnosis of "cocaine psychosis". Self report and hind sight can only generate speculation.
- That Mr. Hicks has a pattern of good institutional adjustment throughout his incarceration.

The Board deliberated upon these issues in mitigation and compared them with the brutality inherent in strangulation and asphyxiation. The board considered the magnitude of the violations of trust embedded in the killing of "loved ones". Mr. Hicks shed a tear as he talked about the fact that they were his friends. He treated Brandy like a daughter. He was a friend to his mother-in-law. His sister in law, Ms. Hughes said, "We trusted him."

John R. Hicks
Clemency Report

There is no manifest injustice in carrying out the lawful sentence of death. The mitigating factors are far out weighted by the aggravating factors.

RECOMMENDATION:

The Ohio Parole Board, with eight (8) members participating, voted unanimously to provide an UNFAVORABLE recommendation for any form of executive clemency for JOHN R. HICKS to the Honorable Bob Taft, Governor of the State of Ohio.

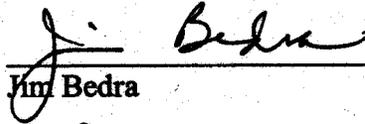
**John R. Hicks
Clemency Report**

**Ohio Parole Board Members
Voting FAVORABLE**

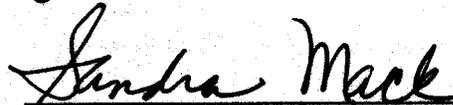
**Ohio Parole Board Members
Voting UNFAVORABLE**



Cynthia Mausser, Chairperson



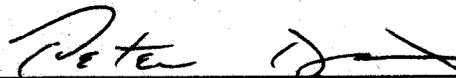
Jim Bedra



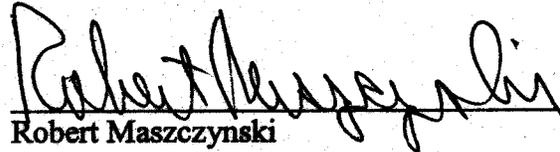
Sandra Mack, Ph.D.



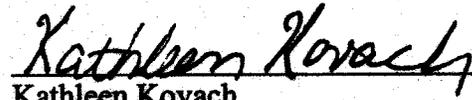
Betty J. Mitchell



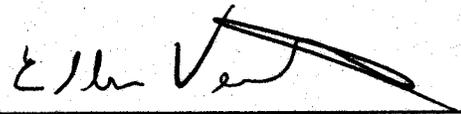
Peter Davis



Robert Maszczyński



Kathleen Kovach



Ellen Venters