DATE TYPED: November 16, 2009
DATE PUBLISHED: November 17, 2009

IN RE: BIROS, KENNETH A249514

STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO

Date of Meeting: November 9, 2009

Minutes of the SPECIAL MEETING of the
Parole Board held at 770 West Broad Street,
Columbus, Ohio 43222 on the above date

IN RE: BIROS, KENNETH A249514

SUBJECT:	Death Penalty Clemency
CRIME, CONVICTION:	Aggravated Murder with Specifications, Felonious Sexual Penetration, Aggravated Robbery, Attempted Rape
DATE, PLACE OF CRIME:	February 8, 1991 in Trumbull County, Ohio
COUNTY:	Trumbull
CASE NUMBERS:	91 CR 87
VICTIMS:	Tami L. Engstrom (Age 22)
INDICTMENT:	2/14/1991: Count 1: Aggravated Murder with 2 Specifications; Specification 1: Committing or fleeing immediately after committing Aggravated Robbery; Specification 2: Attempting to commit or fleeing immediately after attempting to commit Rape; Count 2: Felonious Sexual Penetration; Count 3: Abuse of a Corpse; Count 4: Aggravated Robbery; Count 5: Attempted Rape.
VERDICT:	10/18/1991: Found guilty by Jury of all counts and specifications alleged in the indictment, with the exception of Count 3, Abuse of a Corpse, which was dismissed prior to trial.
SENTENCE:	10/29/1991: Count 1: DEATH; Count 2: 10-25 years; Count 4: 10-25 years; Count 5 8-15 years, all terms to be served consecutively.
DATE OF ADMISSION:	October 30, 1991
TIME SERVED:	18 years, 11 months
JAIL TIME CREDIT:	262 Days
AGE AT ADMISSION:	33 years old

CURRENT AGE:	51 years old
DATE OF BIRTH:	June 24, 1958
PRESIDING JUDGE:	Honorable Mitchell F. Shaker
PROSECUTING ATTORNEY:	Dennis Watkins

FOREWORD:

Clemency in the case of Kenneth Biros #A249-514 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. A clemency hearing was previously held on January 4, 2007, after which the Parole Board submitted a unanimous (7-0) unfavorable recommendation to Governor Strickland. Mr. Biros received a stay of the March 20, 2007 execution due to his attachment to the litigation surrounding Ohio's method of lethal injection. The Ohio Supreme Court has set a new execution date of December 8, 2009. That date has been given a stay pending the July 12, 2010 trial in federal court on the issue of Ohio's lethal injection protocol.

In his supplemental materials, Mr. Biros asks for clemency in the form of a commutation to Life without Parole. He also asks for a reprieve pending the outcome of litigation surrounding Ohio's lethal injection protocol.

On October 22, 2009, Kenneth Biros was interviewed via video-conference by the Parole Board at the Ohio State Penitentiary. Mr. Biros's counsel John P. Parker was present at the institution to observe the interview. Representatives from the Attorney General's Office, the Trumbull County Prosecutor's Office, and the Governor's Office observed through video conferencing, but were separate from the Board Members. Board Members participating in the interview included Chairperson Mausser and Parole Board Members Ms. Kovach, Mr. Maszczynski, Mr. Rauschenberg, Ms. Thalheimer, and Ms. Venters.

A Supplemental Clemency Hearing was then held on November 9, 2009 with seven (7) members of the Ohio Parole Board participating to consider information gathered since the initial clemency hearing. Arguments in support of clemency were presented by Mr. Biros's counsel, John P. Parker and Timothy Sweeny. Arguments in opposition to clemency were presented by Trumbull County Prosecutor Dennis Watkins. Pat Engstrom the victim's mother-in-law, Debi Heiss, the victim's sister, and Tom Heiss, the victim's brother also presented arguments against clemency. Mary Jane Heiss, mother of the victim presented via a pre-recorded video, opposing clemency.

DETAILS OF THE OFFENSE/PRIOR RECORD: Please refer to the Death Penalty Clemency Report published on January 10, 2007.

INSTITUTIONAL/SUPERVISION ADJUSTMENT:

Please refer to the Death Penalty Clemency Report published on January 10, 2007. Mr. Biros continues to have good institutional conduct, with no notable rule infractions since his last hearing. He continues to work on Death Row as a food cart attendant and lives in the special privileges unit. He continues to participate in religious services and community service projects at the Ohio State Penitentiary.

APPLICANT'S STATEMENT:

Mr. Biros was interviewed on October 22, 2009 at the Ohio State Penitentiary. During his interview, Mr. Biros reiterated the claim he made at his trial that this crime grew out of an auto accident. He also claimed that he is innocent of attempted rape, and had no sexual contact with Ms. Engstrom. He said that he cannot remember many of the details due to alcoholic blackout.

He said that he touched the victim in order to wake her. When she woke, she asked to be let out of the car. He said he panicked and took out his pocket knife to try to calm her down. In spite of the physical evidence pointing to strangulation as the cause of death, he said he put his hand over her mouth to calm her, and this is what caused her death. Once he realized she was dead, he went home, then returned and went into a rage. He denied that he ever hit her. He further states that he used his pocket knife to cut up the body so that she could fit in some shallow holes nearby. And later he moved the parts further away fearing detection.

Since coming to prison, he has become a much more religious person, attending Catholic mass, and working with an Eastern Orthodox priest. He continues to participate in community service.

In closing, Mr. Biros reiterated his request that the governor commute his sentence from death to life without parole. He feels that he can do some good while in prison. He apologizes to the victim's family, and asks that the Parole Board and the Governor look at his life as a whole, and not judge him entirely on this one incident.

ARGUMENTS IN SUPPORT OF CLEMENCY:

At the clemency hearing conducted on November 9, 2009, counsel for Biros, Mr. John Parker, and Mr. Timothy Sweeny appeared on his behalf and presented the following arguments in support of executive clemency:

- The day in 2007 when Biros was scheduled to be executed was an extremely stressful day for all involved. Its difficulty can only be understood by those who experienced it. The Board should consider the emotional and physical strain on the participants when determining its recommendation to the Governor.

- Biros is remorseful for causing Ms. Engstrom's death. The crime he committed was heinous and there are no excuses for his conduct. However, his remorse is evident and should be given considerable weight.
- Biros has grown spiritually since he has been in prison, as reflected in letters from clergy provided in his application.
- Biros has been a model inmate. Clemency would serve to encourage good prison behavior.
- Biros has a negligible criminal history. While the crime was heinous, there was only one victim in this case.
- Life without Parole was not a possible sentence when Biros was tried. Given his background (minimal criminal record, college educated, loving and supportive family, one victim), it is reasonably likely that the jury would have recommended Life without Parole if it had been available as a sentencing option, or if tried today, Biros would receive Life without Parole.
- The jury was not allowed to consider mercy. That can only be considered through the clemency process. Clemency has a long tradition and is incorporated into our criminal justice system. Biros is someone for whom mercy is possible and should be granted.
- Biros has support from family and close friends.
- Biros was never properly charged as there was a faulty indictment. This is a fundamental breakdown of the process. The jury did not properly consider all the required elements of the offense. If executed, Biros would be the first person executed for a non-capital offense. That fact should bother all involved and should not be tolerated.
- The lethal injection process in Ohio is flawed. In the absence of a commutation to a sentence of Life without Parole, a reprieve should be recommended until the lethal injection process has been resolved through the court system. Reprieves have been granted to Death Row inmates Lawrence Reynolds and Darrell Durr who are also involved in the lethal injection litigation. Biros is a timely litigant and should be given the same opportunity as Reynolds and Durr to pursue his claim in the courts.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Trumbull County Prosecutor Dennis Watkins presented the following arguments in opposition to clemency:

- By continuing to claim that the crime was essentially an automobile accident, Biros is not taking responsibility for his offense. His description of the offense to the Board is a self serving story, which has changed several times over the years. Biros is devoid of conscience.
- According to his own trial psychologist, Biros possesses a schizoid personality disorder. This disorder has been associated by academic research with many brutal murders.

- This crime is particularly heinous, with 91 pre-mortem wounds. Including some with almost surgeon-like precision. This torture of a stranger is a more horrific crime than that of others who have been executed. Mr. Watkins argued that "there can be no worse scenario for killing one human." The Ohio Supreme Court opined that the nature and circumstances of the offense demonstrates that Biros is incapable of meaningful rehabilitation.
- For public confidence in our system of laws, justice is required in this case. Those who do not support the death penalty should elect legislators and executives who are willing to change the law. Currently, the death penalty is supported in the state of Ohio. The Parole Board should not intervene in any litigation over the lethal injection protocol. The Parole Board should solely determine if anything significant has been submitted to change its previous unfavorable recommendation to the Governor.
- If this case were tried today, it would most certainly result in a recommendation of death. It is one of the 3-4 worst cases ever prosecuted during Mr. Watkins' career as Trumbull county prosecutor.
- While it is true that Biros has apologized for causing the victim's death, the Supreme Court gave little weight to his apology. In addition, Biros's sincerity is doubtful given his untruthfulness regarding the details of the offense.
- While Biros and his family may have suffered due to his incarceration and near execution in March of 2007, the suffering of the victim and her family is far greater.

VICTIM'S REPRESENTATIVES:

The pre-recorded statement of Tami Engstrom's mother, Mary Jane Heiss was presented. She stated that she is in poor health, but is saving her strength to attend Biros's execution. Since her daughter's death, she has endured nearly 20 years of constant pain and nightmares. She believes that the nightmares will end with the execution. It makes her sick that Biros tortured and brutally murdered her daughter.

Pat Engstrom, the victim's mother in law, said that the victim's son grew up without a mother, and his father died when he was 16. She still feels that Biros is not accepting responsibility by claiming that this was an auto accident. She points out that there is nothing cruel, or unusual about a needle stick. So she wonders why there is such a long court appeal process.

Debi Heiss, the victim's sister, spoke about how her sister's loss has been particularly hard on her as she assumes duties to care for her ailing mother. She said that both her mother and her father fell ill after the murder. They had to have a closed casket funeral, and were unable to properly say goodbye to Tami. Holidays are not the same. She went on to say that Biros is a coward, filing all of these lawsuits and not taking responsibility for his crimes.

Tom Heiss, the victim's brother, said that Biros deserves to die. He said that he had a chance encounter with a juror from the original trial, and that juror started to cry.

CONCLUSION:

Following careful examination of all available factors in this case, the Parole Board has determined that a change in its previous unfavorable recommendation is not warranted. The Parole Board maintains the conclusions indicated in its previous report and further concludes that a reprieve is not appropriate. The courts are the most appropriate place to decide whether additional time is warranted before execution to further litigate the issues surrounding lethal injection.

RECOMMENDATION:

The Ohio Parole Board, with seven (7) members participating, by a vote of seven (7) to zero (0), recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that clemency be **denied** in the case of Kenneth Biros, A249-514.

Ohio Parole Board Members
Voting **FAVORABLE**

Ohio Parole Board Members
Voting **UNFAVORABLE**

Cynthia Mausser, Chairperson

Robert Maszczynski

Kathleen Kovach

Ellen Venters

R.F. Rauschenberg

Trayce Thalheimer

R.B. Oberdier, Acting Board Member

DATE TYPED: January 8, 2007
DATE PUBLISHED: January 10, 2007

IN RE: KENNETH BIROS, OSP #A249-514

STATE OF OHIO
ADULT PAROLE AUTHORITY
COLUMBUS, OHIO

Date of Meeting: January 4, 2007

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: KENNETH BIROS, OSP #A249-514

SUBJECT:	Death Sentence Clemency
CRIME, CONVICTION:	Aggravated Murder with Specifications, Felonious Sexual Penetration, Aggravated Robbery, Attempted Rape
DATE, PLACE OF CRIME:	February 8, 1991 Trumbull County, Ohio
COUNTY:	Trumbull
CASE NUMBER:	91 CR 87
VICTIM:	Tami L. Engstrom (Age 22)
INDICTMENT:	2/14/1991: Count 1: Aggravated Murder with 2 Specifications; Specification 1: Committing or fleeing immediately after committing Aggravated Robbery; Specification 2: Attempting to commit or fleeing immediately after attempting to commit Rape; Count 2: Felonious Sexual Penetration; Count 3: Abuse of a Corpse; Count 4: Aggravated Robbery; Count 5: Attempted Rape.
VERDICT:	10/18/1991: Found guilty by Jury of all charges and specifications alleged in the indictment, with the exception of Count 3, Abuse of a Corpse, which was dismissed prior to trial.
SENTENCE:	10/29/1991: Count 1: DEATH; Count 2: 10-25 years; Count 4: 10-25 years; Count 5: 8-15 years, all terms to be served consecutively.
ADMITTED TO INSTITUTION:	October 30, 1991
TIME SERVED:	192 months, (16 years)
JAIL TIME CREDIT:	262 days
AGE AT ADMISSION:	33 years old

Kenneth Biros, OSP #A249-514
Death Sentence Clemency

CURRENT AGE:	48 years old
DATE OF BIRTH:	June 24, 1958
PRESIDING JUDGE:	Honorable Mitchell F. Shaker
PROSECUTING ATTORNEY:	Dennis Watkins

FOREWORD:

Clemency in the case of Kenneth Biros #A249-514 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. A clemency hearing was held on January 4, 2007. Herein are the Parole Board's report and recommendation.

On December 28, 2006, Parole Board Member R.F. Rauschenberg interviewed Mr. Biros at the Ohio State Penitentiary in the presence of his attorney John Parker and Parole Board Parole Officer Panzy Eldridge. Those viewing via teleconferencing at the Department of Rehabilitation and Correction's Central Office in Columbus were Assistant Attorney General Dan Ranke, Trumbull County Prosecutor Dennis Watkins, Investigator Gary Hetzel and Judy Coakley, Executive Assistant to the Parole Board Chair.

A written application requesting clemency was submitted on Mr. Biros' behalf by attorneys Timothy F. Sweeney and John Parker. A response in opposition to clemency was submitted by the Trumbull County Prosecutor along with the Attorney General's Capital Crimes Section.

Seven Parole Board Members participated in the hearing conducted on January 4, 2007. Mr. Biros was represented by Timothy F. Sweeney and John Parker who presented arguments in support of clemency. The inmate's family members, JoAnn Biros, mother; Karen Biros, sister; Cheri Biros, sister; and Curry Biros, brother were present and also submitted testimony in his behalf. Arguments in opposition to clemency were presented by Dennis Watkins, Trumbull County Prosecutor. Testimony in opposition was also provided by Debi Heiss, sister of the victim, Patricia Engstrom, mother-in-law of the victim, and Sharon King, friend of the victim.

After careful review and deliberation concerning the documentary evidence and testimony provided, the Parole Board, with seven (7) members participating, voted and reached a unanimous decision to provide an unfavorable recommendation to the Honorable Ted Strickland, Governor of the State of Ohio.

DETAILS OF THE OFFENSE:

The following account of the instant offense was obtained from the Ohio Supreme Court opinion [78 Ohio St.3rd 426, 678 N.E.2nd 891] dated May 14, 1997:

On Thursday, February 7, 1991, at approximately 5:30 p.m., Tami Engstrom dropped off her one-year-old son, Casey, at her friend Sharon King's house before reporting to work at the Clover Bar in Hubbard, Ohio. Tami's mother, Mary Jane Heiss, worked with Tami at the Clover Bar. Tami arrived at work at 6:30 p.m. Later, at approximately 9:30 p.m., Tami had to leave work due to illness. Heiss relieved Tami so that she could go home early. However, instead of going directly home, Tami drove to the Nickelodeon Lounge in Masury, Ohio, to visit her uncle, Daniel Hivner, who was a regular patron at that tavern. Tami arrived at the Nickelodeon at approximately 10:00 p.m. She was wearing a black leather coat, a sweater, black pants, black shoes, black stockings or socks, and a $1,200 diamond cluster ring she had purchased from King a few weeks earlier. She was also carrying a small gray purse which, according to one witness, contained a significant amount of money.

At the Nickelodeon, Tami had several drinks and spoke with Hivner and others. Kenneth Biros, the applicant, arrived at the Nickelodeon at approximately 11:00 p.m., having earlier participated in a drinking event sponsored by the Nickelodeon and other bars. The applicant knew Hivner but was a stranger to Tami. By midnight, Tami had passed out, due to either sickness or intoxication, while seated at a table. She later fell off her chair and onto the floor. Hivner and the applicant helped Tami back into her seat. At approximately 1:00 a.m., when the bar was closing, the applicant and Hivner assisted Tami outside to the parking lot. Tami insisted on driving herself home, but Hivner took Tami's car keys upon determining that she was too intoxicated to drive. According to Hivner, the applicant then volunteered to take Tami for coffee to help sober her up. Hivner handed Tami her purse and noticed that she was wearing her leather coat. At approximately 1:15 a.m., the applicant and Tami left the Nickelodeon in applicant's car. Hivner remained at the bar after closing and waited for the applicant to return with Tami. However, the applicant never returned Tami to the Nickelodeon.

Meanwhile, on February 7, at approximately 11:30 p.m., Andy Engstrom, Tami's husband, went to the Clover Bar to deliver a gift he had bought for Tami. However, Heiss informed Andy that Tami had left work and had gone home sick. Andy drove home and discovered that Tami was not there. Andy then asked King to continue watching Casey while he went out to search for Tami. At approximately 1:00 a.m., Andy spoke with Tami's sister, Debra Barr, who suggested that Tami might have gone to the Nickelodeon. At 1:10 a.m., Andy called the Nickelodeon and was told that Tami and Hivner had already left the bar. Andy then went to sleep, assuming that Tami would soon return home. When he awoke later that morning, he discovered that Tami was still missing.

On Friday, February 8, 1991, at or about noon, Andy and King went to the Nickelodeon to pick up Tami's car, which had been left there overnight. At some point, Andy learned that the applicant had been the last person seen with Tami. Therefore, Andy drove to

applicant's home and confronted the applicant concerning Tami's whereabouts. Applicant told Andy that after he and Tami had left the Nickelodeon to get coffee, he tapped her on the shoulder and she "freaked out, * * * got out of the car and started running through these people's yards on Davis Street" in Sharon, Pennsylvania. The location where the applicant claimed that Tami had jumped from the vehicle was approximately three-tenths of a mile from the Nickelodeon. Andy told the applicant that he had already contacted the police in Sharon, Pennsylvania, and that he intended to file a missing person's report with the Brookfield Township (Ohio) Police Department. Andy told the applicant that " '[i]f she [Tami] don't turn up right fast, they [the police] are going to come looking for you, and it's going to be your ass.' "

Throughout the day on Friday, February 8, the applicant told a number of witnesses similar stories concerning Tami's disappearance. Specifically, he told Tami's mother, Tami's brother, Tami's uncles, her friends, acquaintances, and others, that after he had left the Nickelodeon with Tami, she woke up, became frightened, jumped from his vehicle and ran between houses near Carpenter's Towing or Carpenter's Garage on Davis Street in Sharon, Pennsylvania. The applicant also indicated that he had initially chased after Tami but that he had been unable to catch her. The applicant told a number of these witnesses that he had abandoned the chase to avoid being caught while driving under the influence of alcohol. Several of the witnesses noticed fresh cuts or scratches on the applicant's hands and a fresh wound over his right eye that had not been present the night before. The applicant explained that he had cut his hands because he had been locked out of his house and had to break a window, and that he had obtained the cut above his eye while chopping wood. Tami's brother threatened to kill the applicant if Tami had been hurt in any way. One of Tami's uncles told the applicant that if Tami had been hurt, he would "rip [applicant's] heart out." Tami's mother told the applicant, "if you put one scratch on my daughter, I will * * * kill you." The applicant tried to comfort Heiss by telling her, "Don't worry. Your daughter is going to be just fine. You wait and see." On Friday evening, the applicant helped Tami's relatives search the area in Sharon, Pennsylvania, where he claimed to have last seen Tami.

The applicant lived on King Graves Road in Brookfield Township, Ohio, with his mother, Jo Anne Biros, and his brother, Kerry Biros. On Friday morning, February 8, the applicant's mother found a gold ring on the bathroom floor. The next day, she asked applicant if he knew anything about the ring. The applicant claimed to know nothing about it. The applicant told his mother that the ring appeared to be made of "cheap gold." When the applicant's mother responded that the ring was not cheap, applicant suggested that perhaps it had belonged to the girl who jumped out of his car early Friday morning. The applicant then took the ring and said that he would return it to the Nickelodeon. However, the applicant never returned Tami's ring to the Nickelodeon. Rather, according to the applicant, he hid the ring in the ceiling of his house.

On Friday night, Kerry Biros was at home watching television while the applicant was outside in a pasture behind the house. Kerry went outside and called to the applicant to see what he was doing. The applicant responded that he was "watching stars." Kerry then returned to the house and retired for the evening.

On Saturday, February 9, Tami's family and friends spent hours searching for Tami in Sharon, Pennsylvania. They also searched a wooded area along the railroad tracks near applicant's home on King Graves Road. However, the search party was unable to uncover any clues concerning Tami's disappearance.

On Saturday afternoon, police called the applicant's home and left a message requesting that he come to the police station for questioning. After receiving the message, the applicant drove to the police station to discuss Tami's disappearance with Brookfield Township and Sharon, Pennsylvania police officers. Police informed the applicant that he was not under arrest and that he was free to leave at any time. During questioning, the applicant reiterated the same basic story that he had previously told Tami's friends and relatives. Specifically, the applicant told police that he had left the Nickelodeon with Tami in the early morning hours of February 8 to get coffee or food at some location in Sharon, Pennsylvania. The applicant claimed that Tami had passed out in his vehicle after they left the Nickelodeon. The applicant told police that he stopped at an automated teller machine to withdraw some money and, at that point, Tami woke up and insisted that the applicant drive her back to the Nickelodeon. The applicant told police that as he was driving on Davis Street in Sharon, Pennsylvania, Tami jumped from the vehicle and ran away. When asked whether Tami's purse might have been left in his vehicle, the applicant responded that he had thoroughly cleaned the vehicle and had found no purse.

At some point during the interview, Captain John Klaric of the Sharon Police Department began questioning the applicant's version of the story. Klaric suggested to the applicant that perhaps he (applicant) had made some sexual advance toward Tami which, in turn, may have caused her to jump from the vehicle. The applicant denied making any sexual advances. Klaric also suggested that perhaps the applicant had made some sexual advance and that Tami had jumped from the car and struck her head. The applicant denied this as well. Upon further questioning, Klaric suggested that maybe an accident had occurred in which Tami had fallen out of the car and struck her head. At that point, the applicant responded "yes," and admitted that he had done something "very bad." Klaric offered to speak with the applicant alone. The applicant agreed, and indicated that he wanted to speak with Klaric outside the presence of other police officers. According to Klaric, after the other officers had left the room, the applicant stated, "It's like you said, we were in the car together. We were out along the railroad tracks. I touched her on the hand. Then I went further. I either touched or felt her leg. She pushed my hand away. The car wasn't quite stopped. She opened the door and fell and struck her head on the tracks." The applicant told Klaric that Tami was dead and that the incident had occurred along the railroad tracks near King Graves Road in Brookfield Township. At that time, police informed the applicant of his *Miranda* rights.

After signing a written waiver of his *Miranda* rights, the applicant repeated his story in the presence of Detective Rocky Fonce of the Brookfield Township Police Department. According to Fonce, the applicant admitted that he had reached out and grabbed Tami while parked along the railroad tracks near his house on King Graves Road. The applicant told Fonce that Tami had then jumped out of the vehicle, fell, struck her head

on the metal part of the railroad track, and died. The applicant told police that Tami's body was in Pennsylvania. When police asked the applicant for the precise location of the body, the applicant requested to speak with an attorney. After the applicant consulted with counsel, he agreed to show police the location of Tami's body.

In the early morning hours of Sunday, February 10, 1991, Pennsylvania and Ohio authorities discovered several of Tami's severed body parts in a desolate wooded area of Butler County, Pennsylvania. Police found other portions of Tami's body in a desolate wooded area of Venango County, Pennsylvania, approximately thirty miles north of the Butler site. Tami's head and right breast had been severed from her torso. Her right leg had been amputated just above the knee. The body was completely naked except for what appeared to be remnants of black leg stockings that had been purposely rolled down to the victim's feet or ankles. The torso had been cut open and the abdominal cavity was partially eviscerated. The anus, rectum, and all but a small portion of her sexual organs had been removed from the body and were never recovered by police.

Forensic technicians, police and homicide investigators searched the area of the railroad tracks near King Graves Road where the applicant had indicated that the incident with Tami occurred. There, investigators discovered a large area of bloodstained gravel near the railroad tracks. Investigators also found blood spatters on the side of one of the steel tracks. A number of other bloodstains were found in the same general area. Bloodstains and swabbings of blood collected at the scene were later tested and were found to be consistent with Tami's blood. Additionally, investigators found what appeared to be part of the victim's intestines in a swampy area near the railroad tracks. DNA testing revealed that the intestines were, in fact, part of Tami's remains. Approximately one month later, police recovered Tami's black leather coat, which was found partially buried a short distance from the tracks. Two cuts or slash marks were found on or near the collar of the coat. Tami's house keys and a tube of lipstick were found in a shallow hole in close proximity to the coat. Police also found one of Tami's black leather shoes in the area of the railroad tracks. Dale Laux, a forensic scientist with the Ohio Bureau of Criminal Identification and Investigation, found a single pubic hair inside Tami's shoe. Laux determined that the microscopic characteristics of that hair were consistent with the characteristics of known samples of Tami's pubic hair.

Police also recovered a number of items during searches of applicant's residence. Investigators found a bloodstained pocket knife hidden in the applicant's basement. A much larger knife was recovered from the applicant's bathroom. Investigators also recovered a bloodstained coat from the applicant's bedroom, which was later identified as the coat the applicant had worn to the Nickelodeon. Forensic experts found numerous bloodstains on the front of the coat, and blood spatters inside the left sleeve. Bloodstains from the applicant's pocket knife and coat were later tested and were found to be consistent with the blood of the victim. Additionally, authorities removed a pair of size eleven tennis shoes from a bedroom in the applicant's home. Rodney M. Cole, a forensic scientist in the trace evidence section of the Ohio Bureau of Criminal Identification and Investigation, found a single hair embedded in a seam near the tread of one shoe. Cole compared the hair to known samples of hair from the victim's head. According to Cole,

the hair from the tennis shoe was microscopically consistent with the known samples of hair from the victim's head.

The automobile the applicant had driven to the Brookfield Township Police Department was also searched. Forensic technicians found numerous bloodstains consistent with the blood of the victim. Several other bloodstains found in the vehicle were determined to be consistent with the applicant's blood. A small piece of human tissue, believed to be Tami's liver tissue, was found inside the trunk.

Dr. William A. Cox, the Summit County Coroner, performed the autopsy of Tami's body. Cox testified that he was board certified in anatomic pathology, clinical pathology, forensic pathology, and neuropathology. Cox determined that the victim had suffered ninety-one premortem injuries which were indicative of a "severe beating" and "an attempt at sexual mutilation." He also found five stab wounds that had been inflicted immediately after the victim's death. Among the premortem wounds were at least five blunt force injuries on the top of the victim's head which, according to Cox, had been caused by an object such as fists or the handle of a knife. Other premortem wounds were found on the victim's breasts and in the area of her groin. Two premortem knife wounds were discovered near the nipple of the right breast. There were fine linear scratches and a premortem knife laceration or incised wound along the victim's face and, according to Cox, "[t]he way that is done is the blade of the knife runs down across the mouth [and] finally gets into the skin, into the soft tissues, then breaks the skin as it continues in the downward direction." Cox also found numerous wounds on the victim's hands which appeared to be "defensive" injuries.

In addition to the ninety-one premortem wounds and the five postmortem stab wounds, Tami's head, right breast and right lower extremity had been severed from her body at some point after death. Her anus, rectum, urinary bladder, and virtually all of her sexual organs had been cut out and were never found. The gallbladder, the right lobe of the liver, and portions of the bowels had been extracted from her body. According to Cox, a pocket knife like the one removed from the applicant's basement could have been used to inflict some of the wounds found on Tami's body. However, Cox found that a much larger or heavier knife had been used to amputate Tami's head and right lower extremity. Cox testified that the victim's right femur had been severed by a sharp knife which had left a "fine linear cut" in the bone. Cox specifically determined that the evidence indicated that the femur had not been fractured by any blunt force trauma or as the result of an automobile accident. Cox testified that the knife recovered from applicant's bathroom was consistent with the type of knife that had been used to accomplish the amputations. Cox found that the dismemberment and eviscerations all occurred within minutes after the killer had inflicted the five postmortem stab wounds. He found no evidence that the victim had been struck by an automobile as the applicant would later claim.

With respect to Tami's cause of death, Cox concluded that the victim had died of asphyxia due to strangulation. According to Cox, the victim had been strangled to death over a period of four to five minutes. The mucosal lining of the esophagus was torn,

indicating that there was a degree of retching and vomiting during this period. Cox testified that, in his opinion, the victim had not been asphyxiated by a hand placed over the nose and mouth. Examination of the victim's oral cavity revealed no signs of injury to the tongue or the delicate tissue inside the mouth. Absent such injuries, Cox found no evidence to support the theory that the victim had been forcibly suffocated as opposed to being strangled to death. Further, the hyoid bone had been fractured and there was injury to adjacent tissue, which supported the finding that the victim had been strangled. According to Cox, Tami was severely beaten, strangled to death, and then stabbed five times. The five postmortem stab wounds had occurred within minutes after death. Later, but still within minutes, the decedent's body was dismembered.

Dr. Theodore W. Soboslay, the Trumbull County Coroner, was present during Tami's autopsy. Soboslay concurred with Cox's findings and officially ruled that the decedent had expired "due to asphyxiation, secondary to strangulation."

APPLICANT'S STATEMENT:

Parole Board Member Fritz Rauschenberg interviewed Mr. Biros on December 28, 2006, at the Ohio State Penitentiary. During his interview, Mr. Biros reiterated the claim he made at his trial that the offense was an accident. He also claimed that he is innocent of attempted rape, and had no sexual contact with Ms. Engstrom.

Regarding the specific details of the offense, Mr. Biros relayed the following:

He admitted to taking Ms. Engstrom in his car, where she had passed out from intoxication. He stated that when she awoke, she asked him to take her home, yet she (in the disorientation of her drunkenness) would not tell him where she lived. He decided to take her home to his house to let her recover from her intoxication. As he was nearing his house (he had traveled down a back road near some railroad tracks to avoid some difficult curves, due to his own intoxication), Ms. Engstrom panicked, and jumped out of the car. He followed her in the car, and hit her, knocking her over the car and to the ground, breaking her leg. She was still alive, and at this point she was fighting him. In an effort to calm her down, he drew his penknife and cut her, at which time she cut him by forcing the knife closed on his hand. He also put his hand over her mouth, resulting in her death.

At this point, he panicked, and attempted to bury the body in some holes where stumps had been removed about 100 yards from his house. When her body would not fit in the holes, he cut her head off, and cut her leg at the point where it had been broken.

He stated that he was in a rage, as if separated from his body, as he cut her up with his pocket knife. He does not specifically remember gutting her body (he had a rudimentary knowledge of anatomy from deer hunting with his father) and removing certain organs. At the time, he said that he doesn't remember seeing her as a person at all, rather as an object.

On the next day, he says that Tami Engstrom's husband confronted him, and he lied saying that she had run away. He felt that her family had suspected foul play because he received phone calls and threats.

After receiving the threats, he decided to move the body parts further away so that he and his family would not be implicated in this crime. He dumped the body parts in locations in Western Pennsylvania. Other parts were found at the murder site, and in the trunk of his car. He claims that he was really hoping that parts would be found so that it could all be over.

He did not go to the police because his sister (who was a police dispatcher) had warned him not to trust the Brookfield Township Police. He later spoke with the police in Sharon, PA, and eventually confessed to his involvement in her death, and took investigators to the sites where the body was located.

During the process, he claims that he did remove her ring while dragging her body in an attempt to conceal it. He also found her purse in his car, and burned it in his wood stove.

He contends that there was no sexual assault. Ms. Engstrom was his friend's niece. It would be impossible for him to try any sexual advances on her.

In support of his request for clemency, he stated the following:

- He takes responsibility for the death of Tami Engstrom and requests Life without Parole. He maintains that her death was an accident, followed by his panicking, which resulted in him mutilating Tami Engstrom's body.

- He has a good work ethic. He has held a job since age 13, when his father required him to work to support the family. He went to Alaska to find work. He persevered in completing college, taking a total of 13 years to complete his degree at Youngstown State University. He likes to learn, and helps to teach the other inmates at OSP.

- He lacks a significant criminal history. His only offenses are a Drunken Driving offense that was pleaded down to a Reckless Operation, and a theft offense that was dismissed.

- He experienced a difficult childhood, most notably his love/hate relationship with his abusive father. His father was an alcoholic, who would tell Mr. Biros that he was "useless". His father even held the fact that he was left handed against him. His father isolated him and his siblings, even stopping them from going to church.

- After his father died of Cirrhosis of the Liver, an anger developed within him. He was able to suppress it generally, but it just came out of him during this crime.

- He feels that he owes society a debt, and he tries to pay that debt as best he can while on death row through community service, and trying to educate his fellow inmates. Other inmates respect him, and he tries to help them out. He says that he has always been someone willing to help out in situations, sometimes to his fault. In this case, he says he started out trying to help Ms. Engstrom.

- Over the years, his anger has left him, and in 2000 he came to understand his anger and it went away.

- He has become a much more religious person, attending Catholic mass, and working with an Eastern Orthodox priest.

In closing, Mr. Biros reiterated his request that the governor commute his sentence from death to life without parole. He feels that he can do some good while in prison. He apologizes to the family, and asks that the Parole Board and the Governor look at his life as a whole, and not judge him entirely on this one incident.

PRIOR RECORD:

Juvenile: The applicant has no known juvenile arrest record.

Adult: The applicant has the following known adult arrest record:

Date	Offense	Location	Disposition
2/9/1991 (Age 32)	Aggravated Murder with 2 specifications, Felonious Sexual Penetration, Aggravated Robbery, Attempted Rape (91CR87)	Trumbull County, Ohio	INSTANT OFFENSE

Dismissed, Nolled and/or Unknown Dispositions: On 4/27/1977, the applicant was arrested by the Brookfield, Ohio Police Department and charged with Larceny in Case #77CRB335. On 10/17/1977, this case was dismissed.

The applicant reports that he was in an automobile accident on October 3, 1986, for which he was charged with DUI. He reports that he plead guilty to Reckless Operation.

INSTITUTIONAL ADJUSTMENT:

On May 6, 1992, Mr. Biros was found to be in possession of a cardboard tube that could be used as a blow gun, along with 3 darts fashioned out of toilet paper and bent staples. He spent 10 days in Disciplinary Control.

On May 28, 1992, Mr. Biros received a conduct report for having a knife made out of a piece of an antenna. He was found not guilty of a violation.

On October 30, 1995 he received a conduct report for talking too long on the phone, after being warned by staff. Following a shakedown after this incident, he was found with 12 packs of cigarettes and a game ticket. His attitude was described as "high and mighty – poor". The contraband was confiscated, and he received a suspended Disciplinary Control Sentence.

While on Death Row, he has completed the Octa-Gone program, where he became a literacy tutor in December, 1996. He reports having tutored other inmates, and helped them whenever he can. He also reports performing community service whenever he is able.

The applicant has held a number of jobs within the prison system, with the longest time being a tutor from April of 1999 to July of 2003. Currently, he is a food cart attendant for Death Row.

ARGUMENT ADVANCED IN SUPPORT OF CLEMENCY:

Attorneys John Parker and Timothy Sweeney appeared at the clemency hearing on Mr. Biros's behalf and advanced arguments in support of a commutation to Life Without Parole, as outlined in the written application:

- Mr. Biros committed a terrible crime, but this was his only serious criminal activity in an otherwise normal and hard-working life. Mr. Biros was raised in an intact family. He graduated from high school and entered college. Although it took many years, Mr. Biros was able to earn a college degree. He always maintained employment and helped support his family. His prior criminal history consists of a dismissed Theft charge and a driving while intoxicated offense that was actually a failed suicide attempt. He was not a career criminal.
- Mr. Biros has been a model prisoner, a fact which weighs heavily in favor of mercy. Mr. Biros received a few incident reports early on during his incarceration. However, he has not received an incident report since 1995, and has remained on honor status for many years. He devotes his time to performing community service projects and tutoring other inmates.
- Mr. Biros is blessed to have the love and affection of a good and decent family. His mother, two sisters and brother have maintained contact with him throughout his incarceration and all wish to see his sentence commuted to Life Without Parole. If executed, Mr. Biros's family members would also become victims, and there is no reason to make victims of still more innocent people when punishment less than death is available and sufficient.
- Commuting Mr. Biros's sentence to Life Without Parole would not minimize the loss suffered by the victim's family. Life Without Parole is

an extremely harsh sentence. It only differs from a death sentence in that it allows for the natural death of the inmate as opposed to the scheduled death. In either case, the inmate is permanently removed from society. The only reasons for maintaining Mr. Biros's death sentence are to exact retribution and blind vengeance which are not ideals towards which we should strive.

- Life without parole was not available as a sentencing option at the time of Mr. Biros's trial. If that sentencing option was available, it is likely that Mr. Biros would have received it in lieu of a death sentence. Mr. Biros is not the worst of the worst offender. His background, education, employment history and lack of a significant prior criminal record are not indicative of a career criminal. It is quite possible that the jury would have recommended Life Without Parole given those factors. Given the heinous nature of the offense, it is understandable why the jury did not want to recommend a sentence that would allow for the possibility of his release. However, had they had the option of imprisonment for the remainder of his natural life, it is quite possible that they would not have recommended a death sentence.
- Mr. Biros was never properly charged with or found guilty of a capital crime as defined by the Ohio legislature. Mr. Biros's indictment was absent of any of the statutory aggravating factors that allow for the imposition of a death sentence. Therefore, his Aggravated Murder conviction is indistinguishable from other Aggravated Murder convictions that are not subject to a potential death sentence.
- There are serious and legitimate questions about the State's ability to carry out an execution in a manner that avoids the unconstitutional infliction of cruel and unusual punishment. Even if a commutation to Life Without Parole is not deemed appropriate in Mr. Biros's case, a Reprieve would be appropriate until the litigation, to which Mr. Biros has been permitted to intervene, surrounding Ohio's lethal injection protocol is settled. Recent moratoriums on executions in the states of Maryland and Florida, as well as the recent recommendation of a blue ribbon commission to abolish the death penalty in New Jersey are indicative of other states concerns of their death penalty processes.

The following family members of Mr. Biros appeared at the hearing and spoke on his behalf: JoAnn Biros, mother; Karen Biros sister; Cheri Biros, sister; and Curry Biros, brother. All members expressed love for Mr. Biros. The key issues discussed included the abusive nature of the alcoholic father and how it impacted their family. They also described the work ethic of the applicant, as well as their appreciation for the helpfulness that he offered to the family unit. Cheri Biros apologized to the victim's family for their pain and suffering. They asked for consideration so that Kenneth Biros' life would be spared and his sentence be commuted to life.

STATE'S POSITION REGARDING CLEMENCY:

Dennis Watkins, Trumbull County Prosecutor provided the following arguments in opposition to clemency:

- This offense represents the worst of the worst. The brutality and heinous nature of this crime is the type of offense for which the death penalty is appropriate. The evidence established that the victim suffered extensively prior to her death. Although much of the dismembering of the victim occurred after her death, the evidence established that she endured 91 wounds prior to her death. Less gruesome murders have resulted in executions. In addition, offenders with similar backgrounds (e.g. David Brewer) have been executed.
- Mr. Biros's conviction and death sentence have survived 16 years of judicial review. This judicial scrutiny has determined that Mr. Biros's trial was fair and the verdict just. Regarding the issue of the indictment raised by the applicant, Mr. Watkins points out that the U.S. Supreme Court has upheld the state's position on a similar case, and the federal courts have applied that holding to Biros's case. Therefore, the issue is settled, and is not favorable to Biros's position. In addition, at the time of trial, defense counsel never raised the issue, and all involved parties were of the understanding that the case was proceeding as a trial on a capital offense.
- Mr. Biros has never taken full responsibility for his crimes, as he maintains his position that her death was an accident. Mr. Biros has denied robbing, attempting to rape, torturing, and murdering Tami Engstrom in a manner that caused enormous pain and suffering. Mr. Biros's version of the offense, that the victim's death was an accident, was not supported by the evidence as produced at trial. Mr. Biros's version of the offense is glib and without remorse.
- There were many instances where Mr. Biros lied about his actions. Mr. Biros relayed at least two different versions of what happened to the victim on the night of the offense, prior to admitting his involvement in her death. In addition, he stated that he took the stolen ring off of Tami Engstrom's finger as he was moving her body from near his house. His mother found the ring in their bathroom, however, while the body was still buried nearby, implicating him in the underlying robbery offense.
- The evidence of Mr. Biros' guilt and the barbarity of his crimes were illustrated by a series of photographs illustrating the location of the crimes, and the injuries that Tami Engstrom suffered. There were 91 separate, pre-mortem wounds, including marks of torture, and meticulous incisions. One of Ms. Engstrom's breasts was completely removed, as well as her anus, rectum and sexual organs. She was decapitated and dismembered and her body parts were dispersed in two separate locations in Pennsylvania.

VICTIM'S REPRESENTATIVES:

Testimony in opposition was provided by Debi Heiss, sister of the victim, Patricia Engstrom, mother-in-law of the victim, and Sharon King, friend of the victim. They related that the family of Tami Engstrom has suffered greatly because of Kenneth Biros. They report what a great family member she was, a caring person, who helped out whenever she could. They point to other relatives who have died before their time in part because of grief over the loss of Tami. Her father-in-law died of a heart attack at 59. Tami's husband, Andy, died of a heart attack at age 45 in 2005 leaving her son, Casey, an orphan.
They further stated that Tami Engstrom never had an opportunity for clemency, and that whatever pain and suffering the lethal injection inflicts on Mr. Biros would not be as great as the suffering that Tami felt. They feel that Mr. Biros is "an evil sociopath who should no longer walk the face of the earth", and that if he is not executed, there is no justice.

COMMUNITY ATTITUDE:

In December, 1991, Brookfield Police Chief Thomas Jones wrote that the death penalty was imposed, and should be carried through.

Before the hearing, Ellen Taylor, LPC, LSW, RA, Director, Rape Information and Counseling Program at Family Service Agency in Youngstown writes "to encourage the Parole Board and Governor to no longer delay the sentenced execution of Kenneth Biros."

V. Rev. Father Daniel Rohan of St. Mark Orthodox Church in Youngstown writes on Kenneth Biros' behalf.

CONCLUSION:

Following careful examination of all available factors in the case of Kenneth Biros, including a hearing conducted on January 4, 2007, the Parole Board determined that the reasons set forth in the application for clemency are insufficient to mitigate against the many aggravating circumstances surrounding the Aggravated Murder conviction of Kenneth Biros in regards to the death of Tammy Engstrom. Mr. Biros's conviction and Death sentence have been upheld over 16 years of judicial review. There is no manifest injustice or lack of fundamental fairness in regard to his trial and subsequent conviction and sentence. The brutality and violence exhibited in the offense outweigh the mitigating factors surrounding Mr. Biros's life prior to the offense, and his adjustment to incarceration. The Parole Board determined that a recommendation to commute Mr. Biros's Death sentence is unwarranted.

Regarding the request for a Reprieve, the Board also finds such a recommendation as unwarranted, given the legal mechanisms available to address the issue of the lethal injection litigation.

RECOMMENDATION:

On January 4, 2007, the Ohio Parole Board, with seven (7) members participating, by a vote of seven (7) to zero (0), recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that clemency in the form of a commutation or reprieve be denied to Kenneth Biros, #A249-514.

Ohio Parole Board Members
Voting **FAVORABLE**

Ohio Parole Board Members
Voting **UNFAVORABLE**

Cynthia Mausser, Chairperson

Sandra Mack, Ph.D.

Peter Davis

Robert Maszczynski

Kathleen Kovach

R.F. Rauschenberg

Trayce Thalheimer, Acting