

DATE TYPED: May 14, 2010
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IN RE: RICHARD NIELDS, OSP #A352-374

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

Date of Meeting: May 10, 2010

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

IN RE: Richard Niels, OSP #A352-374

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with specifications, Aggravated Robbery.

DATE, PLACE OF CRIME: March 27, 1997 in Springfield Township, Ohio

COUNTY: Hamilton

CASE NUMBER: B9703305

VICTIM: Patricia Newsome

INDICTMENT: 5/2/1997: Counts 1-2: Aggravated Murder with specification, Count 3: Aggravated Robbery.

TRIAL: Found guilty by jury

DATE OF SENTENCE: 12/22/1997

SENTENCE: Aggravated Murder with specifications: DEATH
Aggravated Robbery: 10 years

* Counts 1- 2 merged for purposes of sentencing.

ADMITTED TO INSTITUTION: December 23, 1997

JAIL TIME CREDIT: 1 day

TIME SERVED: 136 months

AGE AT ADMISSION: 47 years old

CURRENT AGE: 59 years old

DATE OF BIRTH: May 19, 1950

JUDGE: Honorable Thomas C. Nurre

PROSECUTING ATTORNEY: Joseph T. Deters

FOREWORD:

Clemency in the case of Richard Nields, A352-374 was initiated by the Ohio Parole Board, pursuant to Section 2967.03 and 2967.07 of the Ohio Revised Code and Parole Board Policy #105-PBD-01.

On April 29, 2010, Mr. Nields was interviewed via video-conference by the Parole Board at the Ohio State Penitentiary. A Clemency Hearing was then held on May 10, 2010 with seven (7) members of the Ohio Parole Board participating. Arguments in support of and in opposition to clemency were then presented.

The Parole Board considered all of the written submissions, arguments, information disseminated by presenters at the hearing, prior investigative findings as well as judicial decisions and deliberated upon the propriety of clemency in this case. With seven (7) members participating, the Board voted four (4) to three (3) to provide a favorable recommendation for clemency to the Honorable Ted Strickland, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (B):

The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided August 29, 2001:

On the night of March 27, 1997, Patricia Newsome was found strangled on her kitchen floor. Police arrested the subject, Richard Nields, Newsome's frequent live-in companion, at Newsome's home that night, not long after Springfield Township Police had transported him there. Nields was indicted for aggravated murder and aggravated robbery, found guilty as charged, and sentenced to death.

Prior to 1997, Nields and Patricia Newsome had an on-again, off-again relationship for approximately ten to twelve years. In the year leading up to the murder, they lived together at Newsome's home in Finneytown, Springfield Township, in Hamilton County. Newsome worked as a realtor in Fairfield, and Nields was a keyboard musician who was out of work most of the time. On March 27, 1997, Newsome had lunch with her friend, Dorothy Kiser. Newsome told Kiser that she asked Nields to move out. Even though subject had packed his clothes in his car in order to move out, "he kept coming back to the house."

In the weeks leading up to March 27, Nields would call Newsome with hostile messages. On one occasion, an angry call for Newsome was received by the office receptionist, Floanna Ziegler, from a man identifying himself as a musician. Newsome wrote the incident down and told Ziegler, "I'm trying to file charges against him and I want to document everything that he said to you."

During the afternoon of March 27, Dorothy Alvin had a conversation with subject, who was a stranger to her, at Lulu's bar in Springfield Township. Nields told Alvin that the

lady whose house he lived in was throwing him out. Niels further told Alvin, "I'd like to kill her, but I guess I won't do that because I don't want to go to prison."

Later, during the evening of March 27, Barbara Beck and Patricia Denier were dining at the Briarwood Lounge on Hamilton Avenue. At approximately 10:30 p.m., Niels entered the bar and approached the two women, both of whom he knew. Both women noticed blood on his right hand and asked him what happened. Niels said to them, "You'll hear it on the news tomorrow." Niels also kept repeating, "I'm in serious, serious trouble." Both women thought that he was in shock and was acting strange. Neither smelled any alcohol on his breath.

As Beck and Denier left the lounge, subject walked them to their car and asked to go with them. After they declined to take subject with them, Niels told them, "I'm going to be driving home in a Cadillac." They saw subject walk across the street to a white Cadillac. Friends of Patricia Newsome testified that she owned a white Cadillac but never let anyone else drive it, especially subject, "because of the way he drank."

Anthony Studenka was at DJ's Pub on Winton Road on the night of March 27, a little before midnight and sat down next to a person at the bar who "told me he killed somebody." That person was Niels. Niels showed Studenka his hands, which had cuts on them, and told Studenka that he had killed some kid who was a drug pusher. Niels then suddenly became belligerent and started calling Studenka insulting names. Kimberly Brooks, a friend of Studenka, also heard subject declare that he had killed someone and noticed that subject had "dried blood all over" his hands. However, Niels then denied that he had killed anyone, and said that he had helped drag the body away. Brooks called 911 to report subject's statements.

Springfield Township Police Officer Greg Huber was in front of DJ's Pub when he heard a radio call that a male at the bar was bragging that he had killed someone. Huber encountered Niels inside the bar and asked him to step outside because of the noise. After initially refusing to do so, Niels went outside and spoke with Huber, who then noticed blood on both of subject's hands. When asked about the blood, Niels told Huber that he was in a fight across the street at Lulu's bar. At that time, Police Sgt. Ken Volz arrived on the scene. Huber then went to Lulu's to investigate and discovered that there had been no fight there.

Sgt. Volz and another officer, Clayton Smith, spoke with subject outside of DJ's Pub. Niels told the officers that the story of the killing he was telling inside the bar was really about a Clint Eastwood movie. Smith, who was familiar with such movies, asked subject questions to find out to which movie subject was referring. However, subject could not sufficiently answer any of his questions. Sgt. Volz then instructed Smith to drive subject home due to his "intoxication level."

Niels pointed to the white Cadillac across the way as "his girlfriend's car" that he drove, which Volz learned was registered to Patricia Newsome. Volz then went to Newsome's house on 8527 Pringle Avenue, "to check on her well being." When he peered through

the front window, he could see that the television and some lights were on, and he could hear the dog barking inside.

As Officer Smith drove up to the Pringle Avenue residence with Nields, Sgt. Volz was standing on the front porch area. Nields “became very uptight and aggressive and verbal and almost yelling” at Smith. Nields declared that they were not going into the house without a search warrant. Nields eventually calmed down, and the officers let him enter the house and hoped he would calm down for the night. However, after Nields entered the house, the officers could see him through the front window “waving his hands in an erratic fashion.”

As the officers were leaving, they noticed the door on the attached garage was open. Officer Smith entered the open lit garage and peered in a window that looked into the kitchen. Smith saw “a female on the ground who was obviously deceased.” The officers went to the front door and saw the subject through the front window still waving his arms. They knocked on the door, and as Nields opened the door, they grabbed his arm, pulled him outside, and handcuffed him. Police arrested Nields and advised him of his *Miranda* rights. Sgt. Volz entered the house to check on the victim but could not detect a pulse.

While Nields was detained in the police cruiser, he kept asking Officer Smith, “Is she alive?” During the arrest, police found fifteen traveler's checks in the subject's possession, all of which bore Patricia Newsome's name. Police Chief David Heimpold arrived at the scene and readvised Nields of his *Miranda* rights. Nields told Heimpold that he and Newsome had been in an argument. She hit him with the telephone, he then pushed her, and she hit her head on a bookcase. Nields also mentioned that someone named “Bob” was also there, but shortly thereafter, he admitted that this was a lie. Nields admitted that he had choked Newsome after they had had a fight. The assistant medical examiner, who performed the autopsy on Newsome, concluded that she had died from asphyxia due to manual strangulation.

Nields was incarcerated at the Hamilton County Justice Center. Two days after the murder, he talked with Timothy Griffis, who was serving time that weekend for nonpayment of child support. Nields told Griffis that “he had killed his girlfriend,” that they had argued, and that he “jumped on top of her, started beating her up.” Nields said that he then went to a bar. He came back to Newsome's home to see if she was breathing and started strangling her. He laid the phone on top of Newsome's chest, called her either “bitch” or “baby,” and told her, “Call me from heaven.” According to Griffis, the subject at times appeared to be remorseful, but at other times, he exhibited a carefree attitude while recounting the details of the murder. Nields also told Griffis that he took money, jewelry, and traveler's checks out of Newsome's purse. According to Griffis, the subject was kind of upset because he could not use the traveler's checks.

On May 2, 1997, the grand jury indicted Richard Nields for aggravated robbery, aggravated murder with prior calculation and design, and aggravated felony-murder during an aggravated robbery. A death penalty specification attached to the aggravated

murder counts alleged that Nields had committed aggravated murder during the aggravated robbery and that he was either the principal offender or committed the aggravated murder with prior calculation and design. R.C. 2929.04(A)(7).

Prior to trial, a suppression hearing was held on the subject's motion to suppress his statement to police after he requested an attorney, his statements at DJ's Pub, and his statement to Timothy Griffis because the police entered the curtilage of Newsome's home without a warrant. The trial court denied the motion to suppress, holding that exigent circumstances justified the search of the home. The court further held that Richard Nields statements to police after he requested an attorney were freely and voluntarily given and that his statement at the Justice Center to Griffis and his statements at the pub were not suppressible.

The state called numerous witnesses to establish Nields' guilt before a jury. The defense conceded that Nields had killed Newsome but disputed that Nields had purposefully or "knowingly caused the death of Patricia Newsome" because he was "under the influence of sudden passion and rage." During the trial, Officer Nancy Richter testified that she discovered three pages of yellow legal paper entitled "Record of Abuse" at Newsome's residence while she and Newsome's children were looking for her will several days after the murder. A forensic document examiner with the coroner's office determined that the "Record of Abuse" pages were written by Newsome.

Also at trial, Springfield Township Police Officer Paul Rook testified that he responded to a "domestic call" at Newsome's residence on March 1, 1997. At that time, Newsome told Rook that she wanted Nields to leave her home and that she was afraid of him. Rook and another officer took Nields from Newsome's residence until he could find someone else who would come and get him. The defense called one witness.

After deliberation, the jury found Nields guilty as charged.

At the mitigation hearing, the defense presented three witnesses: Nields' sister, Rochelle Pittman; Dr. Emmett Cooper, psychiatrist and pharmacologist; and Assistant Public Defender James Slattery. Pittman chronicled Nields' family life, including the fact that Nields' father was an alcoholic who left the family when Nields was in high school. Pittman also testified that she became friends with Newsome and that a few weeks before the murder, they discussed having Nields committed at Newsome's suggestion.

Dr. Cooper testified that Nields was an alcoholic and reviewed the medical ailments that Nields suffered as a result of his alcoholism. Dr. Cooper observed that Nields' time in jail since his arrest represented his longest period of sustained sobriety since 1976. Slattery, an admitted alcoholic, testified as to the deleterious effects of alcohol and how his alcoholism interfered with his ability to do what was best for himself as well as his ability to practice law.

The jury recommended death, and the court imposed the death sentence on Nields.

CRIMINAL HISTORY:

Juvenile: Unknown

Adult: Richard Nields has the following known adult arrest record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
2/2/1976 (Age 25)	Drunk Driving on Highway	Riverside, California	3/8/1976: 1 year summary probation, \$315 fine.
6/2/1977 (Age 27)	Drunk Driving on Highway	Santa Ana, California	7/26/1977: 24 months probation, 9 days jail, \$316 fine.
3/9/1981 (Age 30)	Drunk Driving on Highway	Santa Ana, California	3 weekends
12/20/1989 (Age 39)	Domestic Violence 89CRB039644	Cincinnati, Ohio	12/28/1989: \$200 fine, 1 year probation; 12/28/1990: terminated.
10/06/1991 (Age 41)	OVI – Alcohol and/or Drugs	Butler County, Ohio	10/7/1991: Convicted
3/27/1997 (Age 46)	Aggravated Murder, Aggravated Robbery (B973305)	Cincinnati, Ohio	INSTANT OFFENSE

Traffic Violations: On 11/25/1985, Nields received a moving violation in Hamilton County for which he received a \$100 fine.

Institutional Adjustment:

Richard Nields was admitted to the Department of Rehabilitation and Correction on December 23, 1997. His work assignments while incarcerated at the Mansfield Correctional Institution included Food Service Worker, Laundry Worker and Recreation Worker. He was assigned to the extended privilege unit while at this institution. Since his transfer to the Ohio State Penitentiary, his work assignment has been as a Porter. Nields is also currently assigned to the extended privilege unit at OSP.

Since his admission, Richard Nields has never been placed in disciplinary control for any conduct problems.

Currently, Nields is actively involved in religious service programs, bible studies and worship services. He also assists in church musical programs where he plays the keyboard. Nields has also volunteered for community service projects both at the Mansfield Correctional Institution and at the Ohio State Penitentiary.

APPLICANT'S STATEMENT:

On April 29, 2010, Nields was interviewed from the Ohio State Penitentiary via video-conference by the Parole Board. During this interview Nields shared with the Board that he is asking for life without the possibility of parole. Additionally, he expressed sorrow and shared that not a day goes by that he does not feel remorse for what he did to the victim. He further shared that he "loved Patty, still loves Patty, and prays for her family."

When questioned by the Board as to what his role was in the instant offense, Nields shared the following: Nields stated that things began in the morning after the victim left for work. He began by stating he had been intoxicated for a period of ten days. On the morning of the instant offense, Nields walked to the liquor store and purchased some alcohol. He then went to the bar where he claims to have consumed alcohol all day long. Eventually, he went back home and continued drinking.

When Nields arrived home, Ms. Newsome was sitting on the couch and was very upset with him about his drinking. Nields claims that Ms. Newsome was so upset that she began yelling at him, and things started to "go down hill real fast." Nields indicated that the victim threw the telephone, hit him in the head with it, and he "snapped." This was the point at which Nields said he pushed the victim hard against the bookcase causing her to fall and hit her head. Next, Ms. Newsome picked up the phone again, and Nields tore it out of the wall. Nields then followed her to the kitchen and "grabbed" her as she attempted to leave. It was at this time that Ms. Newsome slipped on a mat by the door and hit her head on the kitchen floor. Nields shared that he got on top of her after she fell and started to hit and choke her. Eventually, he realized the victim was not responding, and blood started to come out of her mouth so he stopped.

Nields, then stated that after beating and choking the victim, he sat there for a minute, started to drink again, and began to talk to the victim. He also checked to see if the victim had a pulse, but she was already dead. Nields also states that he prayed for the victim as he finished his bottle of liquor. Next, he got into the car and drove to the local bar. It was at this time Nields told people he did an "insane thing" and let them know they would hear about it on the news. Eventually, he came to his senses and went back home. Upon arriving back home, Nields realized that the victim had not moved. He checked her pulse again and listened for a heart beat. Once again, he began praying and talking to the victim and eventually left to go to another bar.

While at the second local bar, Nields shared that he confessed to another patron about killing his girlfriend. It was at this time that someone must have called the police. The police showed up at the bar, questioned Nields, and drove him back home. After police drove Nields to the house, he told them that they needed a warrant before they could

search his house, and then he closed the door. Police knocked again, Nields opened the door, and he was arrested.

Nields shared that he and the victim met in 1985. He stated they had a “beautiful relationship, loved one another, and did fun things together.” They were involved as a couple for 12 years and lived together for approximately ten years. He did disclose to the Board that the police were dispatched to the home earlier in the month because the victim was upset that he was drunk and had been smoking. In fact, Nields shared that he was not arrested by police when they arrived and stated that they removed him from the home by dropping him off at the local bar. He also admitted to being arrested in 1989 for domestic violence against the victim. Nields indicated that he had been drinking, he and the victim argued, and he smacked her with an “open hand.” The victim telephoned police the next day, and Nields was arrested.

Other than the aforementioned arrest for domestic violence, Nields denied any other record of domestic violence. He shared that he had been an alcoholic since 1976, had been in and out of rehabilitation multiple times, and had attended Alcoholics Anonymous. He also indicated that he had never been sober for longer than five months prior to coming to prison. This upset him because he was never able to receive his six-month sobriety token from Alcoholics Anonymous. Inmate Nields shared that he has been completely sober for the last 13 years.

Upon further questioning by the Board, Nields denied that he and the victim had discussed him moving out or leaving the home. Furthermore, he couldn’t recall stating to anyone prior to that time that he wanted to kill the victim. He did recall confessing to the murder to another inmate while he was held in the county jail for the murder of Ms. Newsome.

Nields admitted to taking money from Patricia Newsome’s purse along with money orders or cashier checks as he was leaving to go the bar after killing the victim. He further admitted to taking the victim’s car keys and driving the car to the local bar. Nields also shared that he drove the victim’s car “quite a bit,” especially when going to visit the victim’s daughter. Nields indicated that he made a deal with the victim that he could drive her car as long as he was sober.

Nields shared that he is estranged from his sister. His friends are his Christian brothers in prison. When questioned by the Board as to whether or not he received a fair trial Nields indicated that he was not a lawyer, but he believed that he was over-indicted and over-sentenced. Rather, Nields believed that he should have received life in prison without the possibility of parole and stated that his attorney believed his case was closer to that of manslaughter. Nields believed that his crime was one of passion and did not deserve the death penalty.

The Board also asked Nields if he returned to the crime scene to kill the victim. He denied leaving and going back to strangle the victim. He stated that he went back to the crime scene because he was hoping for a miracle. Nields also denied that he stated that

he went back to strangle the victim to Timothy Griffis while being held in the county jail. Nields went on to add that he believed that Timothy Griffis was “speaking fiction when he did that” and added, “It disgusts me and makes me sick that he got on the stand and said that lie.”

Nields was questioned as to why he did not get the victim help. He indicated that he did not know why and said, “When someone’s dead, you know she’s dead.” He went on to state that he was not thinking clearly either. He admitted that it took approximately three to four minutes to strangle Ms. Newsome to death. Nields indicated that his conscience keeps this crime in the forefront of his mind, and he beats himself up over his actions as they play like videotapes over and over in his head.

Inmate Nields also shared with the Board that he did not steal the victim’s car. He claimed that he took it because it was in the garage and that it was more convenient than taking his car which was parked on the street. Nields stated that it was not unusual to drive Ms. Newsome’s car to the grocery store, and he was insured to drive her vehicle. He also indicated that he did not know why he took her money but did know that he would not be in prison if it were not for his alcohol abuse.

Nields adamantly denied ever being violent with anyone before the instant offense. He did share that the police were called to his home three or four times throughout his 12-year relationship with the victim. He further added that he has never been involved in a fight and hates violence. At this time, Nields was confronted with a document he had authored entitled *Anger-People I Harmed*. It is in this document that Mr. Nields describes multiple episodes of violence involving at least eight separate women to include his first and second wives, live-in girlfriend, roommate, and other female friends. Nields said these accounts were probably true since he recorded them in his AA inventory. However, he could not recall all of the descriptions listed in the inventory.

Nields shared that Ms. Newsome did not drink or do drugs. He also indicated that she was not fearful of him and that she “loved him and was crazy about him.” Nields was then confronted with the fact that the victim kept a diary outlining her fears about him and the fact that he made statements of killing her and his sister. He claims that those statements were nothing more than figures of speech. In fact, Nields told the Board that the victim kept the diary because she wanted to have him committed.

Nields shared that he has spent most of his time on death row studying the word of God, and he knows that Jesus forgives him for the wretched life that he has lived. He finds peace in Jesus, plays music on the keyboard, plays chess and reads. He has remained a positive person over the last 13 years.

Nields concluded the interview by stating that he was grateful to have had the opportunity to speak to the Board, and that no one has visited with him with the exception of his attorneys. He said he told us the truth and has turned everything over to God. Nields also wanted to let Ms. Newsome’s family know that he is sorry for what he did, prays for

them, and believes in the power of prayer. Finally, he told the Board he would be grateful if the Board would let him live.

ARGUMENTS IN SUPPORT OF CLEMENCY:

A written application with exhibits outlining the arguments in support of clemency for Richard Nields was received by the Parole Board. On May 10, 2010, a hearing was conducted to further consider the merits of the application. Carol Wright and Justin Thompson of the Federal Public Defender's Office and Randall Porter of the Ohio Public Defender's Office represented Inmate Nields and presented oral arguments and witnesses in support of clemency.

Attorney Carol Wright shared with the Board that they are requesting life without the possibility of parole for Richard Nields. She began the presentation by quoting from the United States Sixth Circuit Court of Appeals. In 2007, this was the last court to have an opportunity to examine Richard Nields' case. She pointed out that those justices involved cited the following in their decision: "Despite the weakness of Nields' legal arguments on appeal, we cannot help but note that the circumstances of this case just barely get Nields over the death threshold under Ohio law." They further added, "At the same time, however, we recognize that a determination of whether this particular murder fits within that narrow category is a policy matter initially delegated by the State of Ohio to the jury and eventually delegated by the State to its governor to resolve in a fair-minded and even handed manner."

Attorney Wright stressed that the last court to examine Nields' case was "bothered" by what it saw. She also told the Board that she was going to present information that the jury, trial judge, and reviewing courts did not have available to them. Specifically, they relied on incorrect medical testimony that was provided by Dr. Paul Shrode. Additionally, they did not have available to them evidence showing that Nields has a damaged brain.

Nields' attorney began with the videotaped testimony from Dr. Robert Pfalzgraf. Dr. Pfalzgraf was the Deputy Coroner who supervised Dr. Shrode at the time of Nields' case, and he signed off on the autopsy results of Patricia Newsome that were conducted by Dr. Shrode. Dr. Pfalzgraf began his testimony by stating that the results of the autopsy report are correct and that nothing is technically wrong with them. However, what Dr. Pfalzgraf did not agree with are the conclusions that Dr. Shrode testified to in front of the jury during Nields' trial. It should be noted that Dr. Shrode did not review his testimony in advance with Dr. Pfalzgraf in that he had moved out of state to take a different position.

Dr. Pfalzgraf shared that the conclusions that Dr. Shrode testified to at trial were not "scientifically supported," and he outlined five specific areas where his conclusions were not correct. First, he pointed out that there was no scientific evidence available to support the age of the bruises on the victim in that there was no evidence of healing. However, Dr. Shrode narrowed the time frame of the bruising on the victim down to 15

minutes all the way up to six hours. Dr. Pfalzgraf pointed out that bruises can appear within seconds and last for a day or more.

Second, Dr. Pfalzgraf stated that Dr. Shrode was also incorrect regarding his conclusions on the fingernail clippings that he examined. Dr. Shrode led the jury to believe that due to the lack of DNA evidence under the victim's fingernails, she was already rendered unconscious and was unable to fight back when she was being strangled to death. Dr. Pfalzgraf pointed out that one cannot scientifically conclude that the lack of DNA under the victim's fingernails means that she was not fighting back and/ or conscious during the attack. In fact, he has never had a case where there was DNA evidence left under the victim's fingernails in all of his years of experience as a pathologist. Dr. Pfalzgraf further pointed out that the lack of DNA cannot ensure that the victim was unconscious. In fact, he stated in his affidavit to the Board "that it is actually rare for a victim's fingernails to collect evidence during a crime."

Third, Dr. Shrode attempted to establish a gap in the victim's death between the beating and her strangulation when talking about rigor mortis. Dr. Pfalzgraf pointed out that the only thing that can be scientifically established from rigor mortis is that it occurs after a person is dead.

Fourth, Dr. Shrode's testimony in relation to petechia was also incorrect. Dr. Pfalzgraf pointed out that the only thing petechia can support in this case is that the victim was strangled. In no way can it assist in determining her time of death.

Finally, Dr. Pfalzgraf pointed out that there are no findings available to determine that the victim was unconscious when she was strangled to death. Again, Dr. Pfalzgraf pointed out that Dr. Shrode was incorrect to conclude that the victim was strangled to death 15 minutes up to six hours after being beaten. Rather, Dr. Pfalzgraf shared that this could have all occurred as a single act, and that no evidence exists to support two separate attacks.

Defense counsel pointed out that the jury relied on this incorrect medical information to conclude that the murder of Ms. Newsome was one involving prior calculation and design, in that the beating, then the strangulation, were two separate acts separated by at least 15 minutes up to 6 hours. The trial court also utilized this same factor in imposing the sentence of death.

Counsel next presented Dr. Doug Lehrer who is the Medical Director of Kettering Medical School to offer information about Nields' damaged brain. Dr. Lehrer is a Board Certified Forensic Pathologist. He obtained brain imaging tests in the form of an MRI and a Pet Scan on Nields. These scans were conducted by Dr. Lehrer's colleagues. The results showed that Inmate Nields does have a damaged brain. In fact, the tests concluded that almost every area of Nields' brain had less activity than that of the average normal person, and that this damage would impact every area of his cortex.

The neurological tests that were performed on Nields were completed in 2010. Dr. Lehrer pointed out that one could conclude that these same results would have been worse in 1997 when the crime occurred due to Nields' chronic alcohol abuse. In closing, he shared that these scans get better with prolonged remission from alcohol abuse. Nields' damaged brain would have caused him to be highly impulsive with emotionally driven behavior. While time has allowed for Nields' brain to heal, it is still damaged today.

Jackie Votaw is one of Nields' ex-wives. She provided videotaped testimony to the Board and highlighted the fact that Nields was a great guy who was a prankster and liked to have a lot of fun. She also shared that "music was his whole life." Ms. Votaw states that Nields was her first boyfriend and meant everything to her. They married in 1969, and together they have one daughter.

Ms. Votaw heard about Nields' crime on the news and was shocked to hear what he had done. She further shared that Nields was not shown love by his family and that his father was a drinker and ended up leaving the family. In the end, Ms. Votaw understands why Nields left their marriage. He wanted to be a famous drummer, and she did not want to hold him back from that dream. She indicated that today, Nields' admits to her that his biggest mistake was leaving her. In conclusion, Ms. Votaw said that she and her daughter would be deeply impacted if he is executed and asked for the Board to grant him clemency. She also pointed out that she never was called to testify at Nields' trial.

Nields' childhood friend Greg Mendell also gave videotaped testimony to the Board. He stated that he and Nields were the best of friends in high school and that Nields ended up being the best man in Mr. Mendell's wedding. Mr. Mendell shared that Nields was a nice guy and was never mean-spirited. In fact, he was "shocked" to read about Nields' arrest in the paper. He, too, was never contacted to testify at the trial.

Additionally, Mr. Mendell described Nields as being devoted to his music and often witnessed him practice his music for hours at a time. Mr. Mendell ended his statement by sharing that Inmate Nields has had sincere faith since the first grade and that this is what keeps him going. He asked the Board to let Nields spend the rest of his life in prison and "let God sort out his punishment."

Clinical Psychologist Dr. Robert Smith also presented videotaped testimony to the Board regarding alcoholism. He shared that 90% of Americans drink, but only 10% become alcoholics. He further stated that 10% become alcoholics due to biological or genetic factors, psychological factors, and/or environmental factors. Nields met all three of these factors.

Dr. Smith pointed out that Nields paternal and maternal grandfathers were alcoholics along with his father and his paternal uncles. Thus, Nields did not have a choice in the matter of becoming an alcoholic in that it was in his genetic make-up.

Dr. Smith also pointed out that environmentally, Nields felt that it was “normal” to drink and watched multiple family members drink a great deal. Finally, Dr. Smith pointed out that 40% of all alcoholics have co-occurring depressive disorders along with a history of emotional trauma. In Nields’ case, he was diagnosed with depression, had financial problems, and his father left him when he was 18 years of age.

Dr. Smith stated that nothing externally forced Nields to drink. However, he described his craving for alcohol as being caused by a chemical change in the reward center of the brain. Dr. Smith compared it to non-alcoholics having a similar craving for food and water. He further added that working in bars and taverns while playing music could have also been a big trigger to Nields’ alcohol abuse.

Dr. Smith concluded by stating that Nields had been drinking heavily on the day of the instant offense and that he would have been acutely intoxicated. Thus, this situation impaired his brain, made him impulsive, and caused him to have incorrect perceptions. Ultimately, Nields reacted to what he felt inside. Rather than talking about his feelings, he acted them out with aggression.

Nields’ attorney presented one final witness to the Board. Ms. Pam Ewen, a friend of Nields, shared that she met him in 1993 at the Briarwood Lounge. She was employed as a waitress, and Nields was employed as the musician. Ms. Ewen highlighted the fact that Nields “loved music.” She described him as a good man who was liked by everyone. She did admit that he drank too much and that she did witness him make failed attempts to get assistance for his drinking. She further pointed out that he was only sober for very short periods of time.

Ms. Ewen recalled her own mother driving Nields home from work on several occasions because he was too intoxicated to drive. She also claimed that there were times when Nields would fail to show up to work on a Saturday night and would not change his clothes for several days at a time. She said it was not unusual for him to get paid with “alcohol” by the owner of the lounge for his performances.

Ms. Ewen stated that Nields “drank all the time.” She witnessed him become a “sloppy, nasty drinker.” However, she was surprised to learn of his crime. She felt sorry for him at the time of trial because he was all alone. Ms. Ewen further commented that she would be greatly impacted if Nields is killed. She said, “He has a disease like cancer. We should not put him away, and should let him help others.”

Federal Public Defender Carol Wright emphasized that Nields’ case barely meets the threshold for the death penalty as was pointed out by the court. The jury and the judge relied on incorrect medical testimony, and Nields was destined to be an alcoholic who suffered brain damage as a result of his drinking.

Ohio Public Defender Randall Porter pointed out that this case was first indicted as a murder, and it was not until one month later that it was re-indicted as a capital case. He argued that the re-indictment for Aggravated Murder was based on the receipt of the

medical evidence Dr. Shrode would provide. It was not until then that the state believed it could establish prior calculation and design. Without the medical evidence provided by Dr. Shrode, the entire approach to this case would have been different. Although the case was technically eligible for the death penalty due to the aggravated robbery, the state relied heavily on the medical evidence to prove prior calculation and design. Likewise, the jury and sentencing court also relied on this evidence in making the recommendation and imposing the death sentence. The fact that the medical evidence is now refuted should not be considered as insignificant.

Finally, Attorney Porter pointed out that Nields was remorseful about his crime from the very beginning. He was tearful when telling his story to law enforcement and was upset and crying at times when sharing his story with Timothy Griffis, the jailhouse informant. It is also documented on his jail intake form that he was crying, saw no future for himself and was depressed. The jail ended up putting Inmate Nields on suicide watch.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Arguments in opposition to clemency were presented by Assistant Hamilton County Prosecutor Phil Cummings, and Assistant Attorney General Justin Lovett. Assistant Prosecutor Cummings shared that Nields is not worthy of clemency and that the victim in this matter loved and supported him. He described Nields as a cold, calculated, pre-meditated murderer who continues to lie and minimize his culpability in this crime.

Prosecutor Cummings pointed out that no one knows the exact sequence of events from that evening, in that Nields has told multiple stories and customizes this story, depending on his audience. He pointed out that what we do know is that this was a cold and deliberate act. Patricia Newsome, the victim in this case, documented her fears in her own written document entitled "Record of Abuse." A common theme that she wrote about in this record was Nields' continued need for money as well as his threats to choke her. He also left her threatening voice mail messages at her place of employment, and the police were called to their home one month prior to her murder for a domestic dispute where Nields was removed from the home.

Prosecutor Cummings also shared with the Board that Inmate Nields told Ms. Dorothy Alvin three to four hours prior to the murder, "As a matter of fact, I'd like to kill her, but I guess I won't do that because I don't want to go to prison." He also disclosed during this conversation that he was a musician who could not obtain employment and was financially broke. He was upset with Patricia Newsome for throwing him out of her home. Prosecutor Cummings points out that Nields had murder on his mind for months, and this crime was not one that involved a sudden fit of rage.

Prosecutor Cummings shared that it takes approximately three to five minutes to strangle someone to death. He also argued that the jury did have the option of finding Inmate Nields guilty of manslaughter, but they chose not to do so, based on the evidence presented at trial.

Prosecutor Cummings referenced testimony presented at trial from Timothy Griffis, who was another inmate being held at the Hamilton County Justice Center with Nields. Griffis was told details of the offense by Nields. Details such as how Nields and the victim argued over the telephone, how he grabbed her hair and pulled her to the floor, and thought that he knocked the victim unconscious or may have even killed her were reported by Nields. He also disclosed that he jumped on top of the victim, started beating her up and shared that “blood was coming out of the back of her head.” Nields also admitted to knocking out the victim’s teeth and said that “the little puppy she owned ran over and ate two of them.” Nields also admitted to placing the phone near the victim’s body and told her to “call me from heaven.” He also bragged about a bloody handprint he left on a man after patting the man’s shoulder. Nields also shared with Timothy Griffis that he made it a point to pull the blinds in the home to conceal the view of the victim’s body and went back later to check on her.

Prosecutor Cummings shared that it really does not matter if the victim died from a single event or if Nields left and came back. He stressed that what is very clear is the fact that there is undisputed evidence that a robbery occurred, and that Nields’ motive for this robbery was his financial dependence on Ms. Newsome. Nields realized that he would no longer have the victim’s financial support. He stole the victim’s money, travelers’ checks, and her car after murdering her. In fact, Nields commented to his cellmate that he was upset that he was not able to use the travelers’ checks.

Prosecutor Cummings pointed out that the Aggravated Robbery in this case was a key component to Nields’ conviction. Furthermore, Cummings shared that the jury did have information available to them regarding Nields’ brain damage by way of Dr. Cooper’s testimony. Nields’ sister also testified to her brother’s battle with alcoholism. This testimony was presented during the penalty phase of Nields’ trial.

Prosecutor Cummings also pointed out that because this case involves domestic violence that this should not diminish the inmate’s culpability in this case. He believes that this case deserves more scrutiny than one not involving domestic violence.

The State also interviewed Dr. Pfalzgraf and provided a videotaped presentation of this interview. Dr Pfalzgraf shared that Dr. Shrode could not have determined a time frame between the beating and strangulation of the victim. Additionally, the autopsy of the victim would not assist in determining this time frame of the victim’s death. He did share that it is “possible” that the crime happened the way that Dr. Shrode said it did as he testified at trial.

Assistant Attorney General Justin Lovett offered oral arguments to the Board during the clemency hearing. He began by stating that Dr. Shrode’s testimony does not effect the second aggravated murder specification surrounding the robbery involved in this offense. He also shared that Nields had been a violent person for many years prior to this crime. We know this information by reading his own documentation of violence in Nields’ AA inventory. The abuse dates back to 1970 when he abused his first wife Jackie.

Assistant Attorney General Lovett also shared that the police brought this case to the prosecutor as a murder and domestic violence charge. However, upon further investigation, the State went back to the Grand Jury with additional evidence. Thus a second indictment involving capital specifications was sought.

Attorney Lovett also pointed out that Dr. Shrode's testimony was not the only evidence to "hook" the jury into believing that this case involved premeditation. He went on to state that this was not a passionate murder. Rather this was about money and that this case deserves the death penalty.

In terms of the recent brain scans submitted by the defense, Attorney Lovett shared that these scans do not give the Board any idea as to when Nields' brain was actually injured. He commented that Nields could have sustained a head injury while playing basketball in prison.

In closing, the State reiterated that this case deserves the death penalty. The statement that the facts "barely" meet the threshold to impose the penalty of death is simply not accurate.

VICTIMS' REPRESENTATIVES:

Connie Brown, the victim's daughter, also presented testimony in opposition to clemency. She described her mother, Patricia Newsome, as a good woman who loved life, taught Sunday School and protected animals. She also had a very strong work ethic. Her mother showed Nields kindness. However, "the kindness was what Richard Nields took advantage of. He stole her kindness, her personal belongings, and ultimately her life."

Ms. Brown shared that three weeks prior to her mother's death, she visited with her in Cincinnati. During this visit, Patricia Newsome told her daughter that she should stay with her grandmother in that she has been having problems with Nields. Ms. Newsome shared that Nields had become very angry the previous night, and she became frightened and asked him to leave. When he refused to leave, Ms. Newsome called the police. Police arrived and escorted Nields off of the property. Ms. Brown stated that approximately one week prior to her mother's death, Ms. Newsome had shared with her that Nields had been threatening her, and she had been keeping a record of the incidents to give to the police. Ms. Newsome never had an opportunity to present these threats to the police.

Ms. Brown respectfully asked the Board to deny clemency to Nields. She shared that he has been able to publish a book, yet has never taken the time to apologize to her family.

Carol Young, the victim's sister also provided oral testimony to the Board opposing clemency. She began her statement by telling the Board that her sister was her best friend and that their parents taught them to value life, help others, and work hard.

Ms. Young shared how she and her sister would go line dancing. They also went to real estate school together, took the test together, and worked together. She also spoke about how particular Ms. Newsome was about her Cadillac and shared that she never let anyone drive her car.

Ms. Young said that Ms. Newsome was a kind and generous person and was always willing to help others. She would often put the needs of others before her own. Ms. Young never recalled Niels having a full-time job. Rather, her sister took care of him, and when she finally had enough of his abuse, Niels killed her.

Ms. Young concluded by stating, "Richard Niels was given a sentence to pay for the crime of murdering my sister, and I am only asking that his sentence be carried through and clemency be denied."

The Office of Victim Services also read a letter from Ms. Newsome's son who is also opposed to clemency in this matter.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Board reviewed documentary evidence presented both in support of and in opposition to clemency. Four (4) of the seven (7) Parole Board Members found the following factors pivotal in making a recommendation to commute Niels' sentence to life without the possibility of parole:

- Those voting to commute Niels' sentence to life without the possibility of parole are concerned with the medical evidence that was testified to at the time of trial by Dr. Shrode and has since been called into question by his former supervisor Dr. Pfalzgraf. While Dr. Pfalzgraf does not question the accuracy of the autopsy results completed by Dr. Shrode, he does question the lack of scientifically-supported conclusions that he testified to at that time of trial.
- Specifically, the Board was concerned that Dr. Shrode testified to the fact that the two attacks on Ms Newsome were separated by a minimum of 15 minutes to a maximum of six hours. Dr. Shrode came to this conclusion from bruising on Ms. Newsome. However, Dr. Pfalzgraf pointed out that there was no scientific evidence available to support the age of the bruises on the victim in that there was no evidence of healing. In fact, the bruising could have occurred within seconds and last up to a day or more.
- Members also put much weight into the United States Sixth Circuit Court of Appeals' decision. Members of this court stated the following: "Despite the weakness of Niels' legal arguments on appeal, we cannot help but note that the circumstances of this case just barely get Niels over the death threshold under Ohio law." They further cite in their opinion: "At the same time, however, we recognize that a determination of whether this particular murder fits within that narrow category is a policy matter initially delegated by the State of Ohio to the jury and eventually delegated by the State to its governor to resolve in a fair-minded and even-handed manner."

- Members also factored into their recommendation Justice Pfeifer's dissent in the Ohio Supreme Court decision. He stated in this dissent, "I do not believe that Nields' crime is the type of crime that the General Assembly did contemplate or should have contemplated as a death penalty offense." He further went on to state, "This case is not about robbery. It is about alcoholism, rage, and rejection and about Nields' inability to cope with any of them."
- Members give significant weight to Justice Pfeifer's opinion in that he was a member of the Ohio General Assembly in 1981, and was one of the leading forces who helped write and enact Ohio's current death penalty statute.
- Upon examining Judge Nurre's rationale for his decision to impose the ultimate sentence of death, it is clear that he did factor Dr. Shrode's medical conclusions into his decision to impose the death sentence. Judge Nurre cites the following: "The uncontroverted facts and exhibits reveal that the defendant first brutally beat the decedent, and at some time at least fifteen minutes later, the defendant returned to strangle Patricia Newsome to death." While this is not the only factor he lists, it is clear that it was considered.
- Finally, prosecutors relied on the timing of the victim's death throughout the guilt phase of the trial. They made references to this timing during opening and closing statements.
- In conclusion, members voting favorable are concerned about the medical evidence that has been called into question and not refuted by the State during their clemency presentation. Members also respect the dissent of Justice Pfeifer as well as the concern that the Justices of the United States Sixth Circuit Court of Appeal had, in that the circumstances of this case just barely get Nields over the death threshold under Ohio law. For this reason, we believe that Nields' sentence should be commuted to that of life without the possibility of parole.

Three (3) of the seven (7) Parole Board Members found the following factors pivotal in making an unfavorable recommendation regarding clemency:

While it is troubling that the jury and the courts relied on information from the medical examiner that may have been incorrect, we find that the information presented to the Board during the course of its clemency review lead us to vote in the minority.

- Even though the medical examiner's testimony has been rightly called into question, there is plenty of evidence of prior calculation and design in this case. Nields had threatened Ms. Newsome in the past, including in the time leading up to the murder. Hours before the offense, he told Ms. Dorothy Alvin, a stranger, that, "I'd like to kill her, but I guess I won't do that because I don't want to go to prison."
- Even without the prior calculation and design in this case, the Aggravated Robbery would be sufficient to make Nields eligible for the death penalty. After he killed her, Nields took her car, money, and travelers' checks. Nields was unemployed, without money, and nearly homeless. He needed money, and he went to a person from whom he had stolen in the past. Ms. Newsome wrote in

her diary, “I can’t leave money in the house – he will steal it...I have to lock my purse in the car...He tells me every day to get rid of my car and asks for money...” Niels strangled Newsome and then made off with her valuables.

- Niels has been less than forthcoming about the details of the offense and his prior history of violence. He tried several times to mislead law enforcement while they were investigating the homicide. He said that he regularly drove Ms. Newsome’s car when her family and her own notes indicate that he did not. He told the Parole Board that he had never been violent toward women in the past, in spite of his own notes in his AA Inventory.
- Niels has a history of violence against women, including a Domestic Violence conviction against Ms. Newsome after punching her in the face. He also recorded his own acts of violence against women in his AA Inventory. He had left harassing messages on her answering machine, and threatened her. He generated in her enough fear to cause her to keep a “Record of Abuse”.
- Given all of these facts, we do not believe that the outcome of the case would have been any different had the court and jury heard more reliable medical testimony. We also believe that the aggravating circumstances in this case make death the appropriate sentence.

RECOMMENDATION:

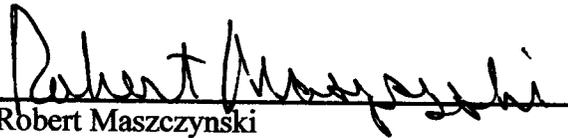
The Ohio Parole Board with seven (7) members participating, by a vote of four (4) to three (3), recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that executive clemency be granted in the case of Richard Niels, A352-374 in the form of a commutation to life without the possibility of parole.

Richard Nields, A352-374
Death Penalty Clemency Report

Adult Parole Authority
Ohio Parole Board Members
Voting **Favorable**



Cynthia Mausser, Chair



Robert Maszczyński

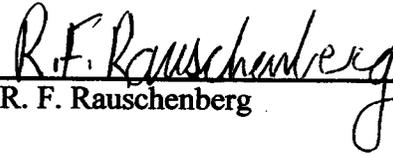


Kathleen Kovach



Ellen Venters

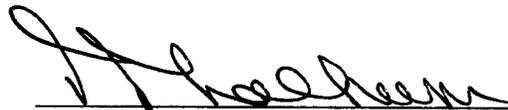
Ohio Parole Board Members
Voting **Unfavorable**



R. F. Rauschenberg



Bobby J. Bogan, Jr.



Trayce Thalheimer

Date: April 30, 2010

Honorable Governor Ted Strickland, Governor of Ohio
Distinguished Members of the Ohio Parole Board

RE: Clemency Hearing for Richard Nields

Dear Governor Strickland and the Ohio Parole Board:

I write this letter to request that clemency for Richard Nields be completely denied and for the imposed sentence of the death penalty to take place as scheduled.

How can anyone describe the tragic and unexplainable loss of a loved one, especially a parent, your mother? It's just not possible to describe what a son, daughter, mother, sister, grandchild and countless friends go through when told of the senseless murder of a loving, caring, giving, and unselfish person. My mother, Patricia Newsome, was just that person.

My mother raised her children to give of themselves, to always help others and to treat others as you would want to be treated. She raised her family to know right from wrong and to do the right thing. She taught us we are responsible for our actions. We were raised in church where she taught Sunday school each week. She was involved in our lives, not only as children, but involved in our adult lives, our families lives. Her grandchildren were the pride and the joy of her life. She lived everyday to the fullest.

Pat Newsome valued the people in her life. Acquaintances became friends, many became very dear friends. My mother valued her life, the things she had earned, the feeling and joy of giving to others. My mother was a sincere, honest, and loving person. She deserved the same in return, although she would never ask of anyone. She was a dedicated and an extremely hard working person.

Richard Nields took advantage of these facts. He had no problem taking from her. When she gave, he took, and he never hesitated to take more. He took her kindness, sincerity, and her willingness to help others. Even the night he calculated and brutally murdered my mother, he took from her. He stole the money she worked hard to earn. He stole her car that she worked so hard to have. The car she used so her clients could pursue their dreams of owning a home. The very car she would never let him drive. He will tell you that he drove the car quite often. It's not the truth and he knows it. It's yet another way for him to avoid taking responsibility for his actions. Though money and cars can be replaced, Richard Nields took the one thing that can never be replaced, he took her life.

Pat Newsome was an important and needed person in this world. She was the type of person that made this world a better place and made us better people. Richard Nields has never given to this world, he has only taken. He remains a cold and calculated murderer. Richard Nields has never denied the murder, nor has he ever shown any remorse for the senseless, brutal and aggravated murder of a beautiful person. At trial, he never spoke. At sentencing, he never spoke. He has had plenty of opportunities. Richard Nields never apologized, never said he was sorry and has never said to the family that what he did to my mother was wrong. He remains a useless person of this society. He deserves absolutely nothing. He has forever affected the lives of scores of people.

My mother had her reasons to keep Niels away from our family. The reasons were never more apparent until after her death. She didn't want him involved, nor was he ever involved with our family. None of the family, especially me, cared for him. Though I met him on two occasions, I suspected he was trouble. However, I never thought for a moment that anyone could commit the crime that he did. If only I'd known, what could I have done to prevent it? When asked to go through her personal belongings, I was completely surprised to find a written log that she was keeping, a written log describing Niels violence, a written log of his threats, a written log that showed my mother was scared. She never told me any of it, she didn't want to burden me, and she didn't want me to get involved. I live with this fact every day of my life.

I grew up with wonderful grandparents, the joys of holidays with family, their unconditional love, the knowing that your family is always there for you. I can't even imagine the pain my Grandmother had to endure every day in the loss of her daughter. I feel the loss and pain each and every day....not one day goes by that the thought is not there, not one day!! I will never be able to describe to anyone what it feels like to sit down with your children and explain what happened to their Grandmother. How do you tell a young child that she is just gone and how? They get older and want to know more. Their lives have been affected forever. I taught my family the value of trust, giving back, sharing and helping others, just as I had been taught. All of this has been shattered due to the actions of Richard Niels. It's now been thirteen years since the tragedy and it continues to impact the lives of all of us. No person on this earth deserves to die in the vicious, brutal and atrocious way that Richard Niels murdered my Mother.

The grandchildren will never feel the happiness and love of their grandmother, never. The grandchildren will never know how important they were to this beautiful person. They will never share in the love and happiness that she gave. I will never have the chance to give back to my mother as she gave to me. The loss will always be there. It has, it does, and it will continue to affect our family for generations to come!!

It doesn't seem right for me to write a couple pages to talk about my mother in an attempt to tell who she was, how she made a difference and that she never deserved what happened to her. She deserves a book to be written about her to let everyone know the person she was. I love my Mother, Patricia Newsome.

I will continue to have faith in our justice system and in this case, I have full faith that justice will be carried out. I, along with my family, request that clemency for Richard Niels is fully denied. We request that the imposed sentence of the death penalty be carried out as scheduled.

I greatly appreciate your time in reading this letter.

Sincerely,

Greg Newsome
(Son of Patricia Newsome)