

DATE TYPED: February 04, 2013
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IN RE: FREDERICK TREESH, CCI #A307-703

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

Date of Meeting: January 31, 2013

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: Frederick Treesh, CCI #A307-703

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder, Attempted Aggravated Murder (2cts) with Firearm Specification, Aggravated Robbery

DATE, PLACE OF CRIME: August 27, 1994 in Eastlake, Ohio

COUNTY: Lake

CASE NUMBER: 94CR000514

VICTIMS: Henry Dupree – deceased
Lewis (Louis) Lauver – wounded but survived
Sgt. Ronald Stih – survived

INDICTMENT: Count 1: Aggravated Murder
Count 2: Attempted Aggravated Murder
Count 3: Attempted Aggravated Murder
Count 4: Felonious Assault (Peace Officer)
Count 5: Aggravated Robbery
Count 6: Failure to Comply with Order or Signal of a Police Officer
Count 7: Weapon Under Disability

TRIAL: Found guilty by Jury of counts 1, 2, 3, 4, and 5 and entered a plea of guilty to count 7. Count 6 was nolle.

DATE OF SENTENCE: March 02, 1995

SENTENCE: Count 1: DEATH
Count 2: 10-25 years with 3 years firearm Specification
Count 3: 10-25 years with 3 years firearm specification
Count 4: Merged with count 3 for sentencing
Count 5: 10-25 years, firearm specification merged with the firearm specification in count 1
Count 6: *nolle prosequi*
Count 7: Merged with count 1 for sentencing

ADMITTED TO INSTITUTION: March 03, 1995
JAIL TIME CREDIT: 0 days
TIME SERVED: 214 months (does not include JTC)
AGE AT ADMISSION: 30 years old
CURRENT AGE: 48 years old
DATE OF BIRTH: April 12, 1964
JUDGE: Honorable James W. Jackson
PROSECUTING ATTORNEY: Charles E. Coulson

FOREWORD:

A clemency proceeding in the case of Frederick Treesh, A307-703, 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.

Frederick Treesh declined to be interviewed by the Parole Board. A clemency hearing was then held on January 31, 2013 with eleven (11) members of the Ohio Parole Board participating. Arguments in support of and in opposition to clemency were presented.

The Parole Board considered all of the written submissions, arguments, and information disseminated by presenters at the hearing, as well as the judicial decisions. The Parole Board deliberated upon the propriety of clemency in this case. With eleven (11) members participating, the Board voted (11) to (0) to provide an unfavorable recommendation for clemency to the Honorable John R. Kasich, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (94CR000514):

The following account of the instant offense was obtained from the opinion of the Supreme Court of Ohio, decided on January 3, 2001:

Frederick Treesh, and two companions, Keisha Harth and Benjamin Brooks, departed Cleveland on August 27, 1994, to smoke crack cocaine in an Ashtabula hotel room. They returned to Cleveland later that day to purchase additional drugs. While there, the group picked up another man, Anthony Washington, who agreed to assist them. After a "couple hours" of driving and smoking cocaine, the group decided to rob a business to finance the purchase

of more cocaine.

Washington eventually directed the group to the Vine Street News, an adult bookstore in Eastlake, Lake County. Treesh and Brooks were armed with a nine-millimeter handgun and a sawed-off shotgun. The handgun was loaded to maximum capacity with "Hydra-Shok" bullets, designed for penetration and maximum stopping power. Before Treesh and Brooks entered the bookstore, Harth handed Treesh a roll of duct tape that Treesh planned to use to restrain the robbery victims.

Treesh and Brooks entered the Vine Street News at approximately 11:30 p.m. After glancing at a few magazines, Treesh and Brooks approached the sales counter where Louis Lauver worked. Treesh pulled out the nine-millimeter handgun, cocked it, pointed it at Lauver, and ordered him not to move or call out for help. Treesh then asked Lauver where the security guard was, and Lauver motioned toward the rear of the store. Treesh walked through swinging doors into the restricted area at the rear of the store and placed the handgun inside his pants. At this point, Lauver lost sight of Treesh. A short time later, however, Lauver heard four gunshots coming from the rear of the store.

Treesh testified that after passing through the swinging doors into the rear portion of the store, he saw two customers behind a rack, looking at magazines, and saw the store security guard, Henry Dupree, sitting in a chair, watching television. At first, neither Dupree nor the customers appeared to notice Treesh's presence. Treesh took the gun out of his pants, poked Dupree in the shoulder with the gun, and ordered Dupree to stand up. Startled, Dupree complied. Treesh testified that he originally intended to take Dupree to the front of the store and tape him up with the clerk, but then noticed handcuffs on Dupree's pants and decided to use them. According to Treesh, a struggle ensued when he reached for Dupree's handcuffs, and the handgun discharged.

While Treesh was in the rear of the store, Brooks ordered Lauver to empty the cash register. Lauver complied, and Brooks demanded that Lauver open the safe. As Lauver explained that this was impossible, shots rang out from the back of the store and Treesh came rapidly back through the swinging doors. Brooks quickly left with the money from the cash register. Lauver stood by the counter with his hands in the air as Treesh headed toward the exit. Before reaching the door, Treesh brought the handgun up, pointed it at Lauver, and fired at least two shots. Bullets struck Lauver in the jaw and forearm. Treesh later testified that he aimed these shots not at Lauver, but at the telephone on the wall behind the counter.

After Treesh left the store, Lauver temporarily lost consciousness, but awoke shortly thereafter and dialed 911. Dupree, grievously injured during his encounter with Treesh at the rear of the store, managed to make his way through the swinging doors, but collapsed on the floor behind the counter. An

autopsy later confirmed that Dupree died as a result of two close-range gunshot wounds in his chest. Lauver survived and testified at trial.

Paul Forner, a witness across the street at a drive-up pay telephone, saw two men enter the Vine Street News. Minutes later, Forner heard popping sounds and saw the two men leave. Forner rushed to the store and found Lauver on the phone with the police. Because Lauver was wounded in the face and had difficulty speaking, Forner gave the dispatcher a description of the suspects and their vehicle. Dale Plunkard, a store customer who hid in a viewing booth during Treesh's encounter with Dupree, heard three or four shots in steady succession, "one right after another," and then emerged from the booth to find Dupree unconscious. Like Forner, Plunkard was able to identify the suspects' vehicle, which he had seen parked nearby before he entered the store.

Sergeant Ronald Stih of the Euclid Police Department received a dispatch concerning the armed robbery. Stih scanned traffic on Interstate 90, spotted a vehicle matching the dispatcher's description, and followed it off the interstate. Officer Frederick Stoldt of the Euclid Police Department also pursued the suspects' car. The vehicles attained speeds of over sixty miles an hour in a residential neighborhood. As Washington drove the suspects' car, Treesh shot out its rear window, and both Brooks and Treesh fired shots through the opening and over the tops of the cruisers to discourage pursuit. Eventually, however, Washington lost control of the car and crashed.

According to Sergeant Stih, Treesh assumed an "action stance" as he got out of the car and pointed his handgun at Stih. Treesh fired the weapon at Stih and Stoldt at least three times. Stih retreated and radioed for help. Treesh fired additional shots while running away with Harth. Brooks remained in the car and was immediately apprehended.

Officers Michael Januszak and Harold Pretel of the Cleveland Police Department arrived at the scene, obtained descriptions of Treesh and Harth, and pursued the two suspects on foot. Eventually, the officers approached a garage, where Pretel saw Treesh aiming a gun at him. Pretel ordered Treesh to drop the weapon. Treesh threw the gun down, but attempted to flee over a fence. Several officers confronted Treesh as he jumped over the fence and ordered him to the ground. Officer Januszak testified that as he handcuffed Treesh, he immediately advised Treesh of his *Miranda* rights.

The police transported Treesh first to Euclid, then to the Eastlake Police Department. On the way to Eastlake, Treesh heard on the police radio that Dupree had died. Treesh later testified that he was not aware prior to that time that he had even shot Dupree.

Treesh arrived at Eastlake just after 2:00 a.m. on August 28. Treesh testified that he felt "high" and "paranoid" at that time. Lieutenant Thomas Doyle of the Eastlake Police Department and Federal Bureau of Investigation Special Agent Robert Alvord conducted a series of interviews with Treesh and Brooks

at Eastlake. Some of these interviews were captured on the stationhouse videotape recorder. Portions of these videotapes, which contained several inculpatory statements, were later played for the jury. At approximately 2 p.m. on August 28, Doyle confronted Treesh and Brooks with the store clerk's statement, and the suspects refused to discuss their participation in the Vine Street News robbery any further without an attorney present. Treesh and Brooks continued to discuss their involvement in other crimes.

The Lake County Grand Jury returned a seven-count indictment against Treesh on August 29. A Lake County jury found Treesh guilty of one count of aggravated murder with two aggravating circumstances, two counts of attempted aggravated murder, one count of felonious assault, and one count of aggravated robbery. Each of these five counts included a firearm specification. The court entered a *nolle prosequi* on count six, which had alleged that Treesh failed to comply with the order or signal of a police officer. Treesh pleaded guilty to count seven, carrying a weapon while under a disability.

At the conclusion of the penalty phase, the jury recommended that the court sentence Treesh to death. The trial court adopted the jury's recommendation and sentenced Treesh accordingly. Treesh timely appealed the decision of the trial court to the Lake County Court of Appeals, which affirmed his convictions and death sentence. In dissent, Judge O'Neill concluded that Treesh had never received proper *Miranda* warnings, and that absent the inferences drawn from Treesh's improperly obtained statements, the state could not prove the lack of mitigating factors beyond a reasonable doubt.

Treesh's appeal went before the Supreme Court of Ohio upon an appeal as of right. Treesh presented twenty-one propositions of law for the court's consideration. The Supreme Court of Ohio affirmed the judgment of the court of appeals and upheld the sentence of death.

PRIOR RECORD

Juvenile Offenses: Frederick Treesh has the following known juvenile record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
03/15/76	Theft	DeKalb Co., Indiana	Found Delinquent; Placed on informal probation
06/77	Theft	DeKalb Co., Indiana	Placed on informal probation
03/28/80	Malicious Trespass	DeKalb Co., Indiana	Placed on probation; Restitution of \$193.79; Terminated 04/28/81

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09/09/81	Criminal Mischief	DeKalb Co., Indiana	Committed to Indiana Boys School suspended upon condition that restitution of \$200.00 be paid within 30 days
11/16/81	Receiving Stolen Property	DeKalb Co., Indiana	Jurisdiction waived to Adult Court
11/23/81	Theft	Whitley Co., Indiana	30 days jail, ordered to be evaluated and receive counseling at the Family Counseling Center in Auburn, IN.
12/03/81	Peeping (2 counts)	DeKalb Co., Indiana	Jurisdiction waived to Adult Court
12/14/81	Battery	DeKalb Co., Indiana	Jurisdiction waived to Adult Court
12/31/81	Theft	Whitley Co., Indiana	Jurisdiction waived to Adult Court

Treesh had the following cases dismissed due to lack of probable cause: Forgery (12/02/80) and Theft/Forgery (01/07/81). The following cases were dismissed on the condition that Treesh enlist in the U.S. Army; however, no further prosecution was sought after he failed to pass the entrance examinations: Battery (01/07/81) and Resisting Law Enforcement (04/02/81).

Adult Offenses: Frederick Treesh has the following known adult arrest record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
02/18/82	Theft/Peeping (2cts)	DeKalb Co., Indiana	4 years Indiana DOC and a maximum of 6 months each count for Peeping (misdemeanor); counts to be served consecutively
02/04/83	Forgery (2cts) Attempted Escape	Whitley Co., Indiana	1 year for Att. Escape and 5 years for Forgery, terms to be served consecutively, 40 days jail time credit
08/11/87	Burglary	Defiance, OH	6-15 years prison Admitted to ODRC on 11/19/87 under #A199-866; Paroled 12/07/92 and granted a final release from supervision on 03/28/94.

08/27/94 (Age 30)	Aggravated Murder Attempted Aggravated Murder (2 counts) Aggravated Robbery (94CR000514)	Eastlake, OH	INSTANT OFFENSE
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On 09/13/94, a warrant (Homicide-Willful Killing-Nonfamily-Gun) was issued for Treesh out of Livonia, Michigan.

On 09/23/94, a warrant was issued for Treesh for 2 counts of Armed Robbery and 2 counts of a Felony Firearm Violation out of Berrien County, Michigan.

On 10/07/94, a warrant was issued for Treesh out of Crown Point, Indiana as a material witness.

Institutional Adjustment:

Treesh was admitted to the Ohio Department of Rehabilitation and Correction on March 03, 1995. His work assignments while incarcerated at the Mansfield Correctional Institution (MANCI) included Porter, Food Service Worker 2, Recreation Worker, and Material Handler 2. He was briefly incarcerated at the Oakwood Correctional Facility (OCF) from 10/18/05 to 10/27/05. He did not have a work assignment during that time period.

Treesh is presently a Porter at the Chillicothe Correctional Institution (CCI). No program or community service completion was noted, and no record of a GED was located.

Since his admission, Treesh has accumulated the following disciplinary record resulting in Treesh's placement in disciplinary control:

- 09/08/99: Threatening bodily harm to another, with or without a weapon. Treesh threatened another inmate that he had "one more chance" to straighten up or he would "kick his ass." Treesh received 15 days disciplinary control for this rule infraction.
- 06/16/00: Possession of property of another. Treesh was in possession of another inmate's CD player. Treesh received 10 days in disciplinary control for this rule infraction.
- 10/03/01: Possession of contraband. Treesh was found to have a four-foot hose with a toothbrush holder attached to the end of it. The hose had been removed from a food cart used to serve food in the dining room. Treesh received 12 days in disciplinary control for this rule infraction.
- 12/23/03: Giving false information or lying to department employees. Treesh had a contraband stereo returned to MANCI, stating that the company to which he sent it had fixed and modified it as part of the warranty. His mother had in fact paid for the repair. Treesh received 15 days in disciplinary control for this rule infraction.
- 01/13/04: Unauthorized use of a telephone or violation of mail and visiting rules. Treesh had his mother call into the institution and participated in a three-way call with her and a staff member at MANCI. Treesh received 15 days in disciplinary control for this rule infraction.

- 10/18/05: Personal Relationships: Giving to, or receiving from an employee, any item, favor, or service. Treesh had his mother purchase a \$50 gift card for a corrections officer at a pizza place. The gift card was left at the pizza place for the employee to pick up. Treesh told the officer that she had a \$50 gift card at the pizza place and that if she wanted to pick up a pizza, it was already paid for. The officer then reported it to the institution. Treesh received 15 days disciplinary control and 60 days local control placement for this rule infraction.
- 09/15/07: Procuring or attempting to procure unauthorized drugs. Treesh attempted to have drugs brought into the institution during a visit. A balloon containing what was later tested and verified as cocaine was found in gum he was chewing. The investigation showed this conveyance of drugs occurred on prior visits and involved two other inmates. Treesh received 15 days disciplinary control and 90 days local control for this rule infraction.
- 9/15/07: Unauthorized possession, manufacture, or consumption of drugs or any intoxicating substance. During a visit, Treesh had a large chew of gum in his mouth. When ordered to spit it out, he failed to obey and had to be given a second order. An inspection of the gum revealed a balloon containing what was later verified to be cocaine. Treesh received 15 days disciplinary control and 90 days local control for this rule infraction.
- 9/17/07: Unauthorized possession, manufacture, or consumption of drugs or any intoxicating substance. Treesh had a positive urinalysis for cocaine on a drug test. He received 15 days disciplinary control and 90 days local control for this rule infraction.

Treesh has received the following conduct reports that did not result in placement in disciplinary control. Those rule infractions include:

- Unauthorized use of telephone and conspiracy to violate a rule of conduct in 1995. When ordered to get off the phone, Treesh yelled and cursed at the officers. He then walked toward them in an aggressive manner by making a fist.
- Unauthorized use of telephone in 1995. Treesh placed a three-way call to the Captain's Office.
- Disrespect to an officer, staff member, visitor or other inmate in 1999.
- Possession of contraband (razor blades, finger-prick needle, and string) in 2000.
- Possession of contraband (stamps) in 2000.
- Refusal to carry out work or other institutional assignments in 2001.
- Possession of contraband (can opener and a homemade antenna) in 2003.
- Disobedience of a direct order and disrespect to an officer, staff member, visitor, or other inmate in 2005.
- Disobedience of a direct order and disrespect to an officer, staff member, visitor, or other inmate in 2006. Treesh yelled and cursed at a nurse while she was conducting a medication pass. When the nurse ordered inmate Treesh to stop yelling, he did not comply with the order.
- Disrespect to an officer, staff member, visitor or other inmate in 2008. Treesh made a disrespectful and racially charged statement towards an officer several times during the officer's shift.

- Threatening bodily harm to another (with or without a weapon) and disrespect to an officer, staff member, visitor or other inmate in 2011. Treesh disrespected a female officer on the recreation yard and attempted to spit on her.

APPLICANT'S STATEMENT:

Treesh declined to be interviewed prior to his clemency hearing.

ARGUMENTS IN SUPPORT OF CLEMENCY:

At the hearing held on January 31, 2013, arguments in support of clemency supplementing the written application previously received were presented to the Board by the inmate's counsel, Timothy Sweeney and S. Adele Shank. Attorney Michael Benza, who was not representing Treesh in the clemency proceeding, also spoke on Treesh's behalf.

Sweeney stated that Treesh is, today, a much different person than he was when he committed his crimes in August 1994. According to Sweeney, Treesh has changed and improved as a human being in the intervening years. Sweeney recognized the severity of Treesh's crimes and stressed that he and Shank were not arguing for Treesh's release but rather commutation of his sentence to life in prison without the possibility of parole. Treesh's case, Sweeney urged, is an appropriate case for the extension of mercy.

Treesh's counsel presented several bases for their clemency request. First, counsel argued that the evidence in this case suggests that Treesh did not act purposefully in taking Dupree's life, making a death sentence inappropriate. Second, counsel argued that there was a rush to judgment in Treesh's case: that police solicited incriminating statements from Treesh without properly informing him of his *Miranda* rights; that police interviewed him while he was clearly under the influence of drugs; and that meaningful, potentially exculpatory evidence was not preserved. Third, counsel argued that Treesh's death sentence was disproportionate when viewed in the light of the sentence imposed upon Brooks, how similar crimes are typically punished, and contemporary views on capital punishment. Fourth, counsel argued that had the jury had life without the possibility of parole available as a sentencing option, it is likely that the jury would have imposed that sentence. Fifth, counsel argued that Treesh's criminal conduct is the direct result of certain biological and pathological conditions over which Treesh has little, if any, control. Finally, counsel argued that clemency is warranted because of Treesh's community service since coming to prison, particularly in relation to educating young people about the dangers of drug use and drug addiction, which demonstrates the significant ways in which Treesh has improved as a human being in the years since he took Dupree's life.¹

¹ In their written clemency petition, Treesh's counsel raised an additional basis for clemency that was not presented during the January 31, 2013 clemency hearing. In the petition, Treesh's counsel stated that Treesh suffers from a number of physical and psychological problems for which he takes medications that could potentially interact with the drugs used in the lethal injection in such a way as to cause Treesh to suffer a tortuous execution. The Board finds this unsubstantiated medical claim, which Treesh's counsel did not more fully develop during the clemency hearing, insufficiently substantial to form the basis for a favorable recommendation for clemency.

Argument 1: The Killing Was Not Purposeful

According to Sweeney, there exists considerable doubt as to whether Treesh purposefully shot Dupree. Sweeney argued that the shooting was not execution style, as suggested by the Supreme Court of Ohio. On the contrary, Treesh and Brooks went into the Vine Street News with the sole intention of committing a robbery. If the intention was to kill the employees in the Vine Street News, Treesh and Brooks would not have bothered to take duct tape into the store to tie up the victims. Treesh intended to tie Dupree up, but did not intend to kill him. A struggle ensued between Treesh and Dupree after Treesh reached for Dupree's handcuffs.

A witness, Dale Plunkard, who was hiding in a booth in the back room where Dupree was shot, claimed to have heard three shots, a pause, then three more additional shots, a pause, and then finally a single shot. This sporadic gunfire, according to Sweeney, is indicative of two people struggling for possession of a weapon.

Sweeney noted that there were numerous shots fired and that they were sprayed all over the room. Spent bullets were still being found at the scene ten days after the shooting. This, according to Sweeney, is likewise indicative of a struggle. Furthermore, there was gunpowder residue on Dupree's hands, suggesting not only a struggle over a gun but that Dupree may have himself fired a gun. In addition, Sweeney noted, there was a gash on Dupree's back, also indicative of a fight or struggle with Treesh. Lastly, Sweeney pointed out that, throughout the police interrogations, Treesh insisted that there was a struggle during which he (Treesh) was shot at.

Sweeney suggested that a 0.38 caliber handgun belonging to Dupree may have been used during the struggle. Dupree was known to own such a gun. Though the 0.38 was never found at the crime scene, Dupree was wearing a holster for the weapon.

Argument 2: There Was a Rush to Judgment

Sweeney argued that there was a rush to judgment in Treesh's case and that Treesh's constitutional rights were compromised in the process. Sweeney pointed to law enforcement's failure to properly Mirandize Treesh prior to the interview they commenced with him at approximately 2:30 a.m. the morning of his arrest. The *Miranda* warning recited to Treesh at that time was incomplete and incorrectly phrased.

Sweeney acknowledged that Treesh's *Miranda* claims have been repeatedly rejected on direct appeal and in his federal habeas proceeding.² However, Sweeney insisted that those courts reached an incorrect result. In support of that proposition, he pointed to Judge William O'Neill's dissent from the Lake County Court of Appeals' opinion on the *Miranda* issue. Contrary to the majority of the judges sitting on that appellate panel, Judge O'Neill concluded

² The Supreme Court of Ohio essentially held that any harm caused by the partial *Miranda* warning given Treesh at 2:30 a.m. was ameliorated by the fact that Treesh had already been properly Mirandized several hours earlier, when he was first arrested and taken into custody. The Supreme Court further concluded that Treesh voluntarily waived his *Miranda* rights, notwithstanding his claim that he was physically exhausted and under the influence of cocaine when Mirandized.

that Treesh's death sentence was unsustainable given the improper *Miranda* warning administered to Treesh. Sweeney urged the Board to accept Judge O'Neill's conclusion and find that law enforcement's improper *Miranda* warning warrants a reduction in penalty from death to life.

Both Sweeney and Shank argued that even if Treesh were properly Mirandized, there exists a material question as to whether Treesh was sufficiently coherent to knowingly and voluntarily waive his right against self-incrimination. According to Sweeney and Shank, Treesh was under the influence of cocaine at the time of the interviews and may not have had the capacity to freely and voluntarily waive his constitutional rights. Sweeney opined that were Treesh not under the influence and had he had an accurate *Miranda* warning administered to him, Treesh would not have spoken with the police.

In arguing that there was a rush to judgment in Treesh's case, Sweeney also pointed to several pieces of exculpatory evidence that went missing immediately after the shooting. A floor ramp, booth door, and booth panel were all destroyed just days after the shooting with the permission of the investigating officer. That mishandling of the evidence, according to Sweeney, was both inexcusable and unfair. It denied defense counsel and its experts the opportunity to examine that potentially valuable evidence.

Argument 3: The Death Sentence is Disproportionate to the Crime

Sweeney argued that Treesh's death sentence is disproportionate to his crime. First, Sweeney argued that Treesh's death sentence was disproportionate because his co-defendant, Brooks, received a sentence of 40 years to life. Sweeney essentially urged the Board to view Treesh and Brooks as a singular criminal enterprise. Sweeney acknowledged that Brooks did not shoot Dupree during the Vine Street News robbery and further conceded that Brooks was not armed during that robbery. However, he stressed that Brooks was by Treesh's side throughout their joint crime spree. In that sense, they share culpability in regard to the collective harm caused by their illegal activities. Sweeney noted that even if Treesh's sentence is commuted to life without the possibility of parole, his punishment will still be more severe than that given Brooks.

In arguing that Treesh's death sentence is disproportionate, Sweeney also noted that Treesh's killing of Dupree, while inexcusable, was not as egregious in its circumstances as other murders. Sweeney noted, for instance, that Dupree's killing did not involve cruelty or significant premeditation.

Sweeney urged the Board to gauge proportionality solely from the standpoint of the events that occurred on August 27, 1994 at the Vine Street News and not to consider the numerous other crimes leading up to that day to which Treesh has been linked but has never been convicted. According to Sweeney, this clemency proceeding is not the forum in which to assign responsibility for crimes that were never prosecuted or tried in court.

More generally, Sweeney argued that Treesh's death sentence was disproportionate to the types of sentences that juries commonly hand down today for similar crimes. Sweeney pointed to an evolving nationwide trend away from the death penalty. He noted a recent opinion from former Lake County Court of Appeals Judge William O'Neill, who won a seat

on the Supreme Court of Ohio in 2012, arguing that, in Judge O'Neill's view, the death penalty violates the United States and Ohio Constitutions.

Argument 4: The Jury Would Likely Have Imposed Life Without Parole If that Had Been an Option

Sweeney noted that death sentences are dramatically on the decline. Only 1.6% of Ohio's murderers are on death row. Today, in sentencing for murder, juries routinely choose life without parole in lieu of death. Life without parole was a sentencing option that became available after Treesh's conviction. The increasing popularity of life without parole as a sentencing option reflects a growing belief that we do not honor victims' lives by taking the lives of their killers.

According to Sweeney, in the context of today's legal landscape, Treesh's case is clearly one where life without the possibility of parole was likely to have been imposed by the jury had it been an available sentencing option. Sweeney insisted that if one were to compare Treesh's case to those of the 380 offenders currently serving life without parole, one would find a significant degree of similarity in the facts and circumstances of the crimes.

Argument 5: Treesh's Actions Resulted from Conditions Not Under His Control

Sweeney argued that the crimes that Treesh committed were the direct result of his severe addiction to crack cocaine, which was biologically based. Sweeney urged the Board to view Treesh's crimes in the context of this addiction and how it interacted with his Attention Deficit Hyperactivity Disorder (ADHD), which made him particularly susceptible to addiction. Compounding Treesh's vulnerability to crack's addictive effects is the severe head and back injury that Treesh sustained in a work-related accident that preceded the 1994 crime spree, which left Treesh in chronic pain and suffering from seizures, resulting in his reliance on crack cocaine as a coping mechanism.

Shank described crack's powerful addictive effect on Treesh. According to Shank, Treesh was hooked on the drug from the moment he first tried it. She noted that, from the standpoint of addiction, cocaine affects different people in different ways. Some of those who try cocaine become very powerfully addicted to the drug. In support of that proposition, she pointed to information provided by the National Institute on Drug Abuse explaining how powerfully addictive cocaine can be and the degree to which the drug affects the brain physiologically over time. This physiological impact was not becoming fully understood until several years after Treesh was convicted. Shank noted that Treesh's addiction is documented in his prison medical records.

Shank noted that one of cocaine's most pronounced side effects is memory loss, which Treesh demonstrated in the hours following his arrest. Shank suggested that Treesh was clearly under the drug's influence on the night of the Vine Street News shooting.

Treesh's reliance on cocaine to feel "normal" again following his accident had disastrous consequences. The first time Treesh ingested crack cocaine, he was hooked. After turning to the drug, Treesh's ability to control his behavior was, from that point forward, severely compromised. Sweeney conceded that Treesh himself is ultimately responsible for becoming

addicted to the drug and that the drug abuse does not excuse his criminal behavior. At the same time, Sweeney urged the Board to view Treesh's drug addiction and his vulnerability to it as the human face to his offending behavior. Sweeney argued that Treesh's severe drug addiction provides perspective on his crimes and why they occurred.

Sweeney argued that Treesh is a different person when he is on drugs. Treesh's ADHD already leaves Treesh with low self-esteem, as well as impulsive, hyperactive, undisciplined, aggressive, and antisocial in character. The drug use grossly exacerbated those preexisting, negative personality traits.

In describing the severity of Treesh's addiction and its relationship to his offenses, Sweeney and Shank noted that Treesh has described being on cocaine as feeling like Superman. Treesh was constantly looking for his next high and it drove him to do whatever was necessary to acquire the fast cash needed to purchase the drug. Treesh continues to struggle with his addiction to this day. The urge to use drugs has never completely gone away. Treesh's addiction is constant and ever present.

Sweeney argued that Treesh's drug use suppresses the many redeeming qualities that he possesses. Sweeney and Shank noted that Treesh is remorseful for his crimes. Treesh's counsel stressed that Treesh did not appear for his pre-hearing interview with the Parole Board because he is not good at expressing his feelings. In counsel's view, remorse is a very personal sentiment. Sweeney and Shank urged the Board not to hold Treesh's unwillingness or inability to publicly express his feelings against him.

Argument 6: Treesh Has Changed Since Going to Prison

According to Benza, Treesh's story is the tale of two men. Benza opined that Treesh's actions since coming to prison demonstrate that Treesh is not the man that he was when he first came to prison. Benza stated that Treesh has grown and developed considerably and that other inmates look up to him as an elder statesman.

Benza described how he was involved with Treesh as lead plaintiff in several pieces of litigation involving death row inmates as plaintiffs and the Department of Rehabilitation and Correction as defendant. Those cases involved, among other things, death row inmates' rights relative to the speaking of last words and the rights of mentally ill inmates in relation to "super max" incarceration. According to Benza, Treesh's involvement in this litigation was always for the right reasons; namely, to improve the lives of other inmates.

Benza noted that, during those cases, Treesh was an indispensable asset to both sides of the litigation. Not only did he represent the inmate's views and concerns, he also was a credible voice of reason, who would routinely dispel misinformation being advanced by other inmates. Treesh has often served as a valuable intermediary between inmates and the Department.

Benza argued that Treesh's institutional conduct demonstrates his considerable growth. Benza noted that Treesh was prohibited from receiving visits from his mother after it was found that his mother was involved in Treesh's 2007 attempt to bring drugs into the institution. After that ban, Treesh promised his mother that he would maintain good conduct while in prison and Treesh kept that promise, Benza asserted.

Benza described the close relationship that Treesh maintained with his mother until her death in 2011. She was a positive role model for Treesh and his strongest advocate. Benza noted that it is unusual for a death row inmate to maintain such a close tie with a family member for as long as Treesh maintained that tie with his mother.

Benza opined that Treesh has grown, matured, and taken responsibility for his crimes. He has done what we hope and expect all inmates would do when they enter the system and that is to use their time productively. According to Benza, Treesh will be a positive impact in the prison system if his sentence is commuted to life without the possibility of parole. Benza noted that, from a public safety standpoint, a sentence of life without parole would ensure that Treesh never again succumbs to the temptation of drugs and returns to a life of crime.

Shank stated that, immediately after becoming aware of cocaine's powerfully negative impact upon his life, Treesh began to educate others about the drug's destructive effects. Treesh became involved in the Drug Abuse Resistance Education (DARE) program to educate children about the dangers of drug addiction. Shank played for the Board a 1997 documentary in which Treesh is interviewed. During the documentary, Treesh speaks frankly about his drug addiction and how it eventually led to his death sentence. Shank also drew the Board's attention to numerous letters from individuals in the community recognizing the educational value of the documentary in which Treesh participated.

Shank stressed that she was showing the documentary to the Board not just to illustrate Treesh's public service in the area of drug education, but also to demonstrate the devastating impact of crack cocaine. According to Shank, the reality of Treesh's addiction and an understanding of its severity are critical to understanding the clemency request.

Shank informed the Board that she spoke with Treesh's father prior to the clemency hearing. Treesh's father conveyed his love for his son. Treesh's father hopes that the Board will do justice for his son. Shank stated that Treesh's family recognizes the wrongfulness of Treesh's actions and that Treesh needs to take responsibility for his crimes. However, justice does not require that Treesh's life be taken. According to Shank, Treesh's family asks that Treesh be allowed to pay his debt to society by serving a sentence of life without parole.

Closing Arguments

As part of their closing arguments to the Board, Sweeney and Shank addressed a March 2, 1995 interview that was conducted between Treesh and retired Eastlake, Ohio Police Department Detective Thomas Doyle. Doyle was the lead detective in the Vine Street News shooting, and the interview occurred shortly after Treesh's conviction. As described more fully below, Doyle discussed this interview in detail during the State's presentation in opposition to clemency. During the videotaped interview, Treesh admits to being involved in several murders, including the lynching of an African-American man. Sweeney and Shank opined that none of the crimes to which Treesh admitted in this interview ever occurred.

Sweeney stressed that no bodies were ever recovered following Treesh's alleged confessions during the interview. One of the alleged victims was actually found alive. According to Sweeney, during this interview, Treesh was essentially telling Doyle "tall tales" in a vain

attempt to regain a feeling of control following his conviction. Sweeney contended that it was also an opportunity for Treesh to see co-defendant Keisha Harth one last time before being committed to prison. Treesh made Harth's presence a precondition to his participation.

Sweeney stressed that Treesh did not kill Dupree because Dupree was African-American, as Doyle suggested during the State's arguments in opposition to clemency. The crime, according to Sweeney, was not racially motivated. Sweeney pointed out that there were two African-American customers in the Vine Street News who were not harmed in any way.

Sweeney and Shank concluded by stating that, for the reasons enumerated in their presentations, a just punishment is a life sentence without the possibility of parole.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Charles Coulson, Lake County Prosecutor, and Brenda Leikala from the Ohio Attorney General's Office presented arguments in opposition to clemency. As noted above, Thomas Doyle, the lead detective in the Vine Street News shooting, also spoke on the State's behalf.

Leikala challenged the argument advanced by Treesh's counsel that Dupree was likely shot while engaged in a struggle with Treesh. Leikala pointed out that all of the bullets found at the Vine Street News travelled in a single direction, westerly. The shots were not fired in numerous different directions, as alleged by Treesh's counsel. This suggests that Treesh was in control of the shots that were being fired from his gun. Leikala acknowledged that there was a bullet found in the ceiling, but stressed that this bullet, like the others, was travelling in a westerly direction.

Leikala and Coulson argued that the proximity at which Dupree was shot and the trajectory of the first bullet that entered his body also negate the idea that Dupree was shot during a struggle. Leikala noted that the bullet wound to Dupree's chest was a contact wound fired at close range. The trajectory of the bullet was from the top, left side of Dupree's chest downward, suggesting that the bullet was fired into Dupree while he was seated and leaning forward. Leikala stated that, while there may have been a struggle, any struggle occurred *after* Treesh fired this first shot into Dupree's chest. A second shot was fired into Dupree's midsection from a maximum distance of several feet. It traveled across Dupree's body in a horizontal direction.

Leikala pointed out that Dupree was bleeding profusely from his gunshot wounds. Had there been a struggle between Treesh and Dupree, as Treesh's counsel suggests, Dupree's blood would have gotten onto Treesh's clothing. However, no blood from Dupree got onto Treesh.

Dupree had a 0.25 caliber handgun in his pocket, but it was never fired. In fact, Dupree never had the opportunity to draw the weapon. The 0.25 was not found until medical personnel accidentally discovered it while treating Dupree. The gun fell out of Dupree's pocket while he was receiving emergency medical treatment. Every bullet found in the Vine Street News matched Treesh's weapon. Coulson stressed that there is no evidence to suggest that Dupree had his 0.38 with him on the day that he was killed.

There are no facts substantiating an accidental shooting, according to Leikala and Coulson. Coulson, who prosecuted Treesh's case, noted that, after the trial, he spoke with each of the jurors and none of them believed that the shooting was accidental.

Leikala pointed out that Treesh shot Lauver for no apparent reason. As Treesh and Brooks were fleeing the store, Lauver was standing with his hands raised into the air. He was not reaching for a button, telephone, or anything else. A witness observed Treesh exiting the Vine Street News in an action stance, shooting into the store as he exited it.

Leikala stressed that Treesh's destructive behavior continued after fleeing the Vine Street News. Treesh and his co-defendants led police on a high speed chase through a residential neighborhood. Treesh and Brooks shot directly at pursuing officers, as evidenced by the bullet holes found in the police cruisers. At one point, they attempted to block the pursuing officers' path by shooting down a tree limb.

Treesh was captured only after he ran out of ammunition and was unable to flee. When apprehended, Treesh told the officers that he would have killed all of them if he could have.³ As proof of his violent intentions, Leikala pointed to the fact that Treesh had reloaded his gun at least one time between shooting Dupree and his eventual apprehension. Treesh's gun held a maximum of 14 bullets; however, a total of 18 bullets matching Treesh's gun were found between the Vine Street News and the location of Treesh's eventual capture.

Leikala stressed that Treesh's case involves much more than a single isolated shooting. She urged the Board to consider the weeks of crime that led up to, and culminated with, Dupree's death at the Vine Street News.

Leikala presented a chronological and detailed overview of Treesh's multi-state crime spree during August 1994. She described more than a dozen separate crimes to which Treesh and his co-defendant were linked in that month. The crimes included bank robberies, car jackings, kidnappings, attempted murder, and murder. Leikala described how, during several of the robberies committed in August 1994, Treesh digitally raped the female victims. On one occasion, Treesh had attempted, unsuccessfully, to penetrate one of those victims with his penis. Leikala described how Treesh would threaten to "splatter" his victims if they did not cooperate with his demands.

Leikala also described how Treesh bound some of his victims, holding them captive in their vehicles. She noted that Treesh would put light bulbs in his victims' mouths, cover them with duct tape, and then punch victims in the mouth, shattering the bulbs. After his arrest, Treesh admitted to police that he found the act amusing.

Leikala spoke in detail about a murder in Livonia, Michigan to which Treesh and Brooks have been linked. The murder occurred on August 25, 1994, two days before the Vine Street News robbery. Treesh and Brooks entered the Best Video in Livonia at approximately 11 p.m. While Brooks distracted a store employee, Treesh sequestered the store's owners, brothers Ghassan "Gus" Danno and Frank Danno, in the store's office. After Brooks heard

³ According to the arresting officer, Treesh's exact words were, "I should have killed all you motherfuckers and would have if I could have."

shots being fired in the office, he ran back to find Treesh struggling with the Danno. At that point, more shots were fired. Gus Danno was hit five times. His brother Frank was shot three times. Frank Danno survived, but Gus Danno died from his wounds. Treesh and Brooks fled the scene, arriving in Ohio shortly thereafter.

Coulson noted that, to his disappointment, neither Treesh nor Brooks was prosecuted for the murder of Gus Danno. After Treesh and Brooks were convicted in Ohio, Michigan and the other states that were part of Treesh's crime spree determined that it would not be an efficient use of their resources to extradite the two men for trial. Coulson stated that he was surprised when Michigan declined to prosecute Brooks and Treesh for Gus Danno's murder.

Leikala stressed that all of the crimes that she and Coulson described for the Board were ones for which they could verify Treesh's involvement. She indicated that it is quite possible that Treesh was involved in other crimes in other states to which he has never been linked.

Leikala argued that, on the day of the Vine Street News robbery, Treesh may not have been as high on cocaine as Treesh's counsel suggested. She noted that much of the drugs Treesh and his co-defendants purchased that day were fake, and what little cocaine Treesh was able to acquire, he had to share with his co-defendants. Doyle noted that Treesh was coherent on the night of his arrest.

Coulson noted that he could not seek the death penalty for Brooks in relation to Dupree's killing because Brooks was not the actual shooter. For Brooks to have received the death penalty, Coulson would have had to establish that Brooks and Treesh had extensively planned Dupree's killing, but he had no proof that such planning occurred.

Coulson rejected the notion advanced by Treesh's counsel that the improper *Miranda* warning administered to Treesh warrants a commutation. Coulson pointed out that the *Miranda* claim was thoroughly vetted in multiple courts. The claim was rejected by a majority of the Lake County Court of Appeals, the Supreme Court of Ohio, and the federal courts that heard and reviewed Treesh's habeas corpus petition.

Coulson also rejected the notion advanced by Treesh's counsel that there had been a rush to judgment in Treesh's case. Coulson stressed that there had been open discovery leading up to the trial. The defense had in its possession everything that the prosecution had.

Coulson indicated that he was personally unimpressed by Treesh's involvement in the DARE campaign. He questioned Treesh's motivation in participating in the documentary shown by Treesh's counsel. According to Coulson, Treesh relishes news media limelight. Doyle concurred that Treesh's DARE participation was self-serving.

Coulson stated that the most memorable moment in his life was when Dupree's sister hugged him after the trial and said to him that the "the system worked." The Dupree family, which is African-American, was concerned that they would not get justice in predominantly white Lake County.

Leikala urged the Board not to conclude from the absence of Lauver and the Dupree family at the clemency hearing that they do not care about the outcome of the clemency proceeding.

Leikala stressed that the Dupree family would have appeared for the clemency hearing had they been able. However, each of Dupree's surviving family members are of advanced age and have serious health issues that made it impossible for them to appear for the hearing. Leikala noted that Lauver has retreated from public life and did not come to the hearing because reliving Dupree's murder and his own shooting is too emotionally painful.

Doyle described the night that Treesh was captured. He described how officers believed that they were going to be killed while pursuing Treesh. To this day, Doyle remains astounded by the brazenness exhibited by Treesh and his co-defendants. Doyle noted how, while fleeing police on foot, Treesh and Harth kicked in people's doors and ran directly through their homes. Doyle believes that, had he not run out of ammunition, Treesh would have killed a police officer on the night he was captured.

Following Treesh's conviction, on March 2, 1995, Doyle interviewed Treesh about a number of other crimes in which Treesh claimed to be involved, including the lynching of an African-American man. Treesh also spoke of being involved in the disposal of several bodies. Doyle's interview was videotaped, and the video was provided to the Board in advance of the clemency hearing. Co-defendant Harth was present for the interview.

Doyle stated that he was able to corroborate some, but not all, of the information that Treesh provided to him during the March 2, 1995 interview. To a large degree, Doyle was hamstrung by other law enforcement agencies' lack of cooperation in commencing investigations on the crimes Treesh described. Some of the cases about which Treesh spoke were cases that various law enforcement agencies had long since closed.

Doyle described Treesh as a racist individual. He believes that Treesh killed Dupree because Dupree was African-American.

Doyle expressed skepticism that Treesh's crime spree was motivated solely by the desire to obtain cash for drugs. He noted that Treesh and his co-defendants did not spend their ill-gotten gains on drugs alone. He pointed out that, on at one least occasion, Treesh and his co-defendants purchased a recreational helicopter ride. Doyle opined that Treesh was "morally off base" long before he used drugs.

In response to the contention advanced by Treesh's counsel that the death penalty is increasingly falling out of favor with Ohio juries, Leikala noted that a Lake County jury recently handed down a death sentence in September 2012. She noted, further, that at the very moment Treesh's clemency hearing was being conducted, a Summit County jury was handing down a death sentence.

The State concluded by asking that the Board make an unfavorable recommendation for Executive clemency.

VICTIM'S REPRESENTATIVES:

Frank Danno, one of the owners of the Best Video store in Livonia, Michigan, described the night that he and his brother, Gus, were robbed and shot by Treesh and Brooks. Treesh sequestered Danno and his brother in their tiny store office. Treesh pointed his 9 millimeter handgun at Frank Danno and said to him, "Guess what time it is, brother." Danno described for the Board how he and his brother were shot multiple times. Danno noted that while he survived, his brother Gus died from his wounds. Danno described the devastating impact that his brother's murder has had upon his family. According to Danno, his mother has never been the same since Gus died. To this day, she still cannot bring herself to celebrate family functions. Danno believes that the only thing that keeps his mother alive is her will to see justice done in relation to her son's murder. Danno's mother asks about the execution often, stating that the execution needs to occur before she dies. She looks at Gus's picture and cries. Gus was the backbone of the family. Gus's two children were only one and a half and two and half years old when he was killed. Danno described their pain growing up without a father. He described how Gus's widow was so devastated by Gus's death that she had to return to Chicago to live with her parents. She never remarried. Danno insists that Treesh's drug addiction is no justification for what he did to Gus and his family. Danno looks forward to the day when justice is finally administered to Treesh in the form of execution.

Deanne Danno, Gus Danno's sister-in-law, stated that Gus could not have been more special to her had he been her brother by blood rather than marriage. She misses him dearly. She spoke of how Gus had always made her feel like a part of the family. Deanne Danno related the events of the day her brothers-in-law were shot. She had received a call from one of the other video stores that the Danno brothers owned, informing her only that there had been a shooting at one of the other stores. The caller had no information as to the identity of the person who was shot. Deanne Danno's husband, Steven, was already on his way to the video store when the shooting occurred. Steven had a prearranged meeting with Frank and Gus to discuss business. When Steven arrived at the store, he was greeted by police and paramedics. Deanne Danno cannot imagine what her husband went through that night having to learn from police that his brothers had been shot. She spoke of the pain her sister-in-law experienced learning from doctors that Gus was not going to survive. Deanne Danno noted that Treesh robbed Gus and his children of moments they will never have together. She spoke of how the shooting has changed her brother-in-law, Frank Danno. He relives the pain every day and there is not a day that goes by that he does not think about the crime. She noted that Gus was only 39 years old when Treesh took his life. No one forced Treesh to ingest cocaine, but he forced immeasurable pain upon the Danno family. Deanne Danno concluded by stating that she believes that Treesh should be executed.

Norton Danno, Gus Danno's cousin, spoke of his family's video store business. He noted that he and his family would always wonder how long the business could last in the face of pay-per-view and other challenges to the video industry. Little did he know that the end of the business was in fact coming much sooner than expected, at the hands of Frederick Treesh. Norton Danno described how he told his cousin Frank about Gus's death while Frank was in the hospital undergoing treatment for his injuries. He will never forget the horror on Frank's face when he conveyed the news. Norton Danno stated that he thinks about the crime everyday and about how it devastated his family. His family constantly relives the horrific

night on which Gus was killed. It saddens him that Gus and his family never got the opportunity to enjoy a life together. He goes to visit Gus's grave as often as he can. He looks forward to the day that he can say to Gus that justice has finally been done and that he can now rest in peace. He noted, too, that Gus's mother is anxiously awaiting the day that Treesh is executed, and justice done.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Ohio Parole Board conducted an exhaustive review of the documentary submissions and carefully considered the information presented at the clemency hearing. The Board reached a unanimous decision to provide an unfavorable recommendation regarding clemency based on the following:

- The Board finds unpersuasive the argument advanced by Treesh's counsel that Treesh did not approach Dupree with the intention of shooting him but rather shot him accidentally during a struggle. The Board finds persuasive the State's argument that the first of the fatal shots fired into Dupree occurred while Dupree was seated rather than during a struggle. Moreover, Treesh's decision to shoot Lauver in the face for no apparent reason as he exited the Vine Street News suggests that he came to the store with murderous intent. In any case, the Board is inclined to show deference to a jury's factual determinations and recommendation of sentence when the basis for clemency relates to a purely factual determination such as this.
- There was no rush to judgment in Treesh's case. Treesh received a jury trial. The verdict and sentence are not constitutionally suspect. Both were subjected to direct appeals and federal habeas review. Treesh's legal claims, including the alleged *Miranda* errors, were thoroughly vetted and rejected by the state and federal courts.
- Treesh's ADHD and his cocaine addiction do not warrant the exercise of Executive clemency. The Board recognizes that Treesh's robbery of the Vine Street News and his earlier multi-state crime spree were fueled, at least in part, by his insatiable appetite for drugs and the fast cash needed to feed the habit. However, that addiction, even in combination with his ADHD, does not excuse or significantly mitigate his behavior. Nor does it explain why Treesh acted so violently and so unconscionably during his criminal rampage. Treesh and his co-defendant, Brooks, gratuitously brutalized, humiliated, and killed innocent people, most of whom, like Dupree, posed no real or perceived threat to them. The Board recognizes that Treesh has not been convicted of any crimes related to the events preceding the Vine Street News robbery; however, there is substantial evidence suggesting his involvement in those crimes, including the killing of Gus Danno in Michigan. Treesh's counsel never denied Treesh's involvement in those crimes during the clemency hearing. The Board is therefore unwilling to ignore Treesh's prior bad acts, including his extensive juvenile and adult criminal records, in evaluating his request for clemency.
- The Board rejects the argument advanced by Treesh's counsel that Treesh's death sentence is disproportionate to the sentence imposed upon Brooks. There is no

question that it was Treesh, not Brooks, who shot Dupree. Brooks was not even armed when he and Treesh entered the Vine Street News. The sentences imposed upon Brooks and Dupree are proportionate given their very different roles and degrees of culpability in Dupree's death.

- The Board disagrees with counsel's suggestion that Treesh's killing of Dupree was not the "worst of the worst" forms of murder. Treesh ambushed an unaware Dupree, who was shot and killed before pulling his weapon. Dupree posed no threat to Treesh. He was not even aware that Treesh and Brooks were robbing the store. Treesh sought out Dupree for the sole purpose of neutralizing what little potential threat he thought Dupree might present. After killing Dupree, Treesh shot an unarmed Lauver in the face for no reason. Treesh then led police on a high-speed chase through a residential neighborhood, shooting at the police throughout the pursuit. Treesh was captured only after running out of ammunition and having nowhere to run. After being arrested, Treesh stated to police that he would have killed every one of the officers if given the opportunity. The Board has no doubt that Treesh meant every word of that sentiment given his violent behavior that night and in the preceding weeks. As tragic as the events of August 27, 1994 were, Treesh's actions that day could have easily resulted in even greater harm. The killing of multiple innocent bystanders and police officers was squarely within the realm of possibility. Popular opinion about the death penalty may have indeed evolved since 1994, as Treesh's counsel suggests, but the Board cannot say that the facts and circumstances of Treesh's crime clearly warrant something less than the death sentence lawfully imposed upon him.
- While Treesh's contributions to the DARE program are commendable, they do not come close to offsetting the havoc he wreaked across multiple states in the summer of 1994 and the life he took at the Vine Street News. His community service does little to mitigate the destruction he has brought to so many innocent people's lives. It does little to mitigate the terror to which he subjected his victims, and does little to ameliorate the fear that many of them no doubt still live with today.
- The Board rejects the contentions advanced by Treesh's counsel that Treesh has significantly grown and improved as a human being since coming to prison and that he is two different people on and off drugs. Treesh's institutional conduct throughout his incarceration belies counsel's contentions. So too does his recent refusal to be interviewed by the Board in advance of his clemency hearing. Treesh's behavior, including the gross disrespect he has repeatedly directed to prison staff, is indicative of a self-indulgent, petulant, and immature individual who lacks respect for authority; who is uninterested in conforming to ordinary rules of decorum; and who lacks sensitivity to the dignity and sensibilities of others. That Treesh displays these negative qualities in prison, a structured and sober environment, strongly suggests that this is simply who Treesh is, with or without the intoxicating effects of cocaine.

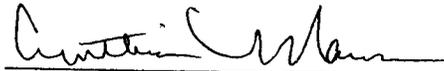
RECOMMENDATION:

The Ohio Parole Board with eleven (11) members participating, by a vote of (11) to (0) recommends to the Honorable John R. Kasich, Governor of the State of Ohio, that Executive clemency be denied in the case of Frederick Treesh.

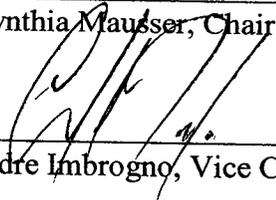
Adult Parole Authority

Ohio Parole Board Members
Voting **Favorable**

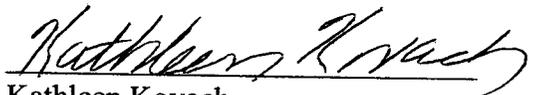
Ohio Parole Board Members
Voting **Unfavorable**



Cynthia Mausser, Chair



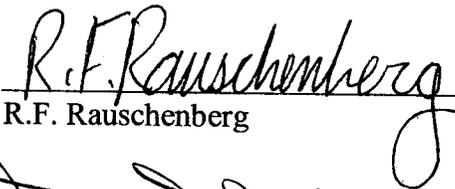
Andre Imbrogno, Vice Chair



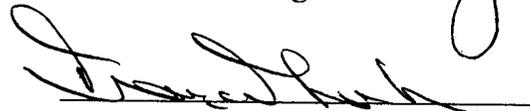
Kathleen Kovach



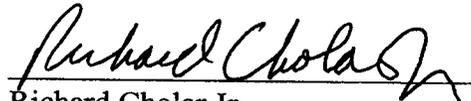
Ellen Venters



R.F. Rauschenberg



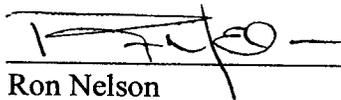
Trayce Thalheimer



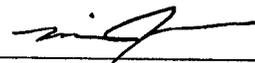
Richard Cholar Jr.



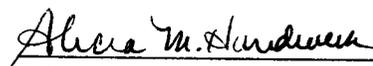
Marc Houk



Ron Nelson



Michael H. Jackson



Alicia Handwerk

To Whom It May Concern:

This letter is being written to express the heartache which occurred to our family. The loss of a beloved son, brother, husband and father. Words cannot explain the torment that was created by two heartless, selfish criminals. I will begin with Ghassan who was known by everyone as Gus. He was like a big teddy bear. We called him the God Father. Gus was the type of person that would give his last dollar to someone in need without any hesitation. He was the back bone of our family. When our father died suddenly, Gus immediately took his place. Everything in our lives included my brother. His opinions, advice and knowledge were extremely important to our family. All major decisions were made through Gus. Going into the video business was an idea Gus had given the family. We wanted to go into a business that would be safe with no worries of theft or robberies. Of course, on that horrific night we never thought this day of misery would ever come our way.

I would like to explain the damage that Frederick Treesh and Benjamin Brooks caused our family. First, the heartache of a mother having to bury her son. Until this very moment which has been over 18 years our mother is still in mourning. Any event that takes place, my mother will not attend. We have had several engagements, weddings, communions, baptisms and birthday parties. Every occasion we have tried to convince her to attend and her response "How can I go to a party and celebrate when my son was murdered". Ever since this horrible night of August 25, 1994, my mother's health has deteriorated. We strongly believe that the only reason she is still alive today is because we have told her many times that we will get justice for our brother's murder. There is never a day that goes by that she does not ask for information regarding the execution date. We are constantly making excuses for every appeal that has been made in hopes that the last one is the final one. She responds by saying "it needs to be done before I die". On an average day my mother will be sitting alone staring at a picture of my brother with tears running down her eyes. On the night Treesh murdered my brother, our mother has never been the same.

One of the greatest occasions for our family was the wedding of my brother Gus and Zina. I remember my mother saying she couldn't wait to become a grandmother. I told her we couldn't wait to become

Uncles. Well, that wish came true when we found out they were having their first child. Gus and Zina were the happiest couple I ever knew. Soon after that, they had their second child. Gus had his dream come true with one boy and one girl. Gus always said he would give them the world. Sadly, his two and three year old would be growing up without a father. As hard as my mother took his death, Zina knew her life had shattered in a blink of an eye. Married for a short time with two kids that would grow up without a father. Zina till this day has never been able to move on with the rest of her life.

After my brother's death, Zina decided to move back to Chicago to live with her parents. As hard as that was for our family to see her go, we understood. She was grieving and needed her family by her side. But our mother had to suffer more knowing that her grandchildren were no longer nearby. We try as much as we can to see the kids and tell them who their father was. They would always ask why this happened to their father. Why couldn't they have just taken the money and left? Why did they have to shoot him? Questions children should never have to ask. But, we were there comforting them as best as we could. Through it all, we are reminded that a father will never walk his daughter down the aisle. His son will never experience camping, fishing or hunting with his father. This truly has been a struggle for our family. But, we know that justice will prevail. Our family knows that the choices these two men made that horrific night were absolutely intentional. Trying to blame the matter on cocaine does not justify the means of one's actions. Frederick Treesh and Benjamin Brooks new exactly what they wanted that night and every other night while on their killing spree. On the morning of Wednesday, March 6, 2013, Frederick Treesh will know what the meaning of life is.

Wednesday January 30, 2013

To Whom It May Concern,

My name is Deanne Danno. Approximately 19 years ago I lost the one brother that I never had, his name was Ghassan Danno but everyone who befriended him called him "Gus." Mind you Gus was not my blood brother but he might as well have been. You see 29 years ago I met three terrific men Gus, Frank, his brother and my now husband Steven. When I first met all 3 brothers, I thought to myself I never had brothers of my own (I have 2 older sisters) so it was nice to finally get the chance to have 2 older brothers in my life. Gus always seemed to include me in whatever his family was doing at the time which made me feel happy. Throughout the years that Gus was alive we had our share of the best times any family could go through. Him being the oldest brother married first. When I first met his wife Zina, I knew right away that her and I would become the best of friends. We seemed to click right away. So when that horrible, awful, nightmare of a night came along on August 25, 1994 I couldn't bear to see the look on Zina's face to tell her what had happened. I will never forget that day as long as I shall live. I was home alone at the time because my mom was Up North on vacation with my grandma and my older sister and her kids. It was midnight when my phone rang, woke me up from a deep sleep. I had no idea that on the other end a nightmare would soon become a reality. On the phone was a manager from the Wyandotte, Michigan store that the 3 brothers also owned. She proceeded to tell me that someone got shot. You see Gus, Frank, and Steven also owned a video store in Livonia as well. 8 mile road and Grand River was the location. When she told me someone was shot, I kept asking her who got shot and she couldn't tell me because at the time she didn't know. Without hesitation I quickly got up called my mother and told her what had happened, also I had to call my boss and tell him that I wouldn't be in to work the next day. Where I lived compared to where the video store was was 45 minutes away. You can't imagine what thoughts I was having as I was driving 45 minutes by myself to the Livonia store not knowing what I was going to find once I arrived. You see that night all 3 brothers were going to have a meeting in their office. Well, Frank and Gus were already there and Steven was still at home but he was going to be there shortly. When Steven was driving to the store little did he know that once he would arrive he would see police cars, fire trucks, and an ambulance. Well, Steven thought nothing of it because next door to their video store was a Perry Drug Store so Steven thought to himself well maybe someone took ill or fell needless to say Steven would soon find out why all the commotion was at his store. You can't imagine and even I can't imagine what Steven would soon be told once he arrived at his store from a policeman that the owners got shot. Right away Steven knew that his brothers were involved. Once I arrived at the scene I didn't see anyone except for the manager from the Wyandotte

store. She proceeded to tell me that there was an attempted robbery at the video store and that Gus and Frank were shot. It was like I was in a daze. We both went to the hospital. I couldn't believe my ears as she was telling me because just an hour and a half ago I was on the phone with Gus talking to him. Little did I know that I would end up in the hospital praying for him and praying for Frank. You always hear about robberies happening elsewhere but never in my wildest dreams would we be living this nightmare. Here we are law abiding citizens of the U.S. and never once did we ever take advantage or hurt others the way Treesh did! For the next two days while my 2 "brothers" were fighting for their lives Treesh and Brooks were out and about breathing fresh air and going wherever they wanted intentionally destroying peoples lives!! Frank was in one hospital in sheer agony, while Gus was transferred to another hospital literally fighting for his life. Zina, his wife wasn't even in town on that horrific day, no, she was in Chicago with her two small precious babies awaiting the arrival of her husband so they can enjoy her father's birthday celebration together. Little did we all know that Gus would never get to see his beautiful wife or his precious babies alive again!! You can't imagine the feeling to make the phone call to his wife to tell her that she had to come home right away because her husband was in the hospital. Unfortunately, our beloved brother, husband, friend, "Godfather" passed away two days later all because of what Treesh chose to do on that night two days before. They made their choice, they chose to get into a car and go wherever they thought would give them the means of their drug addicted habit. They chose to come into our video store and knowing that they didn't care who we were just as long as they got what they came to do. I'll never forget when the time came that Frank told us what had happened that night. Treesh's cold words were "Guess what time it is brother?" A struggle ensued and the end result was that between Treesh and Brookes, Gus ended up with five bullets in his body. Frank ended up with ^{three} ~~two~~. The two murderers left the store and left the two brothers to bleed to death. You cannot imagine what it was like to see Zina walk through those hospital doors and wonder how her husband is when she came to see him. She stayed in love with him until this day and never remarried. You cannot imagine what it is like to hear the doctor's words when he said that there was nothing else they can do for Gus. He bled to death!!! Like I said before Gus was and Frank is like my brother and the pain that Treesh has caused our family is unbearable even 19 years later!! When Gus died 2 days later on Saturday August 27th, 1994, it felt like someone took my heart and put a hole in it. Gus would never be at Christina or Christopher's birthday parties, never witness their first loose tooth. Gus would never be there to take pictures when they go to school on their first day. Gus would never be there as the proud father at their high school graduation, never hear about their first day of college. Gus would never be able to take Christina or Christopher out to learn how to drive. Gus would never walk his beautiful daughter Christina down the aisle when she gets married. Gus will never be able to help Zina cut down her hours and spend more time with her kids. Treesh literally robbed Gus's wife and kids of these beautiful moments in his life that will never happen all because Treesh

chose to get into a car and drove to where Gus and Frank were that awful night and take their life and destroy it. Let me now tell you about my "brother" Frank; Frank also was shot that awful, dreadful night but he Thank God survived. I must tell you though ever since August 25, 1994 Frank has and will never be the same. He has been on antidepressants ever since it happened. He relives the pain and memories of what happened over and over again in his head. Frank didn't choose to take antidepressants he had no choice though because it was the only thing that could help him get through the agony of what he went through. Sometimes when I look at Frank, I can see in his eyes that there doesn't go by a day without him thinking about what had happened. 2 years later on November 5, 1996 Frank got married to a wonderful woman and they had 3 beautiful children whom Gus will never know. I know for a fact that it really pains Frank to know that Gus hasn't been around to see any of the things that his kids have accomplished. Frank's oldest son Andrew getting his drivers license and so much more that Gus will never get to see all because of the choices Treesh made. As for me, I am very angry that Treesh took away my brother that I never will laugh with, listen to his stories or the fact that Gus has never seen mine and my husband Steven's kids Jonathan and Vanessa. Treesh did not only shoot Gus and Frank that night, he killed three families and a mother that has mourned for 19 years.

I would also like to tell Gus; Guess what time it is brother? It is time for a closure. It is time to tell your kids that those who did this to you and your family will soon be facing their Maker. It is time for justice!

Deanne Danno

39 years old that's how old
Gus was! He lived a great life
and was the victim of a senseless,
horrific crime that should never
have happened!

Benjamin Brooks should be
death row.

For 17 years Treesh had his
mother. ~~For~~ Where is Gus ^{for his}
mother

The defense is asking for Treesh's life to be spared. To save him from clemency. What is Gus's life? Why didn't Treesh + Brooks spare his life? Didn't he think after he shot Gus + Frank that their life would just be normal again? No, my brother's life is never going to be normal again.

No one forced Treesh + Brooks take cocaine, but ultimately Treesh + Brooks forced the Danno Family to live without their brother, father, friend, Gus and they also forced Frank Danno to live this nightmare that they put him through over over again.

We watched the video where ^{we see} Treesh's daughter speak to her father on the phone. Where is the phone calls that Gus's daughter has never had since this happened. Treesh has literally robbed the life of a decent beautiful human being that the Danno's family will never see again.

Treesh says that the reason he made the video is to make a difference to at least 1 person. Well, Treesh has surely made a difference in countless numbers of people in Gus's life.

If you choose to shoot someone in cold blood, then I believe with all my heart that you should die why should you continue to live?

Three was the number for our family. When I say three, that was how many boys my uncle had and how many boys my father had. Gus was the oldest of the three, Frank was in the middle just like me. There is a lot more we have always had in common. We all lived in the same neighborhood for many years of our lives. We all went to the same places together and spent a lot of time with each other.

In the 90's when things were going great for the entire family we all decided to go into the video store business. We each had our own store. All we ever did was just try to work hard to make an honest living. Customers loved us and they were always treated with the up most respect.

Throughout the year we always wondered how long the video store business would last due to all the pay per view and new programs that were coming out. Little did we know that the final day would be August 25, 1994 for Gus. I remember going to the hospital and talking to Frank. He looked up at me and asked how his brother Gus was doing. I said to him "don't worry everything will be ok". He responded "Gus is gone, Gus is gone, isn't he." I remember the words just tell me, just tell me. At that point, I could not pretend that everything was ok. I knew the truth had to be told. Frank knew right away when he saw me tear up. On the same night that Frederick Treesh and Benjamin Brooks decided to go into the video store and murder my cousin Gus and try to murder my cousin Frank, my older brother was on his way to the video store to visit Gus and Frank. That night he was with his girlfriend and she told him she had to be home by 11:00. So, he took her home at the same time my cousins were being shot by the heartless, no good criminals. After the incident occurred, we found out what had happened and my brother had come home and we told him the news. Until the day I die, I will never forget the look of

horror on his face. Each and every day of our lives we think about that horrific day. My brother always says to himself if he was not with his girlfriend he would have been there and maybe things could have been different. We explain to him that thank God that was not the case because he too could have been killed. To add ever more heartache, my grandfather cried over Gus's casket to the point where he passed out. A few days later, my grandfather passed away. It has been over 18 years since the incident but each and every time we talk about it, we relive that horrific night. Frederick Treesh and Benjamin Brooks caused damage to our family to last a lifetime. Gus was only 39 years old and had a loving wife and two beautiful babies. Gus never had a chance to enjoy his life because of Treesh and Brooks. Gus's children and wife could not enjoy having a life together because of Treesh and Brooks.

I go and visit Gus as often as I can. It feels good when I talk to him. I let him know how much he is missed and was loved by each and every one of us. Most of all, I have always promised him that we will get justice for what was done. I always told Gus that I would be back to let him know when the execution date is. Gus is now and Angel in Heaven watching over all of us. I know that Treesh will go straight to Hell after he takes his final breath. I often wonder what goes through his mind. Did he have any sorrow or sympathy for what he did? He has had over 18 years to think about it. I wish in all the years that Treesh was locked up he could have had pictures of all the family members he destroyed. I also hope that the final week of Treesh's life will be his most horrific. The last voice he will hear will be that of the victim's family. Treesh, you will never be forgiven but, you will be forgotten. When you are gone it will finally give us closure. When you are gone, Gus will finally rest in peace.