

DATE TYPED: December 8, 2016
DATE PUBLISHED: December 9, 2016

IN RE: RONALD PHILLIPS, CCI #A279-109

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

Date of Meeting: December 1, 2016

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: Ronald Phillips, CCI #A279-109

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder, Felonious Sexual Penetration, Rape
(3 counts)

DATE, PLACE OF CRIME: January 18, 1993 in Akron, Ohio

COUNTY: Summit

CASE NUMBER: CR93020207

VICTIM: Sheila Marie Evans – deceased

INDICTMENT: Count 1: Aggravated Murder with Capital Offense
Specification
Count 2: Felonious Sexual Penetration
Count 3: Endangering Children with Physical
Harm Specification
Count 4: Felonious Assault
Count 5: Rape
Count 6: Rape
Count 7: Rape

TRIAL: Found guilty by jury of counts 1, 2, 5, 6, and 7. Counts 3
and 4 dismissed.

DATE OF SENTENCE: September 14, 1993

SENTENCE: Count 1: DEATH
Count 2: Life
Count 5: Life
Count 6: Life
Count 7: Life

The death sentence is to be served consecutively to
counts 2, 5, 6, 7 and counts 2, 5, 6, and 7 are consecutive
to each other.

ADMITTED TO INSTITUTION: September 16, 1993

JAIL TIME CREDIT: 2 days

TIME SERVED: 279 months (does not include jail time credit)

AGE AT ADMISSION: 19 years old
CURRENT AGE: 43 years old
DATE OF BIRTH: October 10, 1973
JUDGE: Honorable James R. Williams
PROSECUTING ATTORNEYS: Lynn C. Slaby and Michael Carroll

FOREWORD:

A clemency proceeding in the case of Ronald Phillips, A279-109, 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.

On November 10, 2016, the Parole Board interviewed Phillips, who appeared via videoconference from the Chillicothe Correctional Institution. A clemency hearing was then held on December 1, 2016 with twelve (12) members of the Parole Board participating. Arguments in support of and in opposition to clemency were presented at that hearing.

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 twelve (12) members participating, the Board voted ten (10) to two (2) to provide an unfavorable recommendation for clemency to the Honorable John R. Kasich, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (CR93020207):

The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided November 22, 1995:

On January 18, 1993, Sheila Marie Evans, age three, died as a result of cardiovascular collapse due to, *inter alia*, severe, blunt force trauma to her abdomen. At the time, Sheila's mother, Fae Evans, was dating and occasionally cohabiting with appellant, Ronald Ray Phillips. In addition to Sheila, Evans had two other children, Sara, twenty-nine months old, and Ronald, Jr., appellant's infant son.

Shortly after 10:00 a.m. on the morning of January 18, 1993, Fae Evans took Ronald, Jr. to see the family physician for a routine physical examination. Appellant remained at Evans's apartment to care for Sheila and Sara. Evans returned to the apartment at approximately 11:25 a.m. and found appellant sitting in the kitchen. Soon thereafter, Evans called out to her daughters, but they failed either to respond or to appear. Appellant walked into the girls' bedroom and found Sheila lying on her bed motionless, pale and cold. He then lifted Sheila and carried her downstairs to his grandmother's apartment. Hazel Phillips, appellant's grandmother, telephoned the 911 emergency operator, reported that Sheila was not breathing, and relayed instructions on performing

cardiopulmonary resuscitation to appellant. Appellant in turn attempted to revive Sheila until medical assistance arrived.

Paramedics from the city of Akron responded to the 911 call within four minutes of being dispatched and immediately transported Sheila to Children's Hospital in Akron. Upon her arrival at the emergency room, Sheila was not breathing and had no pulse. The first physician to examine Sheila, Dr. Eugene Izsak, noted that she had multiple bruises on her torso, a distended stomach, apparent internal abdominal injuries, and a stretched anus with some acute, recent changes. Dr. Izsak's medical team continued cardiopulmonary resuscitation and was eventually able to obtain a pulse. Sheila was transported to the operating room after spending approximately one hour in the emergency room. Dr. Robert Klein performed emergency abdominal surgery, which revealed that Sheila's abdominal cavity was filled with a significant amount of free air and blood, and that a portion of her intestine, the duodenum, was perforated and gangrenous. Dr. Klein removed the dead portion of the intestine, and attempted to control the internal bleeding. Based upon his observations, Dr. Klein determined that the injury to the duodenum had been inflicted at least two days prior to Sheila's admission into the hospital. Despite the significant medical efforts performed at Children's Hospital, Sheila died later that day.

On January 19, 1993, Dr. William Cox, the Summit County Coroner, conducted an autopsy on Sheila. During his external examination of Sheila, Dr. Cox documented more than one hundred twenty-five bruises, many of which he identified as acute injuries that had been inflicted within a few hours of death. The bruising indicated that Sheila had been severely beaten about her head, face, upper and lower torso, arms, legs, and genitalia. He also detailed that the blows to Sheila's abdomen had resulted in severe internal trauma, including hemorrhaging in her stomach, intestine and other internal organs. Dr. Cox examined the section of Sheila's bowel that had been surgically removed, and determined that the injury to the duodenum had occurred approximately forty-eight hours prior to her death. During that forty-eight-hour period, Dr. Cox opined, Sheila would have suffered from intense abdominal pain, an inability to eat, vomiting, a high temperature, and listlessness. The beating Sheila suffered on the morning of January 18, 1993 caused the already necrotic and gangrenous duodenum to rupture. Dr. Cox concluded that Sheila died as a result of cardiovascular collapse stemming from the severe, blunt force trauma to her abdomen, and the numerous related complications.

Dr. Cox also discovered during the autopsy evidence of acute anal penetration. Based upon the presence of contusions and lacerations, Dr. Cox determined that Sheila had sustained repetitive anal penetrations over a period of time, and that the most recent anal trauma had occurred sometime during the morning of January 18, 1993. Given the absence of abrasions within the rectum, Dr. Cox further concluded that Sheila had been anally penetrated by a penis rather than by a finger or some other foreign object.

At approximately 3:00 p.m. on the day Sheila died, Detective Jan Falcone, an officer with the Juvenile Bureau of the Akron Police Department, interviewed appellant at the police station. Although appellant was not placed under arrest,

Falcone read appellant his *Miranda* rights, which he waived. During the interview, appellant admitted that on Friday, January 15, 1993, or Saturday, January 16, 1993, he had spanked Sheila three times with an open hand. After the spanking, appellant noticed bruises on the girls' bottom, which surprised him. He said, "I really didn't think I spanked her that hard but I told Fae I would not do it anymore." Appellant indicated that Sheila had not felt well during the weekend, and that she had vomited several times.

Appellant also told Falcone that Sheila had been injured on several previous occasions. He recalled one incident in which Sheila fell on a railroad spike which penetrated either her vagina or anus. On another occasion, appellant claimed that Sheila hurt her "vagina and stomach area" when she jumped from a dresser to a bed and struck the corner of the bed. Sheila bruised her eye and cut her lip when she fell down a flight of stairs. Appellant denied having ever touched Sheila or Sara in their "private areas."

At some point during the interview, appellant was informed that Sheila had died. Falcone then asked appellant again what had happened to Sheila. Appellant responded that the night before Sheila's death, he had observed Evans in the girls['] bedroom standing over Sheila with both fists clenched after hearing Sheila scream, "Don't beat me." The interview ceased after that exchange, and appellant left the police station. In total, the interview lasted approximately seven hours, during which time appellant was provided with food, beverages, and several breaks.

On Wednesday, January 19, 1993, appellant telephoned the Akron police station in order to speak with the detectives who were investigating Sheila's death. Detective Ronald Perella, a detective assigned to the case, was attending Sheila's autopsy at the time appellant's call was received and thus was unable to immediately speak with appellant. The next morning, Perella and his supervisor, Sergeant Dye, drove to South Alternative School, where appellant was enrolled as a student. The officers met with appellant and asked him to return to the police department for further questioning. Appellant complied, was driven to the Juvenile Bureau of the police department, and taken to an interviewing room. Perella read appellant his *Miranda* rights, which he again waived, and asked appellant to share whatever additional information he wished to convey. Appellant then repeated the same information he had given to Detective Falcone on the previous day. The detectives questioned appellant as to why he had telephoned them if he simply wanted to reiterate his earlier statement. They also informed appellant that the coroner had performed an autopsy on Sheila, and therefore knew everything that had happened to her.

At that point, appellant asked Sergeant Dye to leave the room so that he could speak with Detective Perella alone. Dye agreed. Once they were alone, appellant told Perella, "I don't want to go to jail; I don't want to get pumped in the butt." Perella responded that "not everybody who gets arrested goes to jail, that there could be counseling but without knowing what [appellant] wanted to talk about, that [Perella] couldn't promise him anything except to tell the prosecutor and the judge that he cooperated." Appellant then confessed that on the morning of January 18, 1993, he "lost it" and repeatedly hit Sheila. Appellant explained that

he had called Sheila three times for breakfast and she had failed to respond. As a result, appellant went to the girls' bedroom, pulled the covers off Sheila, and began hitting her, throwing her against the walls, and dragging her by her hair. During the beating, appellant noticed that Sheila was not wearing underwear, which caused him to become sexually aroused. After beating Sheila, appellant stated he put Vaseline on her anus and inserted his fingers. While appellant admitted that he thought about anally penetrating the three-year-old girl with his penis on that morning, he denied doing so. Appellant did confess to anally penetrating Sheila with his penis on two prior occasions, but claimed that Evans had paid him to perform those acts. Toward the end of the approximately three-hour interview, appellant prepared a handwritten statement detailing the events to which he had verbally confessed. Shortly after he completed the written statement, appellant was arrested.

On February 1, 1993, the Summit County Grand Jury returned an indictment against appellant for one count of aggravated murder in violation of *R.C. 2903.01(B)* with a death specification pursuant to *R.C. 2929.04(A) (7)*, one count of felonious sexual penetration pursuant to *R.C. 2907.12(A) (1) (b)*, three counts of rape pursuant to *R.C. 2907.02 (A) (1) (b)*, one count of felonious assault in violation of *R.C. 2903.11(A)(1)*, and one count of endangering children pursuant to *R.C. 2919.22(B)* with a physical harm specification pursuant to *R.C. 2941.143(A)*. [footnote omitted] Appellant entered a plea of not guilty to each count. Prior to trial, the state dismissed the felonious assault and child endangering charges. On August 18, 1993, a jury found appellant guilty on each of the remaining charges. Following a mitigation hearing, the jury recommended that appellant be sentenced to death for his conviction of aggravated murder. The trial court agreed with the jury recommendation and sentenced appellant to death. Additionally, the trial court imposed life sentences for each of the three rape charges and the charge of felonious sexual penetration.

PRIOR RECORD

Juvenile Offenses:

According to the Post-Sentence Background Investigation, Phillips does not have a juvenile record.

Adult Offenses: Ronald Phillips has the following known adult arrest record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
01/20/93 (Age 19)	Aggravated Murder Felonious Sexual Penetration Rape (3 counts) (CR93020207)	Akron, OH	INSTANT OFFENSES

Institutional Adjustment:

Phillips was admitted to the Ohio Department of Rehabilitation and Correction on September 16, 1993. His work assignment while incarcerated at the Southern Ohio Correctional Facility was as a Porter. While incarcerated at the Mansfield Correctional Institution, Phillips's work assignments included Material Handler 2, GED Student, and Barber. At the Ohio State Penitentiary, Phillips was a Porter.

Presently, Phillips is a Recreation Worker at the Chillicothe Correctional Institution. No program or community service completion was noted. Phillips did enroll in a GED program on August 28, 1997. However, it does not appear that Phillips has received his GED while incarcerated. According to the Post-Sentence Background Investigation, Phillips has a 12th grade education.

Since his admission, Phillips has accumulated the following disciplinary record resulting in placement in disciplinary control:

- 12/14/94: Fighting, with or without weapons, including instigation of, or perpetuating fighting. Phillips was fighting with another inmate on the yard. Both inmates were given direct orders to stop fighting but would not comply. This resulted in other inmates gathering around both Phillips and the other inmate, creating a disturbance due to yelling. Phillips received 6 days in disciplinary control for this rule infraction.
- 03/30/95: Being out of place. Phillips let another inmate enter his cell, which is not permitted. Phillips received 5 days in disciplinary control for this rule infraction.
- 12/20/96: Threatening bodily harm to another, with or without a weapon. Phillips threatened another Death Row inmate. Phillips was not given time in disciplinary control, but a separation order was completed between the two inmates.
- 12/03/05: Fighting, with or without weapons, including instigation of, or perpetuating fighting. Phillips was in a fight with another inmate. Phillips was cut by the other inmate during the fight. Phillips received 7 days in disciplinary control for this rule infraction.
- 05/11/06: Fighting, with or without weapons, including instigation of, or perpetuating fighting. Phillips was in a fight with two other inmates. Phillips did not obey officers' orders to stop fighting. Phillips received 15 days in disciplinary control for this rule infraction.
- 12/28/10: Fighting, with or without weapons, including instigation of, or perpetuating fighting. Phillips was in a physical altercation with another inmate. Phillips received 10 days in disciplinary control for this rule infraction.

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

- Disobedience of a direct order, disrespect, and encouraging or creating a disturbance in 1994. When ordered to come to the recreation door to be cuffed, Phillips threw a basketball at the door the officer was standing behind.
- Disobedience of a direct order in 1994. Phillips was purposefully walking slowly and holding up all inmates on the recreation chain.
- Disobedience of a direct order in 1996. Phillips had paper covering the windows in his cell after being ordered not to cover the windows.
- Disobedience of a direct order and encouraging or creating a disturbance in 1997. Phillips was standing in the visiting room yelling at other inmates.
- Disobedience of a direct order and disrespect to an officer in 1998. While being escorted to recreation, Phillips was given an order to stop talking. Phillips stated to the officer, "Your mama's a bitch and you are a coward."
- Disrespect to an officer in 1999. While passing out food trays, Phillips told an officer that he was going to "write him up" and that it would be best for him to "bid out of DR3." Phillips then cursed at the officer.
- Possession of contraband (chemicals) in 2000.
- Possession of contraband (blue shower curtain) in 2000.
- Possession of contraband (pornography) in 2006.
- Destruction, alteration, or misuse of property and possession of contraband in 2007.
- Phillips painted his cell door and had a book that had a false bottom in 2007.
- Possession of contraband in his cell in 2007.
- Disrespect of an officer in 2013. Phillips was disrespectful to an escort officer while discussing recreation.

APPLICANT'S STATEMENT:

On November 10, 2016, members of the Ohio Parole Board conducted an interview with Phillips via videoconference from the Chillicothe Correctional Institution.

The following individuals observed the interview via videoconference, but did not participate: Kevin Stanek, Assistant Chief Counsel, Office of Governor John Kasich; Brenda Leikala, Assistant Attorney General; Timothy Sweeney, attorney for Phillips; Lisa Lagos, attorney for Phillips; Richard Cline, Chief Counsel, Office of the Ohio Public Defender; and Brad Gessner, Chief Assistant Summit County Prosecuting Attorney. The following staff from the Ohio Parole Board were present during the interview to facilitate the proceedings but did not participate: Jamie O'Toole, Parole Board Executive Assistant; Jerrold Montgomery, Parole Board Parole Officer; Scott Coleson, Parole Board Parole Officer; and Catherine Baker, Parole Board Parole Officer.

Ohio Parole Board Chair Andre Imbrogno opened the interview by introducing himself and the other Parole Board Members participating in the interview and then identified the individuals who were observing but not participating. He explained to Phillips the purpose of the clemency interview and noted that his clemency hearing was scheduled for December 1, 2016. Chair Imbrogno noted that the Board last interviewed Phillips on October 2, 2013 in conjunction with a previously scheduled execution date.

Chair Imbrogno asked Phillips what he would like the Board to consider in determining whether to make a favorable or unfavorable recommendation for clemency in his case. Phillips responded by thanking the Board for giving him the opportunity to speak and indicated that he takes full responsibility for what he described as a "horrible" crime and asked that the Board show him mercy.

In response to questions from the Board Members, Phillips reiterated what he told the Board in 2013 in relation to having anally raped the victim, Sheila Evans, on three occasions prior to the day that Sheila was killed. Two of those instances he could recall more clearly than the third. As in 2013, Phillips stated that on the day that Sheila died, he had beckoned for Sheila to come eat some food he had prepared for her and when she did not appear he began beating her. Phillips reiterated that the sexual abuse on that particular day did not extend beyond his digitally penetrating Sheila. Phillips admitted to slapping Sheila on her buttocks in the days preceding her death, which he speculated may have left bruising.

Phillips indicated that the victim's mother, Fae Evans, participated each time he anally raped Sheila. According to Phillips, the rapes began when he asked Evans to engage in anal sex with him. Evans refused and suggested that he perform that act upon Sheila instead.

Phillips suggested that in addition to facilitating the rapes, Evans may have struck Sheila. Phillips recounted a time that he encountered Evans standing over Sheila with clenched fists. Phillips made reference to a nephew of his who had disclosed to Phillips that he had seen Evans hitting the child. Phillips himself never saw Evans strike Sheila, however. When asked by the Board whether Evans struck the blow or blows that killed Sheila, Phillips stated that he was the one responsible for Sheila's death, not Evans.

When asked what, if anything, has changed about him or his situation since the Board last interviewed him in 2013, Phillips responded that he has continued the growth that he has been experiencing throughout his incarceration. He noted that he has been trying to obtain his GED, is close to becoming an ordained minister, has been doing community service, and helps other inmates when he can. Phillips noted that he continues to adjust to incarceration at the Chillicothe Correctional Institution.

As in 2013, Phillips indicated that he suffered physical, mental, and sexual abuse at the hands of his father and others. Phillips described how, when he was four years old, his father had sexually abused him. Phillips recounted that his father sexually abused him multiple times. Today, he tries to block out those negative memories of his father. Phillips also described being sexually abused by a cousin when he was seven years old.

Phillips noted that he first disclosed the sexual abuse approximately five to ten years ago to the attorney who currently represents him. He was able to disclose to that attorney because he trusts him. When asked why he never disclosed the abuse to his trial attorneys, Phillips responded that he never completely trusted those attorneys and “froze up” in his interactions with them. Phillips stressed that even though he was abused as a child, he is the one ultimately responsible for Sheila’s death.

Phillips pointed to his trial attorneys’ failure to introduce evidence of his childhood abuse as one of the factors that led to the sentence he received. Today, Phillips wishes that he had told his attorneys about the abuse he had experienced. His trial attorneys had only a very limited understanding of the extent of Summit County Children Services Board’s (CSB) interventions into his family home, Phillips observed. Rather than focus on his upbringing and how it negatively affected him, his trial attorneys’ tactic was to instead portray Phillips as a fundamentally “good guy.” In the end, a better trial strategy, particularly in the mitigation phase, would have resulted in a lengthy prison sentence but not the death sentence he received, Phillips suggested.

Phillips stated that he was to some degree a product of his environment, noting that he was raised in an environment where physical violence and verbal altercations were the norm. Still, Phillips insisted, what he did to Sheila was wrong and he is the only person responsible for his actions. He insisted that he is not the same arrogant, immature, and selfish person who committed those crimes.

Phillips spoke briefly about his mother, who died since the Board last interviewed him in 2013. Phillips indicated that he remains saddened by the loss of his mother and takes comfort in the belief that he will one day see her again.

Phillips stated that he has a supportive family and is particularly close to his older brother and younger sister. Phillips also cited his spiritual advisors, friends, and pen pals as important members of his support system in the community.

Phillips spoke briefly about the two children he conceived prior to coming to prison, a son with Evans and a daughter with Evans’s sister. Phillips was asked about information provided to the Board at his 2013 clemency hearing indicating that Evans’s sister was only 15 years old at the time Phillips impregnated her. Phillips stated that he was 18 years old when he conceived

that child and that he believed the age of Evans's sister to be 17 at that time based on information he had received from a friend. Phillips further indicated that he had been corresponding with his daughter up until a year or so ago. Phillips noted that, from the time he was arrested, he has had no knowledge of his son's whereabouts. Through the years, Phillips's family tried to locate the boy but was unsuccessful.

When asked precisely what form of clemency he was seeking, Phillips responded that he is seeking a commutation of his sentence to life without the possibility of parole. Phillips stated that he is guilty of taking Sheila's life and life without the possibility of parole is a just punishment for that crime. Phillips believes that he could adjust to incarceration in general population even given the nature of his convictions.

Phillips stated that he has not committed any institutional rule infractions since the Board last interviewed him in 2013. Phillips described an incident that occurred with another inmate in which that other inmate made false accusations against Phillips that were investigated but resulted in no disciplinary proceedings being initiated against Phillips.¹

Phillips concluded by asking the Board Members to find it within their hearts to recommend clemency in his case. Thereafter, Chair Imbrogno thanked Phillips for participating and concluded the interview.

ARGUMENTS IN SUPPORT OF CLEMENCY:

At the hearing held on December 1, 2016, Phillips's attorneys, Timothy Sweeney and Lisa Lagos, presented arguments in support of clemency supplementing the written application previously received. There were four primary bases for clemency presented and they were, to some degree, interrelated. First, Phillips's attorneys argued that Phillips grew up in an abusive environment. Second, they argued that his trial was characterized by mistakes and missteps, which call into question the reliability of the death sentence that resulted from it. Third, Phillips's attorneys argued that he has experienced positive growth since coming to prison and is, today, a person of good character who wants to help other inmates. Fourth, Phillips's attorneys argued that his psychological development and functioning was diminished at the time of the offense due to his youth and the abusive environment in which he was raised.

Argument #1: Phillips Was Raised in an Abusive Environment

Lagos described Phillips's background, noting that he was born in Texas to a father who was a Vietnam veteran and a mother who had three children from a previous marriage. Phillips was the fifth of seven children in the family. By the time he turned nine, Phillips had been repeatedly sexually, physically, and verbally abused by his family. The abuse occurring in Phillips's home was well documented, Lagos observed. Two children services agencies, one in Pittsburgh and one in Akron, were repeatedly involved with the family but the interventions were not significant enough to stop the repeated abuse. Children services only removed Phillips briefly when he was 14. When arrested for Sheila's death in 1993, Phillips was 19 years old and still in high school.

¹ Phillips has not received any conduct reports for institutional rule infractions since the Board last considered him for clemency in 2013.

Phillips's attorneys played a videotaped statement from Phillips's half-brother, Edward ("Eddie") Phillips, who stated that he is very concerned about his brother. Eddie urged the Board and the Governor to consider that his brother was young at the time of the crime and had suffered a great deal of abuse to that point. Eddie described Phillips as an educated kid with a good head on his shoulders.

Eddie characterized the household in which he and Phillips were raised as "crazy" and very abusive. Eddie related that his stepfather (Phillips's biological father) would molest their siblings and would punish Eddie by making him stand against the wall for hours on end. Eddie recalled that their mother and father had a violent relationship. According to Eddie, he and his siblings were abused on a daily basis, which would commence when his father returned from work. Eddie indicated that he had witnessed Phillips being abused. Eddie stated that the conditions in the home were so bad that he eventually ran away from home, walking all the way from Akron to Pittsburgh.

Eddie described the negative impact that his childhood had upon his own life, noting that he had served 20 years in prison, although he has lived a law-abiding life for the past 10 years. Nevertheless, he carries his negative childhood experiences with him to this day.

For a long time, no one in his family wanted to face the reality of what had occurred in the home, Eddie related. At the time of the trial, no one from Phillips's defense team had asked Eddie about what it was like in the home growing up. If they had, he would have spoken with them about it, Eddie stated.

Phillips's attorneys showed a videotaped interview they conducted with Phillips's mother, Donna Phillips, prior to Phillips's clemency hearing in 2013. In her videotaped statement, Phillips's mother noted that Phillips's father was killed by a drunk driver in 2009 and she had tried to keep the family together since. She indicated that she visited Phillips regularly, but it became more difficult when he was transferred to the Chillicothe Correctional Institution. Phillips's mother noted that she was on dialysis at the time. She next described how she had tried to get custody of Phillips's son, Ronald Jr. ("Rocco"), after Phillips and Evans were sent to prison. According to her, she was denied custody because CSB wanted to keep Rocco together with his half-sister, Sara. Though Phillips's mother was willing to take in Sara, the potential "conflict of interest" with the Evans family, which would not want Sara with the Phillipses, precluded taking custody of either child so the children were sent to foster care.

Phillips's mother described the sexual abuse that Phillips suffered at the hands of his cousin when he was seven years old. The cousin was a teenager at the time and was residing in the Phillipses' home, she related. After learning of the abuse, Phillips's father removed the cousin from the home, but no one reported the abuse to the police. Phillips's father did not share with her any details about the abuse. After his cousin abused him, Phillips became withdrawn, his mother reported.

Phillips's mother described how her son has changed during his incarceration. She described how he was heavily involved in the prison ministry. He has grown and become more mature with better judgment, Phillips's mother related. The change in Phillips was like night and day, she described. Phillips's mother asked that the Board and the Governor spare her son's life.

At the conclusion of the videotaped statement of Phillips's mother, Lagos noted that CSB records indicate that the Phillips's home was rejected as a placement for Rocco not because of any potential conflict between the Phillipses and Evanses regarding Rocco's half-sister Sara, but because the Phillips's home was unfit. Lagos stated that this is indicative of the degree to which Phillips's mother remained in denial about the abuse occurring in her home, even as recently as 2013.

Phillips's attorneys next played a videotaped interview that they conducted with Phillips's step-sister, Mary Phillips. Mary noted that she and Phillips shared the same mother and grew up in the same household. She stated that Phillips's father sexually abused her and her siblings. Phillips knew what was happening to his sisters and would retreat to his room each time he witnessed the abuse.

Mary further reported that, throughout his childhood, Phillips's parents repeatedly told Phillips that he was no good and would never amount to anything. Her brother largely kept to himself in his room, building model cars. She described Phillips as the brightest of the children. He tried to avoid conflict and kept to himself.

Mary described the neighborhood in which she and Phillips were raised as deplorable. Prostitutes solicited their clients directly under the kids' bedroom windows. The ground immediately outside of the home was littered with condoms. A girl in a neighboring home was forced to have intercourse with a dog. Mary described it as a neighborhood where murder, prostitution, and drug dealing were rampant.

Inside the home, Mary and her siblings were subjected to never-ending physical abuse. The kids were forced to continually clean the home and were beaten by their father if they did not comply, and there were many pets in the home that were treated better than the children. Phillips's father made the children remove his boots for him when he returned from work. He would routinely force the children to strip completely naked before whipping them. He would break dishes over their heads. Mary recalled that she was afraid to return home from school. Some of her siblings would run away from home, but she did not for fear of the repercussions. She would sit in school afraid to go home. Everyone in the home lied to CSB. Her mother knew about the abuse but did not intervene, probably because she too was afraid of their father, Mary surmised. The childhood home she shared with Phillips was a "house of hell," she recounted.

Argument #2: Mistakes and Missteps Occurred in Phillips's Trial

Sweeney noted that evidence concerning the abusive environment in which Phillips was raised was never presented to the jury and urged that it was information that would have made a difference. Phillips's trial attorneys instead told the jury that Phillips was a good kid from a good family who had a bad day. Instead, Sweeney argued, the jury should have been told that, while the *crime* he committed is among the "worst of the worst," given the terrible conditions under which he was raised, Phillips himself was not among the worst of the worst *offenders*. Juries can be fair, Sweeney continued; they can judge difficult and horrible facts, put them in context, and make fair judgments.

To spare Phillips's life, his trial attorneys needed to convince just one juror that his life was worth sparing. Sweeney argued that evidence of his abusive childhood could have accomplished that. Even without that evidence, notes made during the jury deliberations that were subsequently placed into Phillips's court file indicate that, during deliberations, at least one juror was initially in favor of a sentence other than death. Clearly, evidence of Phillips's abusive childhood could have made a difference, Sweeney argued.

Phillips's attorneys noted that similar crimes have recently received life sentences, noting that life without parole was not an option at the time Phillips's sentence was imposed. In support of that contention, they cited the case of Joshua Million, a man who accepted a plea deal under which he received a life sentence for raping and killing his girlfriend's four-year-old daughter.²

Sweeney played a videotaped statement from Michael Edminister, one of Phillips's trial attorneys, who described how he was appointed as second chair to Phillips's lead counsel Kerry O'Brien. The agreement between the two attorneys was that O'Brien was primarily responsible for the guilt phase of the trial while Edminister would be responsible for the mitigation phase should the trial proceed to that point.

Edminister stated that there was limited funding available to the defense team. The trial court granted the two attorneys 500 dollars to obtain an investigator, and there were other caps placed on additional mitigation experts, including Dr. James L. Brown, a psychologist who evaluated Phillips at the time of trial. Edminister stated that there were no funds available for medical witnesses, which precluded the defense team from retaining a forensic pathologist whose testimony was desperately needed to counter the conclusions of Summit County Coroner William Cox, who opined at trial that Sheila was penetrated by a penis. Proof of penile penetration, as opposed to penetration by a finger or some other object, was needed to support a rape conviction that, in turn, was needed to support a sentence of death in Phillips's case.

An investigator named Gerry Schultz was available to the trial defense team, but he added little of value to the case, Edminister recalled, noting that Schultz visited CSB and informed Edminister that there were some records there related to the Phillipses and might have also visited the juvenile court in search of records. However, in the end, the trial defense team received less than their money's worth from Schultz, whose background as a beat cop and accident reconstructionist made him underqualified to meaningfully assist in the case, Edminister opined.

Edminister explained how, as the attorney responsible for the mitigation phase of the trial, it was his responsibility to learn what he could about Phillips's background, including his upbringing. Edminister added that he was also responsible for "client control," in part because he had previously represented Phillips's brother, Eddie, in an unrelated criminal matter. Despite his history with the Phillipses, Edminister still had difficulty opening any meaningful lines of communication with family members. Phillips's father ruled with an iron fist and was ever-present during the trial, Edminister recalled. Even on the few occasions when he could separate Phillips and other family members from Phillips's father, Edminister was largely stymied in his efforts to obtain information, as the family was a closed group.

² Ashtabula County Court of Common Pleas, Case Number 2014CR00053.

One of his responsibilities, Edminister continued, was to attempt to access relevant files from CSB, which he described as a very secretive agency at the time. His original approach was to request files on the Phillips family from CSB's attorneys, who summarily rejected those requests. Ultimately, Edminister had to obtain a subpoena permitting him to visit CSB and investigate the files. Even at that, he was frustrated in his attempts to obtain information. Edminister described how he was unable to copy any CSB records and was limited to taking notes in long hand. Edminister described it as an extremely time intensive and difficult process during which CSB monitored him closely, prohibiting him from ever being alone with its files.

Phillips himself was not forthcoming to Edminister about abuse in his family. There was nothing in the conversations he had with Phillips that would have suggested that CSB would possess significant files on the Phillips family, Edminister recalled. While Edminister and O'Brien knew that in cases like Phillips's the defendant often has his own underlying history of physical abuse, Phillips himself gave no indication of it. The extent of Phillips's disclosure to his attorneys was that he experienced a "rough upbringing," Edminister related.

In the end, all the jury heard relative to Phillips's abusive childhood was that he suffered a few instances of having his buttocks hit with a belt. CSB files detailing the horrendous conditions in the Phillips home, had they been presented to the jury, would have completely turned the tables for Phillips's defense team in the mitigation phase of the trial, Edminister argued. Phillips's history of being mistreated would have provided the jury with some understanding as to how a 19 year old could come to perpetuate such horrible abuse upon a three-year-old child.

Edminister described Phillips as relatively childlike at the time of the trial. His relative youth manifested itself, and his maturity level was incompatible with his age. Edminister described speaking to Phillips at that time as comparable to speaking to a 12 year old.

Edminister recalled Phillips's 1993 trial as being highly publicized. The kind of crime that Phillips committed against a very young child was certainly unique, Edminister observed. Stories on the case appeared regularly in the newspapers, which reported extensively on the case even before the trial commenced. Edminister speculated that the Summit County Prosecutor ensured that the trial stayed in the public eye, perhaps to advance his own political interests.

In his videotaped statement, Edminister spoke at length about Dr. Cox's testimony. Edminister alleged that Cox was well known at that time for overreaching and overstating his opinions when testifying. Cox claimed board certification in three separate disciplines and gave an air of being ultra-qualified, Edminister recalled. It was only later, Edminister explained, that he learned Cox had been seeking approval at the time of the trial from the Summit County Prosecuting Attorney to establish a private autopsy business.³ Edminister argued that Cox's conflict of interest and potential bias would have been crucial information if known to the defense at that time, which at a minimum would have provided some basis for the defense team to obtain additional funding from the court to hire a forensic pathologist of its own.

³ Cox was later convicted in 1996 of improperly using Summit County facilities and other county resources to conduct private autopsies for personal gain.

Edminister described Cox as generally contemptuous of defense attorneys, which made it virtually impossible for Edminister and his co-counsel to discuss the case with him. Cox avoided meetings with the two attorneys and when he did finally meet with them was dismissive of any meaningful attempts to discuss his findings. There was something about Cox's manner that caused Edminister great concern about his testimony, particularly because the death specification in Phillips's case hinged entirely upon Cox's opinion relative to whether Sheila's anal injuries were caused by a penis or some other object.

Despite the importance of Cox's testimony, O'Brien gave Cox a pass during his cross-examination of Cox, Edminister recalled. Edminister stated that the cross examination was so brief that it could be reduced to a single page of court reporter transcript. According to Edminister, the cross-examination of Cox was "ridiculous" and something that he still laments to this day.

Edminister discussed the opinion that Phillips's current attorneys obtained from Dr. George Nichols, a licensed pathologist, who opined that Cox may or may not have been correct in his conclusion that a penis caused Sheila's internal injuries and that the injuries could in fact have been caused by any number of objects, including but not limited to a penis. According to Edminister, Nichols's opinion does not surprise him, and he believes that Nichols is in fact correct in his opinion that the specific object inserted into Sheila is unknowable.

At the conclusion of his videotaped statement, Edminister stated that he gave his statement completely voluntarily and urged the Board to correct a "horrific injustice." He concluded that the system is not perfect and it wronged Phillips, who has grown into a man and has tried to make the most of his life and does not deserve to die.

Dorian Hall, a mitigation specialist employed by the Ohio Public Defender (OPD), provided an overview of how her office approaches mitigation in capital cases. Mitigation is a "team approach," Hall explained, with that team comprised of the attorneys, a mitigation specialist, a fact investigator, and, typically, a defense psychologist. Each member has unique skills and completes individualized tasks. Mitigation specialists are responsible for, among other things, tracking down social service, education, court, and other records needed to understand the client's psycho-social history. According to Hall, obtaining records requires a great deal of persistence, sometimes requiring that the defense team approach the record keeper in person. In addition to obtaining records, the mitigation specialist also needs to interview a wide range of people, including family, friends, and teachers to obtain a complete picture of the client, which includes the client's negative traits and history, as well as the positive. The amount of time spent obtaining records and conducting interviews alone routinely runs into the hundreds of hours.

Effective interviewing, Hall explained, requires that the mitigation specialist establish a rapport with the person being interviewed and develop a level of trust. Interviews should be conducted in person and without third parties present. Opening the lines of communication can be particularly difficult in cases involving physical and sexual abuse because of the secrecy that typically surrounds that abuse. One needs to be particularly persistent in abuse cases, Hall observed.

It requires a great deal of time to develop a client's psycho-social history, and mitigation theories evolve as a picture of that history begins to be painted, Hall explained. For that reason, the work of the mitigation specialist needs to be largely complete before the trial commences. The mitigation theory is relevant long before the trial arrives at that phase, Hall continued. The mitigation theory is relevant to the questions posed to prospective jurors during jury selection, for example. Hall noted that her office needs a lead-in time to trial of six to 12 months to properly complete an investigation.

Hall opined that Phillips did not have an adequate defense team. First, the defense team did not have a mitigation specialist. While they had Schultz to investigate facts, there was no one on the team equipped to put together a complete picture of Phillips's psycho-social history. Moreover, the defense team relied upon attorneys to interview witnesses, which is not the preferred approach. Many witnesses are skeptical of attorneys, viewing them as part of the system, which in turn makes witnesses reluctant to speak openly. It can also be difficult for attorneys to balance the interviewing responsibility against all of the many other tasks they have in a capital trial.

Hall opined that the defense team also began its mitigation preparation too late. Schultz, for example, did not begin searching for records until a month prior to Phillips's sentencing. The late start meant that the defense psychologist, Dr. Brown, lacked the psycho-social history needed to explain to the jury how Phillips got himself into the situation he did.

Hall lamented that Phillips's defense team did not do more to glean information from the CSB records and to share it with the jury. Clearly, Phillips lived in a dysfunctional and chaotic home. Studies indicate that traumatic childhood events negatively impact cognitive and social development into adulthood, Hall explained, citing the CDC-Kaiser Permanente Adverse Childhood Experiences (ACE) study, which investigated the effects of childhood abuse and neglect on health and well-being in later life.

Argument #3: Phillips Has Changed in Positive Ways

Christopher Gebhart, one of Phillips's spiritual advisors, stated that he has known Phillips since 2012. Gebhart described Phillips as a changed man who is very spiritual and close to God. Today, Phillips is someone that other inmates approach for counsel. Phillips's greatest desire is to become a chaplain in prison and to help lost souls, Gebhart related. Gebhart urged the Board and the Governor to spare Phillips's life because he has worked hard to improve himself during his incarceration.

Another spiritual advisor, Jim Cole, noted that he befriended Phillips in 2009 and has witnessed genuine and profound changes in Phillips. Cole urged the Board to look beyond the callous disregard, neglect, and malicious violence that characterized Phillips's crime and to try to view that crime in the context of Phillips's own abusive childhood. Phillips is redeemable, Cole urged, and is well along the path to redemption. Today, Phillips is transformed by his faith, and other inmates regard Phillips as having a special relationship with God. Cole asked the Board to allow Phillips to make restitution to Sheila and the Evans family by continuing the positive growth he has undergone since coming to prison.

Argument #4: Phillips's Psychological Development and Functioning Was Diminished

Dr. Daniel Davis, a board certified forensic psychologist, noted that he has met with Phillips twice, once in 2013 and again on November 23, 2016. Prior to the hearing, Davis also reviewed CSB records, medical records, educational records, court records, mental health evaluations, and affidavits from members of the Phillips family.

Davis stated that Phillips experienced a number of negative risk factors during his childhood that greatly increased the odds of his life having a negative outcome into adulthood. Davis indicated that he was struck by the high number of contacts between CSB and the Phillips family as well as the range of dysfunction being exhibited in the home, which included physical abuse, unsanitary conditions, and a highly sexualized environment. Davis opined that extreme dysfunction, which was documented by independent outside observers, lends credibility to Phillips's claims of abuse. Davis added that the conditions in the home put Phillips in a perpetual state of fight or flight, which could have negatively impacted his brain's development.

Evidence of a negative impact manifested itself in Phillips's history, Davis suggested. Functionally, Phillips was very much at an early adolescent level at the time of the crime. He was 19 years old and still in high school. He continued to build model cars, a child's pastime. Despite being 19, there was a dearth of prosocial adaptive experiences in Phillips's history, Davis observed.

Today, Davis continued, with advances in the field of neuroscience, the impact that growing up in an abusive environment has upon a young brain is well documented. From those advances in neuroscience we know too that the human brain does not stop growing until the age of 24. Decision-making and judgment—higher order executive functioning—are the last functions to fully develop, Davis explained. Teenagers, which Phillips was at the time of the crime, are particularly driven by that part of their brains that facilitate emotional reaction as opposed to considered judgment. In short, teenagers and young adults are more likely to engage in high-risk behavior. There is a period of developmental “mismatch” in teenage brains between that part which produces impulsive behavior and that part which produces reasoned judgment.

Davis suggested that the reluctance of Phillips and his siblings to disclose sexual and other abuse is not uncommon or unexpected. Much of that reticence is attributable to the shame and embarrassment that attaches to the abuse. Moreover, children are egocentric, Davis continued, and often blame themselves for the abuse inflicted upon them. That self-blame is often reinforced by the abuser. Distrust of authority is another reason why victims of abuse elect not to disclose, Davis added. Moreover, at 19, that part of Phillips's brain that controls judgment and other executive functioning had not developed to the point where he could readily recognize that disclosing his sexual abuse was in his best interest. Add to that fact that his brain's development may have been negatively impacted by trauma, and it is not surprising that Phillips failed to disclose his abuse to his trial attorneys.

Males, Davis continued, are particularly reluctant to disclose abuse, especially sexual abuse. In Phillips's particular situation, the reluctance may be justified. When asked why he did not disclose sexual abuse sooner, Phillips told Davis that disclosing the information could make him more vulnerable to attack in prison.

Davis insisted that he could not say definitively whether or not Phillips's allegations of sexual and other abuse are true. He could say, however, that the results of psychological tests administered to Phillips are consistent with someone who has undergone trauma. Likewise, those same results are not indicative of someone who is attempting to exaggerate his problems. Davis stressed that he has to look at those test results in the context of what he knows about Phillips's dysfunctional childhood from objective, collateral information. Examining it all together, it makes sense that Phillips experienced trauma that negatively affected him into adulthood.

Davis suggested that Phillips's trial attorneys could have done more than they did to explore the possibility that Phillips was abused. Few official reports or other pieces of collateral information concerning Phillips's background were obtained. That collateral data is critical to any psychological evaluation because it provides needed context for interpreting results. For that reason, Davis is particularly troubled by the fact that the report Dr. Brown produced for the jury was not grounded upon any collateral information.

Today, Phillips exhibits those characteristics that you would expect to see of someone who grew up in an abusive environment—somewhat immature and seeking the approval of others, Davis observed. He noted that Phillips still exhibits social and emotional deficits today that may be the result of going to prison at a young age and having other inmates as his only available role models. Though predicting Phillips's future adjustment is difficult to do, Davis would expect Phillips to cope fairly well were his sentence to be commuted. The mere fact that Phillips is getting older and behavior tends to moderate with age is a sufficient basis to expect a successful adjustment going forward, Davis concluded.

Phillips's attorneys concluded their presentation by asking that the Parole Board make a favorable recommendation to the Governor for the commutation of Phillips's sentence to life without the possibility of parole.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Brad Gessner, Chief Assistant Summit County Prosecuting Attorney, and Brenda Leikala, Assistant Ohio Attorney General, presented arguments in opposition to clemency.

Gessner stated that he wanted to redirect the Board's attention to an aspect of the case that was overlooked by Phillips's attorneys; namely, the three-year-old victim, Sheila, and her tragically short life. The crime committed against her has to be acknowledged, Gessner urged. Gessner quoted records from Akron Children's Hospital, which noted Sheila's very poor prognosis for survival. Sheila was literally dying from the inside out, Gessner observed. He argued that this *is* the worst of the worst form of the offense and whoever commits it is also the worst type of *offender*.

Gessner addressed the argument made by Phillips's attorneys that necessary expert witnesses were not available to Phillips's trial attorneys, noting that the trial court had approved a handwriting expert to examine Phillips's handwritten confession when its authenticity was questioned. Phillips's trial attorneys thus knew perfectly well that if they needed an expert they could approach the court to have that expense approved, Gessner observed.

Gessner challenged the opinion offered during the hearing by Hall, the mitigation specialist from the office of the OPD, that the absence of a mitigation specialist on Phillips's defense team rendered the team inadequate. Phillips's trial attorneys had approached the OPD for financial assistance to hire an investigator and the OPD refused to assist. It is therefore unfair for the OPD to criticize trial counsel today when they refused to assist at the time of trial, Gessner argued.

Phillips has lied throughout, Gessner continued. Records from Akron Children's Hospital indicate that upon Sheila's admission, the hospital was told that she was found unresponsive in her bed and abuse was specifically denied. Gessner observed that this is only one of many lies Phillips has told. To this day, Phillips denies raping the child, Gessner continued. Likewise, Phillips will not admit to raping Fae Evans's sister, who had not reached the legal age of consent at the time Phillips impregnated her. Phillips instead insists that he believed Evans's sister to be 17. Nor will Phillips acknowledge that, after raping Evans's sister, he threatened to do harm to her family, Gessner added.

Phillips's lies are the true indication of what Phillips is, Gessner argued. As further evidence of Phillips's bad character, Gessner pointed to notes made by a nurse at Akron Children's Hospital indicating that Phillips seemed nervous and that Phillips's grandfather approached the nurse and stated that if anything happened to Sheila, "he's (Ron) your man."

Gessner took issue with Edminister's suggestion that the Summit County Prosecuting Attorney politicized Phillips's trial. That prosecuting attorney had just been elected to a new term when Phillips's trial commenced so there was no need to publicize the trial for political gain, Gessner observed.

Gessner addressed the argument made by Phillips's attorneys that Dr. Cox was unreliable due to his potential conflict of interest at the time of the trial—seeking the county prosecutor's permission to conduct private autopsies while simultaneously testifying as one of the State's witnesses in Phillips's trial—and his subsequent conviction for crimes related to those private autopsies. Gessner noted that, despite his legal troubles, Cox subsequently found employment with Franklin County (Ohio) and thereafter became Rhode Island's chief medical examiner. To this day, Cox continues to testify as an expert witness in trials.

Gessner pointed out that in his affidavit, Dr. Nichols does not take issue with most of Cox's findings but merely opines that there is no conclusive medical evidence to determine that a penis caused Sheila's anal injuries. Nichols does not opine that Cox is wrong, Gessner noted. Nichols only suggests that he would offer the opinion that the source of Sheila's anal injuries is unknowable. At any rate, Leikala added, the issue of Cox's testimony has been extensively litigated in the courts, all of which have denied Phillips relief.

Gessner continued that there were sound reasons for Phillips's trial attorney, O'Brien, to limit his cross-examination of Cox. O'Brien testified in the federal habeas proceedings that Cox had a habit of engaging in "run-away testimony" during cross-examination in which he repeated at length testimony provided on direct examination. Because O'Brien did not want Cox to repeat testimony that was visibly disturbing the jurors, O'Brien elected not to extensively cross-

examine Cox on the question of whether Phillips inserted a penis or a finger into Sheila on the morning of her death.

Phillips's attorneys know perfectly well that this was the reason why O'Brien conducted a limited cross-examination of Cox, Gessner argued. Attorneys routinely make strategic decisions. For instance, for Phillips's attorneys to repeat the approach they used at the 2013 clemency hearing to present numerous videotaped statements as opposed to live testimony is a strategy, Gessner observed. Videotaped presentations preclude the Board Members from posing potentially difficult or probing questions to those witnesses. It is unfair for Phillips's current attorneys to employ strategies today while simultaneously criticizing Phillips's trial attorneys for employing their own, Gessner argued.

Lawyers cannot act contrary to their clients' interests, Gessner added. At the time of trial, Phillips denied any history of abuse. That being the case, how can we now demand of trial counsel that they have used CSB records to prove what their client insisted was not true, Gessner asked rhetorically. At any rate, there was no support for the abuse theory in the CSB records. It is unreasonable to call Phillips's trial attorneys ineffective for failing to advance a theory that was not documented and the client specifically denied.

Gessner argued that if Phillips had been sexually abused as a child as he alleges, his family could at the very least have mentioned the sexual assault Phillips's cousin allegedly committed against him. Given that the Phillipses had essentially disowned that relative, disclosing that specific abuse would not have tarnished the Phillipses in any way, Gessner observed.

To this day, Gessner added, Phillips's sister, Mary, makes no mention of Phillips being abused by his father. Nor was there any mention of that abuse by Phillips's mother in her statement. As for the most recent statement provided by Phillip's brother, Eddie, Gessner noted that three years ago, the Board was provided an affidavit from Eddie detailing how his father would wrestle the boys and grab their penises. Today, Eddie describes his father's inappropriate sexual contact with his sisters, with no mention of inappropriate contact with Phillips.

If you read the CSB records, Gessner argued, they paint a picture of a family that had a lot of issues but tried hard. Phillips's family stood behind him throughout his trial. Much of the discussion about the CSB records and abuse is an attempt to make sense of Phillips's senseless crime, Gessner argued. Otherwise, without some reasonable explanation for Phillips's behavior, death is an appropriate punishment in his case. Some crimes simply make no sense, Gessner added.

Gessner noted that the unsworn statement that Phillips provided during the mitigation phase of his trial, which was not subject to cross examination by the prosecution, contains no mention of abuse, sexual or otherwise. On the contrary, in that unsworn statement, Phillips specifically denied any sexual abuse. In fact, Phillips spoke rather favorably of his father in that statement. If ever there was a time for Phillips to be forthcoming it was then, when speaking to the jury that held his life in its hands, Gessner observed.

Gessner argued further that even if the jurors had been told that Phillips had been raped and believed that allegation, it would not necessarily have precluded a death sentence. The jury

could still have determined that the aggravating circumstances in the case outweighed that mitigation, making death an appropriate sentence.

Gessner distinguished the recent case of Joshua Million, cited by Phillips's attorneys in support of their contention that Phillips may not have received the death penalty if tried today. Unlike Phillips, Gessner observed, Million admitted the crime and accepted responsibility.

Gessner suggested that Phillips's sexual abuse claim is just one ploy in a series of attempts to delay his execution. Through many years of state and federal appeals there was no word of sexual abuse, Gessner observed. Then, on the eve of the 2013 clemency proceeding, Phillips disclosed abuse to his attorney. After the Governor denied clemency in 2013, the issue of Phillips donating his organs was raised for the first time, resulting in a gubernatorial reprieve. Thereafter, in May 2014, Gessner continued, Phillips's attorneys sent the Governor a request for an additional reprieve to provide more time to accomplish the organ donation. Then, after the federal district court stayed executions, all talk of organ donation ceased. Today, Phillips's attorneys present Dr. Nichol's report in an attempt to discredit Dr. Cox's trial testimony, Gessner summarized.

Every time there is a dead end, a new ploy to delay execution is advanced, Gessner argued. Were Phillips to have his sentence commuted to life without the possibility of parole, the next argument he would likely advance is that life without parole unfairly denies the possibility of redemption as much as capital punishment, Gessner speculated.

Gessner noted that in 1993, Summit County established Operation Teddy Bear in Sheila's memory, which is a program that makes teddy bears available to police and CSB caseworkers to distribute to children who have experienced traumatic events.

Gessner and Leikala concluded the State's presentation by asking that the Board recommend to the Governor that clemency be denied.

VICTIM'S REPRESENTATIVES:

Renee Mundell, Sheila's half-sister, stated that while she has suffered much hurt and loss in her life, nothing quite compares to Sheila's death. Mundell noted that Phillips took away her opportunity to watch Sheila grow up. It is difficult for her to face the reality of the pain and fear her sister endured, Mundell related. It makes her sick to think about it. Mundell noted that much was made during the clemency hearing of the fact that Phillips's father was his abuser as opposed to his protector. So too Phillips should have been Sheila's protector, Mundell observed. Mundell asked that the Board and Governor please give her family justice and closure. According to Mundell, she heard nothing during the clemency hearing that would warrant sparing Phillips's life.

Donna Hudson, Sheila's aunt, observed that Sheila never had the opportunity to go to school, to get married, and to have children. Hudson expressed confusion as to why it has taken so many years for the Evans family to obtain justice in this case. The execution needs to go forward and justice needs to be done for Sheila and the Evans family, Hudson urged.

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. A majority of the Board has concluded that Executive clemency is not warranted based on the following:

- Phillips's crime involved the killing of a vulnerable three-year-old victim, an abuse of trust, and extensive victimization, therefore making it among the worst of the worst capital crimes.
- Although Phillips was raised in a dysfunctional environment, it remains unclear how much, if any, physical abuse was actually inflicted upon Phillips as there is a dearth of contemporaneous objective evidence substantiating his specific claims of abuse. What the official records and other evidence concerning Phillips's childhood reveals about the environment in which he was raised, dysfunctional as that environment may have been, neither explains nor excuses his crime.
- Phillips's attorneys offered a recent opinion from Dr. Nichols, a pathologist, who agreed that Sheila had sustained an anal injury on the date of her death but opined that there was no conclusive medical evidence to determine the precise instrument of penetration. Nichols's opinion does not rule out the possibility that Sheila was penetrated by a penis but rather expressly concedes that possibility. Therefore, a majority of the Board defers to the jury's finding of penile penetration, which it reached in the context of other evidence presented at trial, including Dr. Cox's testimony and Phillips's own admissions to having raped Sheila with his penis on prior occasions.
- To some degree, Phillips's poor institutional conduct during his incarceration belies the contention that he has positively changed since coming to prison. To his credit, Phillips has been exhibiting a more consistently positive adjustment in recent years; however, that improved adjustment does not warrant a favorable recommendation for clemency in this case when weighed against the heinous character of the crime committed.
- The Board is not persuaded that trial counsel's failure to rely upon CSB records, to more extensively cross-examine Cox, or to employ other strategies and approaches identified by Phillips's current attorneys as missteps produced an inherently suspect result. Many of the decisions made by Phillips's trial attorneys appear to have been reasonable strategic decisions in the context of the circumstances they encountered during the trial, including the information provided to them by Phillips and his family. At any rate, the effectiveness of Phillips's trial counsel has been extensively litigated in the courts, all of which have refused to overturn his death sentence on that ground.

Two members of the Ohio Parole Board have concluded that Executive clemency in the form of life without the possibility of parole is warranted in this case based on the following:

- Phillips's eligibility for the death penalty hinged on the opinion provided by Dr. Cox at trial that Sheila was raped by a penis on the day she died, which was expert testimony that went largely unchallenged by Phillips's trial attorneys. There are several considerations present in this case that call into question whether Cox's opinion is sufficiently reliable to stand as the foundation for Phillips's death sentence, including Cox's apparent conflict of interest posed at the time of trial between his desire to receive the prosecutor's approval to establish a private autopsy business and his obligation to testify truthfully at trial; his subsequent convictions arising from that private autopsy practice; trial counsel's failure to cross-examine Cox on potential conflicts of interest; the fact that evidence presented at the federal district court's evidentiary hearing in the habeas proceedings suggests that Dr. Cox's opinions evolved over time, becoming more conclusive in the time between early meetings with defense counsel and the trial; and the opinion offered by Dr. Nichols that there is no conclusive evidence that Sheila was penetrated by a penis on the day she died.

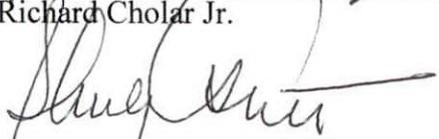
RECOMMENDATION:

The Ohio Parole Board with twelve (12) members participating, by a vote of ten (10) to two (2), recommends to the Honorable John R. Kasich, Governor of the State of Ohio, that Executive clemency be denied in the case of Ronald Phillips.

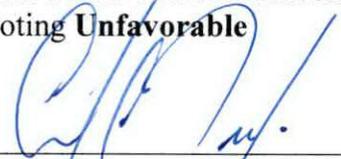
Adult Parole Authority

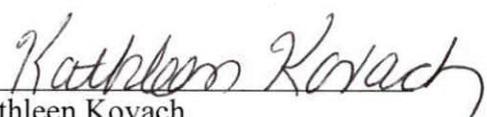
Ohio Parole Board Members
Voting **Favorable**

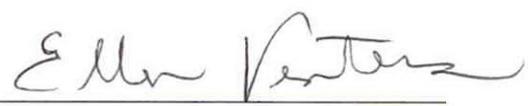

Richard Cholar Jr.

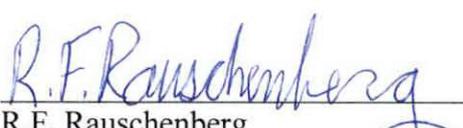

Shirley A. Smith

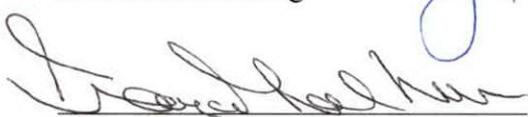
Ohio Parole Board Members
Voting **Unfavorable**

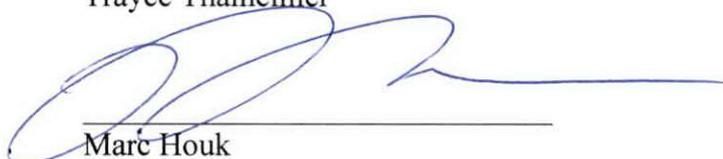

Andre Imbrogno, Chair

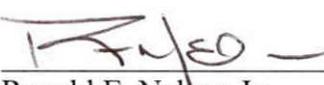

Kathleen Kovach


Ellen Venters

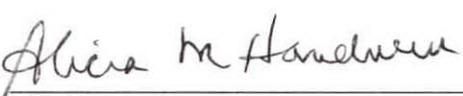

R.F. Rauschenberg

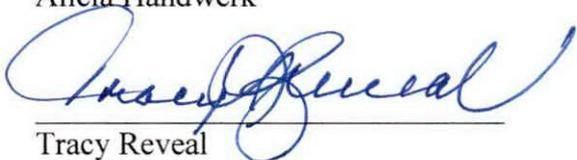

Trayce Thalheimer


Marc Houk


Ronald E. Nelson Jr.


Michael H. Jackson


Alicia Handwerk


Tracy Reveal

Read @ 2016 Hrg.

2016

A279109

Ronald Phillips

I have had a lot of things hurt me in my life. I lost my mother when I was young. And I lost her to violence. My grandmother who helped raise me, and my father. But this was different. I can't seem to face the reality of what my sister must have went through. The fear she must have felt. The loneliness and pain she endured. She couldn't have had any kind of understanding of what was happening to her. Or why! She was so young. It makes me sick to think about it. And that is not the memory anyone should have for a child, let alone a sister. I was confused about the death penalty. But in this case, I'm not any more. I lost the chance to watch my sister grow. To be a part of her life. And to have her be such a big part of the family. To meet my children, who would have loved her. She was taken from all the love we could have given her. ~~By~~ by a self centered unfeeling and unimaginable act.

Renee Mundell