

EXECUTED - 6/8/04

DATE TYPED: May 26, 2004  
DATE PUBLISHED: June 1, 2004

**IN RE: WILLIAM ZUERN , A181416**

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

Date of Meeting: May 25, 2004

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

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IN RE: WILLIAM ZUERN #A181-416 MANCI

SUBJECT: Death Penalty Clemency  
CRIME, CONVICTION: A) Aggravated Murder with three (3) specifications  
B) Aggravated Murder  
DATE, PLACE OF CRIME: A) June 9, 1984; Community Correctional Institute,  
Cincinnati, Ohio  
B) May 12, 1983, Cincinnati, Ohio  
COUNTY: A) Hamilton  
B) Hamilton  
CASE NUMBER: A) B842052  
B) B841776  
VICTIM: A) Officer Phillip Pence,  
Hamilton County Deputy Sheriff  
B) Greg Earls  
INDICTMENT: A) Aggravated Murder with three (3) specifications:  
(1) defendant was prisoner in a detention facility;  
(2) victim was a peace officer engaged in his  
official duties; and  
(3) defendant's specific purpose was to kill a peace  
officer.  
B) Aggravated Murder  
PLEA: A) Not guilty  
B) Guilty  
TRIAL: A) Jury  
B) N/A  
VERDICT: A) Guilty to indictment  
B) N/A  
SENTENCE: A) Death  
B) Life Sentence  
ADMITTED TO INSTITUTION: October 5, 1984

TIME SERVED:	235 months
AGE AT ADMISSION:	25 years old, DOB: December 5, 1958
JAIL TIME CREDIT:	155 days
PAROLE ELIGIBILITY:	N/A
PRESIDING JUDGE:	Honorable William J. Morrissey
PROSECUTING ATTORNEY:	Arthur M. Ney, Jr.
ACCOMPLICE:	None

### **FOREWORD:**

Clemency in this case was initiated by the Honorable Bob Taft, Governor of the State of Ohio, and the Ohio Parole Board, pursuant to Section 2967.03 of the Ohio Revised Code, and Parole Board Policy 105-PBD-01.

A Death Row Clemency Review Hearing was conducted on May 25, 2004, with nine members of the Ohio Parole Board participating. There were no participants present on behalf of the defendant.

Present at the hearing on behalf of the State were Assistant Hamilton County Prosecutor Ronald Springman, Assistant Attorney General Charles Willie, and Assistant Attorney General Tim Pritchard. Also present was Mr. Gary Roush, a friend and former co-worker of the victim.

After reviewing and deliberating the information provided, the Parole Board voted and reached a unanimous decision.

We now submit to the Honorable Bob Taft, Governor of the State of Ohio our report and recommendation.

### **OFFENSE CASE #B842052:**

The following account of the instant crime was obtained from the Ohio Supreme Court's review of this case on August 12, 1987, via appeal as of right, whereupon said court affirmed the conviction and sentence imposed by the Hamilton County Court of Common Pleas.

On May 14, 1984, defendant, William G. Zuern, was incarcerated at the Community Correctional Institute ("CCI") in Hamilton County, Ohio. He was the sole occupant of a cell located in a section of the institution designed for those individuals charged with serious crimes. Some time in the latter part of May 1984, Zuern had a conversation with another inmate, Wayne C. Lewis, in which he expressed a general animosity towards correctional officers for failing to give him his full five minutes of telephone time. Lewis also had observed Zuern sharpening a straightened portion of a metal bucket hook over the course of three days. Thereafter, Lewis informed a corrections officer that appellant had a knife or a shank.

CCI supervisors ordered a search of several cells to recover the weapon. On the evening of June 9, 1984, several officers were ordered to search Zuern's cell, among others. At approximately 10:20 p.m., Officers Joe Burton and Phillip Pence arrived to perform the search and found Zuern lying naked in his bunk. Officer Pence ordered Zuern to get to his feet. Zuern then stood at the door of the cell. Pence unlocked the cell and told Zuern to come out and put his hands against the wall. Zuern suddenly lunged at Pence and stabbed him with the metal shank. The instrument entered Pence's body at the lower left side of the chest.

After the door was secured and Zuern confined, Pence lifted his shirt to observe the wound, at which time he began to feel faint. After a nurse was summoned, Pence was rushed to a nearby hospital. Despite efforts to save his life, Pence died. An autopsy determined that death occurred as a result of the stab wound to the chest which penetrated Pence's heart. Authorities immediately recovered the weapon used by Zuern. It was a long dagger-like piece of metal, approximately seven inches long. One end was sharpened to a point, and the other was curved into a loop.

Zuern was indicted for purposely causing the death of another with prior calculation and design in violation of R.C. 2903.01. Three specifications, pursuant to R.C. 2929.04(A)(4) and (6), were part of the charge: that the offense was committed while Zuern was a prisoner in a detention facility as specified in R.C. 2929.04(A)(4); that the offense was committed while the victim was a peace officer, whom Zuern knew to be such, and at the time of the commission of the offense, the victim was engaged in his duties as a peace officer as specified in R.C. 2929.04(A)(6); and that the offense alleged in this indictment was committed while the victim was a peace officer, whom Zuern knew to be such, and at the time of the commission of the offense alleged herein, it was Zuern's specific purpose to kill a peace officer as specified in R.C. 2929.04(A)(6).

A jury trial was held and at the conclusion of all proceedings, Zuern was found guilty of aggravated murder including all three specifications. Zuern waived the mitigation hearing which permitted the jury to consider all aggravating circumstances. After the mitigation phase, the jury recommended that the sentence of death be imposed. The trial court filed a written opinion and having found that the aggravating circumstances outweighed the mitigating factors beyond a reasonable doubt, imposed the sentence of death.

**OFFENSE-CASE #B841776:**

In January, 1979 the victim took an undercover police officer to Inmate Zuern's father's residence. The undercover officer made a narcotic buy from the inmate's father, and the father was subsequently convicted for the offense and given probation.

In May, 1979 both the inmate and victim were incarcerated at the Lebanon Correctional Institution. On May 6, 1979 inmate and victim got into a fight in the yard that started with a confrontation by the inmate. Eventually the victim was paroled and inmate Zuern was released due to his sentence expiring.

On 5/12/83, at approximately 12:40 a.m. inmate was at a friend's house socializing when he saw the victim get out of a car. The victim started walking toward the inmate, and the inmate started yelling. After a short conversation, the inmate was approximately 3 feet

away from the victim when he drew a revolver from the back of his pants, pointed it at the victim's chest, and fired one shot. The victim staggered backward, and the inmate fired a few more shots. The victim was transported to the hospital where he was pronounced dead.

On November 19, 1984 the inmate pled to the indictment of Aggravated Murder.

**PRIOR RECORD:**

**Juvenile:**

<u>Date:</u>	<u>Offense:</u>	<u>Disposition</u>
10-19-72 Age 13	Malicious Destruction of Property (4 counts)	11-7-72: probation & restitution 3-7-75: released from probation

Details: On 10-19-72, subject cut tires on four vehicles.

1-15-73 Age 14	Burglary	4-4-73: probation, fine, costs and house arrest, and placement with Father; 3-7-75: released from probation.
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Details: On 1-15-73, subject broke into the Community Development Association and took some business equipment.

3-21-73 Age 14	Violation of Court Order	3-23-73: Adjudicated delinquent; 4-4-73: probation, fine, house arrest, placement with father; 3-7-75: released from probation.
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Details: On 3-19-73, subject was being temporarily housed at Woodman Farms pending placement with a family member. He was caught trying to sell some contraband (marijuana) and a syringe.

5-29-73 Age 14	Violation of Court Order	6-6-73: permanent commitment to OYC suspended, continued on probation; 3-7-75: released from probation.
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**Details:** On March 6, 1978, at approximately 1:30 a.m., the victim James Driscoll, age fifteen and his friend Greg Kidd went to subject's residence at 2151 Hatmaker Avenue. Once inside, they smoked marijuana with subject, after which Greg Kidd offered to trade his knife for some marijuana. Subject became belligerent, and began telling the victim how mean his German Shepherd dog was. The victim and Greg Kidd then decided to leave, and as they were exiting the door, subject went into another room and retrieved a .22 caliber firearm. Subject then walked to the door and shot victim James Driscoll in the hip.

5-13-84 Age 25	Aggravated Murder (B841776)	Cincinnati, Ohio	11-19-84: plead guilty as charged and sentenced to Life concurrent to the Death sentence imposed in B842052.
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**Details: Instant Offense**

6-9-84 Age 25	Aggravated Murder (B842052)	Cincinnati, Ohio	10-13-84: Jury verdict of guilty as charged 10-15-84 sentenced to death.
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**Details: Instant Offense**

10-14-85 Age 26	Kidnapping (CR85317)	Lucasville, Ohio	1985: Pled guilty to Abduction and sentenced to 2-10 years.
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**Details:** On October 14, 1985, while being held in the J1 unit at SOCF, Zuern, along with fellow death row inmates John Byrd and Jay Scott and inmate Eric Swofford, kidnapped Officer William Dunn and Officer Randy Mehaffey. During the course of the negotiations, Zuern threatened to kill the officers. At 2:53 a.m. on October 15, 1985, the inmates released Officer Dunn in exchange for a radio. At 3:46 a.m. the inmates released Officer Mehaffey in exchange for an opportunity to air their grievances on a local radio station. During the standoff, the inmates destroyed several sinks, a toilet and an electric console. Zuern was indicted in Scioto County for Kidnapping, with a specification due to his prior aggravated felony conviction. Zuern agreed to plead to a lesser charge of Abduction, and was sentence to a term of 2-10 years. In addition, Zuern along with the above-indicated inmates raped and stabbed a fellow inmate.

**Other Convictions:** On 5-31-78, subject was convicted of Cultivation of Marijuana and fined. On June 1, 1983, subject was fined for a pedestrian violation.

### **INSTITUTIONAL ADJUSTMENT:**

Since his admission to the institution, Zuern's adjustment has been problematic, as evidenced by his conduct violations. Zuern's misconduct has included the following incidents:

- On June 26, 1985, Zuern stabbed a fellow death row inmate with a shank. The shank was made from a bedspring, with a handle made of cloth and rubber bands. The inmate suffered a superficial stab wound in the chest.
- On August 26, 1985, Zuern sprayed human waste on Officer Michael Warren.
- On August 31, 1985, Zuern set fire in his cell and was treated for smoke inhalation.
- On September 11, 1985, Zuern head-butted inmate McLellan while being escorted to an RIB hearing.
- On September 27, 1985, during a hearing before the Administrative Control Committee, Zuern overturned a table, resulting in injury to Officer Jack Bendolph.
- On October 14, 1985, while being held in the J1 unit at SOCF, Zuern, along with fellow death row inmates John Byrd and Jay Scott and inmate Eric Swofford, kidnapped Officer William Dunn and Officer Randy Mehaffey. During the course of the negotiations, Zuern threatened to kill the officers. At 2:53 a.m. on October 15, 1985, the inmates released Officer Dunn in exchange for a radio. At 3:46 a.m., the inmates released Officer Mehaffey in exchange for an opportunity to air their grievances on a local radio station. During the standoff, the inmates destroyed several sinks, a toilet and an electric console. Zuern was indicted in Scioto County for Kidnapping, with a specification due to his prior aggravated felony conviction. Zuern agreed to plead to the lesser charge of Abduction, and was sentenced to a term of 2-10 years. In addition, Zuern along with the above-indicated inmates raped and stabbed a fellow inmate.
- On November 13, 1986, Zuern threw three cups of human waste at Officer Asbery Arnett, one of which hit Officer Arnett in the face. Zuern also threw two bars of soap at Officer Arnett, both of which struck Officer Arnett in the head. When Zuern was removed from his cell, officers located a shank in Zuern's cell fashioned from a bedspring, rubber bands and a toothbrush handle. Zuern admitted that he planned to assault the guard with the weapon because the guard gets paid for working at the institution. Zuern also stated that he was bored and needed some excitement.
- On October 28, 1987, Zuern destroyed a sink.

**PAROLE PLAN:**

N/A

**COMMUNITY ATTITUDE:**

**PROPONENTS TO CLEMENCY:**

The Ohio Parole Board received no written application for clemency on Zuern's behalf and Zuern himself elected not to be interviewed by a member of the Board. The only information received from Zuern's counsel was a letter dated May 21, 2004 from attorney Kathleen McGarry. In sum, Ms. McGarry indicated that defense counsel had decided not to participate in the hearing, and it was their belief that their client would not want them to initiate clemency proceedings or appear on his behalf. Therefore, no request for clemency was made or mitigatory information presented by Zuern or on his behalf through counsel.

The Ohio Parole Board did receive a petition containing 102 signatures requesting that the Board recommend and the Governor commute Zuern's death sentence.

**OPPONENTS TO CLEMENCY:**

Ronald Springman, Assistant Hamilton County Prosecutor, and Charles Willie and Tim Prichard of the Ohio Attorney General's Capital Crimes Unit represented the State of Ohio at the hearing before the Parole Board on May 25, 2004. Arguments offered in opposition to the granting of Executive Clemency included:

- There exists no doubt that Zuern committed the offense for which he received the death penalty. Zuern only disputed at trial that the offense was committed with prior calculation and design. However, Zuern surreptitiously obtained the weapon and took days to develop it. Zuern knew that officers were going to search his cell and disrobed prior to the attempted search in order to appear non-threatening. Upon Officer Pence opening his cell, Zuern lunged at Officer Pence and used the weight of his shoulder to plunge the shank deep enough into Officer Pence's chest to cause death. Immediately after stabbing Officer Pence, Zuern sat back down, remained calm and showed no remorse. Subsequent to stabbing Officer Pence, Zuern stated that it felt good to stab someone and that he "got his nut". Zuern at no time since committing the offense has shown any remorse.
- The trial was relatively short, uncomplicated and straightforward. The facts of this case clearly indicate that the death penalty was a proper punishment and was not unjustly imposed. A jury lawfully imposed the death penalty on Zuern, and his conviction and sentence have not been disturbed after nearly twenty years of judicial scrutiny by every level of both the state and federal courts.

- Zuern's criminal history is extensive and violent. He was incarcerated for an Aggravated Murder charge when he committed the Aggravated Murder against Officer Pence. He subsequently plead guilty to the additional Aggravated Murder charge and was sentenced to Life.
- Zuern's institutional conduct has been problematic. There may be no inmate less deserving of clemency.
- No basis for the granting of clemency has been offered.

Former Deputy Sheriff Gary Roush appeared and spoke on behalf of the victim Phillip Pence. Mr. Roush stated that the victim was only 25 years old at the time of his death, and had just begun his law enforcement career. The victim had plans to start his own business, but was unable to do so due to his untimely death. In addition, the victim was the only living relative of his mother. When she died, no one was there to ensure that her grave was properly attended to.

Mr. Roush was present when the victim was stabbed by Zuern and described the brutality of the offense. Immediately after the stabbing, the other inmates were "going wild", except for Zuern who sat in his cell calmly. Mr. Roush stated that Zuern lacks any redeeming value as a human being, and his incarceration places other officers in jeopardy.

Mr. Roush then read a letter from the victim's step sister Sherry Behler. Ms. Behler is adamantly opposed to clemency. In addition, approximately 44 letters in opposition to the commutation of Zuern's death sentence have been received.

### **CONCLUSION:**

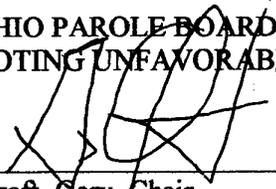
At present, William Zuern's scheduled execution date of June 8, 2004 has been stayed. Mr. Zuern declined an interview by the Parole Board.

The Parole Board reviewed the documents and deliberated extensively on the information provided. No mitigation was offered and no request for mercy was made by William Zuern. The Parole Board could find no mitigating factors to outweigh the overwhelming aggravating factors in this case. Therefore, the undersigned members concur with the imposition of the death penalty in this case, and find that the exercise of clemency is not warranted.

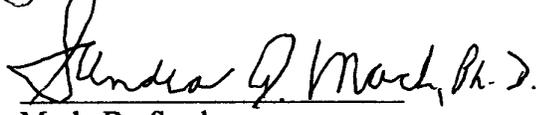
### **RECOMMENDATION:**

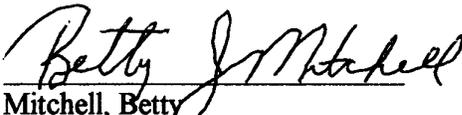
The Ohio Parole Board, nine (9) members participating, by a vote of nine (9) to zero (0), recommends to the Honorable Bob Taft, Governor of the State of Ohio, that Executive Clemency be denied in the case of William Zuern #A181-416.

OHIO PAROLE BOARD MEMBERS  
VOTING UNFAVORABLE

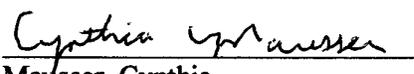
  
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Croft, Gary, Chair

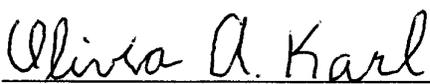
  
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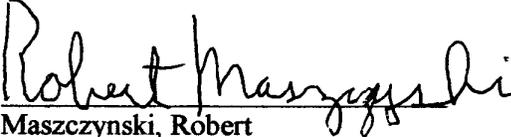
  
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Mack, Dr. Sandra

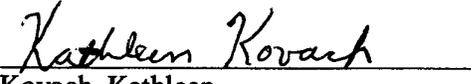
  
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Mitchell, Betty

  
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Karl, Olivia

  
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Maszczyński, Robert

  
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Kovach, Kathleen

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