

DATE TYPED: September 13, 2010
DATE PUBLISHED: September 15, 2010

IN RE: MICHAEL BENGE, OSP #A276-821

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

Date of Meeting: September 7, 2010

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

IN RE: Michael Bengé, OSP #A276-821

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with aggravating circumstance specifications; Aggravated Robbery; Gross Abuse of a Corpse.

DATE, PLACE OF CRIME: February 1, 1993 in Hamilton, Ohio

COUNTY: Butler

CASE NUMBER: CR93-02-0116

VICTIM: Judith Gabbard (Age 38)

INDICTMENT: Count 1: Aggravated Murder with death penalty specifications; Count 2: Aggravated Robbery; Count 3: Gross Abuse of a Corpse.

PLEA: 5/24/1993: Pled no contest, found guilty by Court of Count 3, Gross Abuse of a Corpse.

TRIAL: 5/27/1993: Found Guilty by Jury as indicted in Counts 1-2.

SENTENCE: 6/14/1993: Counts 1: Sentenced to DEATH; Counts 2: 10-25 years consecutive with Count 1; Count 3: 1 year concurrent with Counts 2.

ADMITTED TO INSTITUTION: June 16, 1993

JAIL TIME CREDIT: 132 days

TIME SERVED: 17 years, 2 ½ months (does not include Jail Time Credit)

AGE AT ADMISSION: 31 years old

CURRENT AGE: 49 years old

DATE OF BIRTH: August 7, 1961

JUDGE: Honorable Michael J. Sage

PROSECUTING ATTORNEY: Robin Piper

FOREWORD:

Clemency in the case of Michael Bengé, A276-821 was initiated by the Ohio Parole Board, pursuant to Section 2967.03 and 2967.07 of the Ohio Revised Code and Parole Board Policy #105-PBD-01.

On August 26, 2010, Michael Bengé was interviewed via video-conference by the Parole Board from the Ohio State Penitentiary. A Clemency Hearing was then held on September 7, 2010 with nine (9) members of the Ohio Parole Board participating. Arguments in support of and in opposition to clemency were then presented.

The Parole Board considered all of the written submissions, arguments, information disseminated by presenters at the hearing, prior investigative findings as well as judicial decisions and deliberated upon the propriety of clemency in this case. With nine (9) members participating, the Board voted 9 to 0 to provide an unfavorable recommendation for clemency to the Honorable Ted Strickland, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (CR93-02-0116): The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided March 4, 1996:

In the early morning hours of February 1, 1993, a car belonging to Judith Gabbard, Michael W. Bengé's live-in girlfriend, was found abandoned on the west side of the Miami River in Hamilton, Ohio. The vehicle was found near the river with the front passenger-side tire stuck in a gully. After the vehicle was towed to the impound lot, the tow-truck operator observed blood on the front bumper and passenger side of the car and notified the police.

The police returned to the area where the car was found and discovered the body of Judith Gabbard in the Miami River. Her body had been weighed down with a thirty-five pound piece of concrete which had been placed upon her head and chest. One of the pockets on the jacket Gabbard was wearing was empty and turned inside out. She still had in her possession her checkbook, cash and jewelry. The police retrieved a tire iron, or lug wrench, from the river approximately twelve to fifteen feet from where Gabbard's body was found. A jack and spare tire were found in Gabbard's trunk, but no lug wrench was discovered. Police removed lug nuts from the vehicle, which were sent to a laboratory and compared with the lug wrench. Although no positive match was made, the lug nuts did bear markings which were similar to the lug wrench.

The police gathered other physical evidence from the scene which was also tested by a forensic laboratory. Strands of hair and type A blood (which both Gabbard and Bengé had) were found on the driver's side front tire. Smears of blood were also discovered above the passenger-side headlight and on the fender. Police also found a pool of blood with a tire track through it and blood contained in the tire treads. According to one of the

investigative detectives, this evidence indicated that the car had been driven through the blood and through the hair of the victim.

An autopsy was performed, which revealed that the victim had suffered a number of blows to the head with a long blunt object which produced pattern abrasions and multiple skull fractures, one of which was circular in nature. According to the coroner, the victim died of brain injuries secondary to multiple skull fractures which were inflicted with a blunt object.

The police apprehended Bengé the next day, on February 2, 1993. When the detectives approached Bengé, on the street, they observed him drop Judith Gabbard's ATM card to the ground. They picked up the card, arrested Bengé, and took him into the station for questioning. After being read his Miranda warnings, Bengé agreed to talk to the detectives. Bengé told police that two black men in a Bronco had chased him and Gabbard to the river and that their car had gotten stuck. Bengé claimed that one of the men injured Gabbard and took her ATM card while the other held him at gunpoint, demanding the ATM code word. When Bengé refused to tell him, the man returned the ATM card to him. Bengé escaped by jumping into the river. As he swam away, he heard Gabbard screaming as the men beat her. The detectives told Bengé they did not believe his story. Bengé told them he thought he should talk to a lawyer. The questioning ceased at that point.

A short time later, Bengé told police he was willing to talk. Bengé signed a Miranda warning card indicating that he waived his Miranda rights. Bengé then gave the police a tape-recorded statement in which he recounted a different version of what happened the night before. Bengé told police that he had driven to the riverbank with Gabbard so that they could talk. He said that they had argued over the fact that he was addicted to crack cocaine. Gabbard also accused him of being unfaithful to her. Bengé then said he got out of the vehicle to urinate. At that point, he said Gabbard tried to run him down, but the car got stuck in the mud. Bengé said that he became enraged, pulled Gabbard out of the car, and began beating her with a metal pipe he found lying on the ground. Bengé said he threw her body into the river, face down, disposed of the weapon and swam across the river. He did not recall whether he put any rocks or cement on her body. Bengé then went to the home of his friend, John Fuller, to get dry clothes, which Fuller's fiancée, Awantha Shields, provided.

During this second interrogation, Bengé was questioned about the ATM card, why he had dropped it when he saw the police, and whether he had used it after killing Gabbard. Bengé said he threw down the card because he was scared and he knew he would not need it anymore. He also told police that he had not used the card since he killed Gabbard, although he did allow a man by the name of Baron Carr to use the card once to get money to purchase crack cocaine. Bengé claimed that the only reason he had the card in his possession was because he and Gabbard had used it on January 31, 1993 before they went out that evening. However, the police discovered through retrieving ATM records that no transaction had taken place on January 31, 1993 and that two transactions were made following Gabbard's death; on February 1, 1993 at 2:45 a.m., a \$200 withdrawal was made, and on February 2, 1993 at 12:01 a.m., another \$200 was withdrawn.

Benge was indicted on one count of aggravated murder in violation of R.C. 2903.01(B) with death penalty specifications under R.C. 2929.04(A)(3) (offense committed for the purpose of escaping detection for another offense) and R.C. 2929.04(A)(7) (offense committed during the commission of an aggravated robbery) as well as for aggravated robbery and gross abuse of a corpse. Bengé pleaded no contest to gross abuse of a corpse. The case proceeded to trial on the other charges.

At trial, the state called Awantha Shields, who testified that in the early morning hours of February 1, 1993, Bengé arrived at the house she shared with John Fuller, wearing wet clothes and asking for John. Bengé also asked her if she had ever killed anyone. He then told her that he and his girlfriend had “got into it” earlier, that it blew over, and that they went to the river bank. He then told her that they had started fighting and that he hit her in the head no more than ten times with a crowbar, put rocks over her head and pushed her in the river. Bengé told her that he had killed his girlfriend to get her “Jeanie” card. He also said that if the police questioned him he would lie and say that a couple of black guys jumped him and his girlfriend and beat his girlfriend up. He also told her that he had given her ATM card to a guy named Baron to get \$200 to buy crack cocaine but that he never saw the money.

Larry Carter testified that he and Baron Carr ran into Bengé in the early morning of February 1, 1993. Bengé, whose clothes were wet, asked Carter to excuse how he smelled but that he had just swum in the river. Carter thought Bengé was kidding. Bengé told him he had given John \$20 to buy crack cocaine for him and said that he could get more money. Carter drove Bengé and Carr to a Society Bank where Bengé withdrew \$200 from an ATM; Carter then bought crack cocaine for Bengé. Carter later drove Bengé to Fuller's house. Later that next night, Carter and Baron Carr withdrew another \$200 from Gabbard's account using her ATM card so that they could buy drugs for Bengé. However, to avoid giving the drugs or money to Bengé, the two men conjured up a story and told Bengé that his girlfriend had closed the account. Bengé insisted that she had not.

Benge took the stand on his own behalf and reiterated what he had told police during his second interrogation, including that Gabbard had tried to run him down and that he was in a rage when he killed her. Bengé also claimed that he had permission to use Gabbard's ATM card and did not rob her. On cross-examination, he admitted losing his job in January 1993 due to his crack cocaine habit and that he had no income at the time he killed Gabbard.

Benge was convicted of all counts and specifications. Thereafter, the jury recommended that he be sentenced to death, and that recommendation was accepted by the trial court. The court of appeals affirmed Bengé's convictions and death sentence.

PRIOR RECORD

Juvenile Offenses: Michael Bengé, at the age of 16 or 17, was charged with Breaking and Entering, for which he was placed on probation. He has no other known juvenile arrest record.

Adult Offenses: Michael Bengé has the following known adult arrest record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
01/19/1990 (Age 28)	Attempted Drug Abuse (89CRB01654-A)	Middletown, Ohio	60 days jail (suspended), \$250 fine, 2 years probation; Probation Violation for failure to complete substance abuse counseling.
02/01/1993 (Age 31)	Aggravated Murder; Aggravated Robbery; Gross Abuse of a Corpse (CR93-02-0116)	Hamilton, Ohio	06/14/1993: Count 1: DEATH; Count 2: 10- 25 years consecutive w/ Count 1; Count 3: 1 year. INSTANT OFFENSE

Dismissed, Nolle and/or Unknown Dispositions:

On 4/18/1987, Bengé was charged with Drug Abuse (Quaaludes) in Dayton, Ohio.

On 8/26/1989, he was charged with Possession / Drug Abuse in Darke County, Ohio; disposition unknown.

On 2/22/1992, Bengé allegedly assaulted Judith Gabbard; Hamilton Police responded. It is unknown if charges were pursued in this matter.

Institutional Adjustment:

Michael Bengé was admitted to the Department of Rehabilitation and Correction on June 16, 1993. His work assignments while incarcerated at the Mansfield Correctional Institution included Barber, Material Handler and Porter. Since his transfer to the Ohio State Penitentiary, his work assignments have been as a Library Aide and as a Porter. Bengé was enrolled as a student from 8/1999 until 4/2001. In March 2001, he obtained his GED. He has participated in numerous community service projects while incarcerated that have benefited local schools, churches and other non-profit agencies. He continues to maintain his eligibility for assignment to the extended privilege unit at the Ohio State Penitentiary. Bengé actively participates in religious services activities, including worship services and bible studies. He completed the "Stress and Stressors" program and a 12 step program in March, 1999 and "Life without a Crutch" in November 1998.

Since his admission, Benge has accumulated the following disciplinary record which resulted in placement in disciplinary control:

- 09/05/1997: Rioting or encouraging others to riot. Benge was involved in an uprising at the Mansfield Correctional Institution where he set the stage for a Corrections Officer to be overpowered in the recreational area of the death row unit. As a result, the inmates were able to gain control of the unit and several assaults occurred. Benge received 15 days in disciplinary control for this rules infraction and his security level was increased to level 5 through February, 2003.

Benge has received approximately three (3) additional conduct reports since he was admitted to the Department of Rehabilitation and Correction in 1993. These offenses include Malicious destruction, alteration, or misuse of property (12/24/1998), Disobedience of a Direct Order (11/23/1999) and Possession of Contraband (11/27/2000).

APPLICANT'S STATEMENT:

Michael Benge was interviewed by members of the Parole Board via video-conference on August 26, 2010. Benge stated that he felt it was time to tell the truth about the offense; his family and the victim's family deserved to know the truth. He apologized for the pain and suffering this crime has caused his family and the victim's family. He stated he has tremendous guilt and has brought shame upon himself. He stated he accepts full responsibility for his actions.

Benge stated that on the morning of January 31, 1993 while Judy Gabbard was at work, he got high all day causing him to be late picking Judy up from work. When he got to the house, she was already home getting ready to go out. They went to the Riverview bar where they stayed from 7:00 p.m. to midnight. While at the bar, they both drank, and he also smoked crack outside. At some point in the evening, Judy went to the bathroom leaving her jacket on the bar stool. Benge stated that he reached into the jacket and took her "Jeanie" (ATM) card out. They left the bar and argued over Benge's drug use. They decided to stop and talk about their problem, and pulled over near the river. When Judy stopped the car, she reached into her coat pocket to get her cigarettes and discovered her ATM card was missing. She confronted Benge and demanded it back, but he refused and she slapped him. He slapped her back, and as she started to get out of the car, he pushed her from behind causing her to fall out of the car onto her knees. He then followed her out of the driver's side and grabbed a tire iron that was located along the floor. As Judy got to her feet, Benge hit her in the head with the tire iron and continued to hit her when she was on the ground. He stated he hit her between 7 and 10 times. When she stopped moving, he got into the car to leave the scene, but noticed that the keys were not in the ignition. He went back to Judy's body, and reached into her pocket to get the keys. He tried to drive away but got stuck in the mud. He exited the car, drug Judy's body to the river, found a rock and laid it on her chest, then put her in the river.

After putting Judy's body in the river, Benge swam across the river and eventually made his way to his friend John Fuller's home. He arrived there soaking wet. John's girlfriend,

Awantha Shields, let him into the house and offered him dry clothing. As he pulled things out of his pockets, he asked Awantha if she had ever killed anyone. She advised she had not and he told her he had just killed his girlfriend.

Benge admits he used the ATM card to withdraw money to buy drugs and snacks. He admitted he lied to police and lied when he testified in court.

Benge stated that he started using alcohol at age 11 and marijuana at age 13, he graduated to Quaaludes soon after that and he started using cocaine in 1989. He advised that he had been sober for several years, explaining that being sober to him was only using alcohol and diet pills. He stated that he had started using crack cocaine a few months prior to the offense.

When asked about prior violence in his relationships, Benge admitted that there had been a few instances where he and Judy fought. Benge also admitted to an incident with his prior wife Peggy, where he backhanded her during an argument.

Regarding institutional conduct, he admitted he has had a few tickets that have resulted in segregation. Benge stated that he was not actively involved in the riot. Benge explained that he was frightened during the riot, so he climbed atop a basketball hoop to safety and to stay out of the way.

On the positive side, Benge stated he has received his GED since being in prison and has attended a 12- step program as well as other programming. He actively participates in three (3) bible study classes and has been a library aid and a porter. He participates in community service projects by making crosses for churches and schools, participating in charity events, and cutting box tops.

Benge spoke about his family and the support they provide each other. He stated that he has two children by his first wife Peggy, and he is still very close to them. He advised that he was able to visit his children when his mother would come to visit him. Both children joined the military. His son is currently in the reserves and his daughter is still on active duty. He stated he advises his sisters spiritually, and provides positive support to his mother.

Benge feels he is a positive role model for other inmates. He feels he has a lot more to offer if he is allowed to live. Benge stated he is not the same man who committed this crime and he asked for a commutation of his sentence to life without parole.

ARGUMENTS ADVANCED IN SUPPORT OF CLEMENCY:

Jennifer Prillo and Randall Porter of the Office of the Ohio Public Defender presented arguments on behalf of Mr. Bengé. They stated that Bengé admits his guilt in this crime and takes full responsibility for his actions. However, they wanted the Board to take into consideration the following:

- Bengé has abused substances since age 11. He started using alcohol, then marijuana and graduated to cocaine in 1989. Bengé's addiction was severe and he committed this offense to have access to more drugs.
- Bengé suffers from a brain impairment that is the result of both his extensive drug use and physical abuse suffered during his youth at the hands of a step father.
- Bengé was brought up in a dysfunctional home. He and his sister were the products of an extramarital affair. They were not accepted into their father's family. After their father's death, their mother married a man who physically abused Bengé. Bengé was only 3 years old at the time. Once the abuse was discovered by his mother, she divorced her husband. She then married again, to another man whose son then abused Bengé. Emotional support was lacking in this family; Bengé did not have a strong male figure in his life while growing up.
- The sentence in this case is disproportionate to another Butler County case. The details of the case against Timothy Bradford are similar to the offense of Bengé. Timothy Bradford killed his girlfriend and disposed of her body. Sometime after her death, he used her ATM card to withdraw money from her bank account. Two months after the crime, the victim's skull was found in a lake, and the investigation revealed that Bradford had dismembered the body and disposed of it in different locations throughout Butler County. Bradford eventually pled guilty to a Bill of Information to the crime of Voluntary Manslaughter, and was sentenced to 12-25 years in prison. Although Bengé's case is truly a capitol murder case, Bradford's case is similar in details, yet he was allowed to plea to voluntary manslaughter.

Family and expert witnesses then provided the following information:

- Tom King provided a statement via video indicating he has known Bengé since they were 10 years old. He described Bengé's childhood as tough. He recalled an incident where Bengé saved him from potentially drowning in a river. He feels that Bengé's life should be spared.
- Juanita Babb, Bengé's mother, stated that she feels responsible for some of the problems in her son's life, due to some decisions she made. The two men she married after Bengé's father died abused Bengé physically, and she did not recognize the abuse. She feels that while she gave him material things, she failed to provide love and affection. Mrs. Babb stated Bengé was a fun loving boy and is a special person still. He has been a great support to her during her husband's

illness, and she needs her son as she enters her late years in life. Mrs. Babb asked the Board to spare her son.

- Vicky Rauf, Bengé's younger sister, spoke of her brother's use of marijuana in his early teens. She says he smoked all the time and she never told anyone. She also used to help him cut school by writing notes to the school pretending to be his mother. Mrs. Rauf feels that if she had told her mother about the issues Bengé was having, he may not be in prison today. Mrs. Rauf stated that while she is not proud of his crime, she is proud of her brother and has a great deal of respect for him and the way he has handled himself while incarcerated. She explained that Bengé plays a significant role in their family, and asked the Board to grant him clemency for the family and his children.
- Barbara Reid, Bengé's older sister, spoke of the hardships she and her brother endured as children. They were not welcome in their fathers' family, and when their mother married their step-fathers, they were subjected to physical abuse. Mrs. Reid stated that Bengé did not have any role models to look up to and fell in with the wrong crowd. She explained that since his incarceration, he has been a tremendous support to her and their family. He guides them in difficult decisions and supports them in their lives. She told the Board that Bengé is worth more alive than dead and asked for clemency for him.
- Dr. Nicholas Doninger, Licensed Psychologist, provided a statement via video. He explained that it was not possible to conduct an MRI on Bengé, but relying on other tests administered, he was able to diagnose Bengé with Cognitive Disorder NOS. Bengé suffers from deficits in his executive functioning which make it difficult for him to modify his behavior. He exhibits poor reasoning and has a difficult time adapting and finding alternative courses of action in response to stressors. The cause of this deficit has been his long history of substance abuse, and several closed head injuries which resulted in temporal lobe damage. During the time leading up to the offense, Bengé was having problems dealing with the loss of his job and the pressure Judy was putting on him regarding his substance abuse. This culminated on the night of the offense, when Judy smacked him in response to his refusal to turn over her ATM card. Now that Bengé is in a more structured facility, with little confrontation and few stressors, it is unlikely he will engage in further violence.
- Peggy Ferneding, Bengé's ex-wife, spoke via video. She stated that their marriage dissolved due to Bengé's drug use. She stated she tried to help him, went to treatment with him, but in the end she could not continue to tolerate his drug abuse. She indicated that there was never any violence in their marriage, and this offense was out of character. Bengé has always maintained a good relationship with his children. He offers support to them and they visit him as often as they can. She fears for her daughter if Bengé's sentence is carried out, as she is very close to her father. Mrs. Ferneding stated that she is sure there are people in prison who have committed worse crimes and she hopes Bengé is not executed.

- Dr. Robert Smith, Clinical Psychologist/Addiction Specialist, provided the following information regarding Bengé. He stated that the brain is who we are, and when substances are used, the brain is changed, and can be changed permanently. A person who is addicted to substances changes the make up of the reward center, and that addiction becomes a compulsion. That compulsion may make a person do anything to satisfy it. Bengé's combination of an addiction and frontal lobe impairment put him at significant risk for extreme violence. He never received treatment for either of these problems, and therefore was unable to cope with the conflict that occurred on the night of the offense.
- Chaplin Orr, ODRC Chaplin at OSP spoke on behalf of Bengé. He shared that Bengé has played a positive role in several bible study classes at OSP, and is a positive role model to fellow inmates. He has earned the respect of those inmates, as well as several Corrections Officers. He related that Bengé leads by example. Chaplin Orr feels Bengé is not the same man he used to be, and has a peace and comfort about his life. He is proud to know him.
- Michael Bengé, Bengé's son provided his statement via video. He explained that he was 7 years old when his father went to prison. He has some memory of the time before his father went to prison. He has always visited his father and his father writes to him several times a month. Michael Bengé stated that his father has been very supportive to him throughout his life, was a major factor when he was deciding what to do after high school, and supported his decision to join the military. Michael Bengé stated that his father continues to give him good advice, and he feels his father still has a lot to offer, even if he spends the rest of his life in prison.
- Tabitha Saunders, Bengé's daughter shared that while growing up, her father was like a big kid. They did many things together and always had a lot of fun. Mrs. Saunders never saw her father angry, and he was never violent with her. She was 11 years old when her father went to prison; she refused to believe he had a substance abuse problem. After his incarceration he became a huge support to her. He was critical in helping her decide to join the military, and she has had a 10 year career and plans to remain in the service. She visits as often as she can, and they communicate often. Mrs. Saunders stated that her father has lead by example in prison, giving of himself to other inmates and community groups. Mrs. Saunders stated that if his sentence were to be carried out, her life would be empty. She would be lost without her father. She feels his crime is not the worst of the worst, and asked the Board to recommend that his life be spared.

ARGUMENTS ADVANCED IN OPPOSITION TO CLEMENCY:

Robin Piper of the Butler County Prosecutor's Office and Stephen Maher of the Ohio Attorney General's Office presented in opposition to clemency. Prosecutor Piper presented the following arguments:

- Bengé has not always taken full responsibility for his actions. He has told several different stories regarding the night of the offense. He concocted a lengthy, articulate story, which suggests that his executive functioning was not impaired.
- Shortly after committing the crime, Bengé arrived at the home of John Fuller and Awantha Shields. After telling them of the crime he committed, he told them he was going to tell police that two black men chased him and Judy down to the river where they were assaulted. He was going to say that the men took Judy's ATM card and demanded the access code. When he would not give them the code, they gave the card back and he fled. He intended to further tell police that he heard these same men beat Judy to death along the river bank.
- It is not coincidence that shortly after the crime Bengé gave the ATM card to two black men, and advised them to use the card to withdraw money for drugs. Bengé had hoped these men would get caught using the card, and ultimately blamed for the murder.
- Bengé told Awantha that he committed the crime for the card. He also stated to her and Fuller that "he knew what he was going to do, but he didn't know what he was going to do to her", meaning he planned the robbery but did not know what would happen to Judy.
- After his arrest, and upon telling police his first version of what happened that night, Bengé realized his details did not fit very well. So, he decided to change his story to fit the events of the night. He told police a second version where Judy became angry with him and tried to run him over with the car. Now he tells the Parole Board another story claiming it is the truth.
- Bengé's claim that he had no treatment for his substance abuse is contradicted by the defense psychologist. Dr. Fisher testified at trial that Bengé was in substance abuse treatment, but did not like having to pay \$60 a session, so he stopped going. The truth is that Bengé liked to party, live off of women and not work.
- The current defense experts (Dr. Nicholas Doninger, and Dr. Robert Smith) completed evaluations based on Bengé's self report, which is not truthful or complete. Therefore, the reliability of their assessments and conclusions is questionable.
- Bengé has no credibility. He has lied throughout this process, beginning at the time of his arrest, to the time of his interview with the Board. He lies to his

supporters on-line and even to this own family regarding the truth in this case. The current version of the offense likely represents another lie and to escape further responsibility. Since previous versions of the offense did not result in success in the courts, Bengé has elected to concoct another version that he thinks will satisfy the Board, and will gain him a favorable clemency recommendation.

- Bengé killed the victim because she refused to give him the ATM card. He went through her pockets to take the card. When he was arrested, he threw the card to the ground because he knew he was not permitted to have it.
- During his interview with the Parole Board, Bengé expressed remorse for himself, and then for the victim as an afterthought.
- An offer was made to Bengé to drop the death penalty specifications in exchange for his plea to Aggravated Murder, which would have resulted in a life sentence. This was done to avoid a trial, as it is done quite frequently. It is difficult to determine whether a jury will believe a defendant's story, and the prosecution did not want to risk losing the Aggravated Murder conviction. Bengé chose not to accept the plea deal. That does not mean that the elements of Aggravated Murder and the death penalty specifications were not proven beyond a reasonable doubt. The prosecution proved all the requisite elements, and the jury fairly convicted Bengé. They chose not to believe his story, which we now know is a lie.
- Bengé received a fair trial; his counsel was very well prepared and put on a zealous defense. He challenged the prosecution in every legal way possible. The judge went to extraordinary lengths to ensure that Bengé received a fair trial. The jury recommended a Death sentence, which was imposed by the Judge and found to be appropriate. All appellate courts have reviewed the trial and sentence and have found it to be properly imposed. There was only one dissenting opinion throughout the entire appeals process that suggested voluntary manslaughter should be considered.
- The proportionality argument in relation to the Bradford case is not well founded. Investigators had no case against Bradford until Bradford came forward and made a statement. Perhaps Bradford's story that suggests Voluntary Manslaughter is self-serving, but without it, they had no evidence. If the Parole Board believes that Prosecutor Piper dropped the ball in that case by permitting a plea to Voluntary Manslaughter, then so be it. However, that does not mean that the Parole Board should drop the ball in Bengé's case by recommending clemency in a case where the conviction and sentence were lawfully imposed.
- During the time when Judy Gabbard was being beaten by Bengé, Bengé admitted that she called out his name several times. She had no defensive wounds, which indicates she was ambushed. Bengé showed Judy no mercy; Bengé should not receive any mercy.

Assistant Attorney General Stephen Maher presented the following arguments:

- It is a significant concession by defense counsel that the facts of the offense demonstrate a capital case. This is new information. Bengé has argued all along that he is guilty of Voluntary Manslaughter and the death penalty is not an appropriate punishment. The argument that his case is disproportionate to the Bradford case is no longer a valid argument, since he concedes that the facts of his case constitute capital murder.
- The Parole Board should view with skepticism the argument that Bengé suffers from brain impairment. The diagnosis is based on patient history that is self-reported. If Bengé is lying, which we know he has done, the opinions and diagnosis are fundamentally flawed. In addition, Bengé appears to be able to tailor versions of the offense at various times since his arrest that are consistent enough with the facts that those in positions of authority might find them plausible. When confronted with the reality that he will have to take more responsibility for the offense to put himself in the best light to the authority figures he seeks to convince, his executive functioning works just fine to create an alternative version. For example, Bengé created the first version that he and Judy were chased, which when law enforcement advised him that they did not believe, he changed it to a story of Voluntary Manslaughter. He maintained that story throughout his trial and appeals. He was close to being successful in the appellate courts with that version, but ultimately the majority held that his statement of the offense was in contradiction to the physical evidence. Now that Bengé is seeking a recommendation of mercy from the Parole Board, his story has again changed so that he can present himself as remorseful and truthful. The Board should be skeptical of this latest version based on the timing of its admission, and should not accept the brain impairment argument.
- Bengé was not charged with prior calculation and design, however, the Board should consider that there is an element of prior calculation and design in the facts. Bengé's explanation as to the reason why he and Judy were at the river is implausible. In addition, witness statements indicate that Bengé planned to rob Judy, and more than likely he planned to kill her to get what he wanted. The area where the crime occurred was not in the direction of the victim's home; it was in the opposite direction. It is also implausible that the victim would not have discovered that her ATM card was missing until they were at the river. Bengé indicated that her card was in the same pocket as her cigarettes. It would seem more likely that she would have discovered that the card was missing prior to their exit from the bar. Finally, Judy had no defensive wounds. It is very likely that she was ambushed.
- Bengé has no remorse, which is evident by his refusal to accept the plea deal offered prior to trial.

- Bengé has also been untruthful about his involvement in the 1997 incident at MANCI. Bengé made two requests to the Correctional Officer to be permitted to give inmate Lamar a basketball. The second request is strong indication of complicity to riot. After Lamar's exercise cage was opened and he overtook the Correctional Officer, Bengé sat on top of the basketball rim. The riot was not occurring in that area, so Bengé did not need to climb on top and sit on the rim for his own protection. The only reason to sit on top of the rim was to participate in the riot by signaling to the other inmates.
- Bengé is not deserving of clemency and should not receive a favorable recommendation.

VICTIM'S REPRESENTATIVES:

The following family members of the victim appeared and presented to the Board in opposition to clemency:

- Beth Nistler, victim's sister-in-law, stated that her sister was a good woman. Bengé took her sister-in-law's life and destroyed her children. Mrs. Nistler's husband, Judy's brother, had a breakdown after his sister's death. She is appalled that Bengé would ask for life, when Judy does not have a life. She stated Bengé deserves death, and Judy deserves justice.
- Several letters were then read by the victim's family that are attached to this report.
- Kathy Johnson, the victim's sister, then spoke about how Judy was so happy when she met Bengé, but eventually the drugs took a toll on their relationship. Bengé would disappear and when his children would call to see their father, she did not know what to say to them. Mrs. Johnson said Judy told her she was being abused by Bengé; that he had started hitting her and threatening to kill her and the children. She stated that Judy threw Bengé out of the home and changed the locks, however he was able to get back into the home and she allowed him to stay.
- The family concluded their presentation with a video tribute to Judy Gabbard.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Parole Board considered all of the written submissions, arguments, information disseminated by presenters at the hearing, the interview with the applicant, prior investigative findings as well as judicial decisions and deliberated upon the propriety of clemency in this case. Clemency in the form of a commutation is not recommended in this case for the following reasons:

- There is no question that the victim was beaten to death during the commission of an Aggravated Robbery because Benge wanted to gain control of the victim's ATM card.
- Benge lied to investigators and the court, and he continues to circumvent the system by telling partial truths to this Parole Board in order to convey remorse and responsibility.
- Benge admits that this case is a capital case, which refutes any proportionality claim regarding other Butler County cases.
- Benge received a fair trial as supported by all appeals courts who have reviewed this conviction and sentence.
- Benge does have tremendous family support, and he has had limited institutional rules infractions; however these factors do not outweigh the brutality and aggravating circumstances of the offense, or the impact this offense has had on the victim's family.

RECOMMENDATION:

The Ohio Parole Board with nine (9) members participating, by a vote of nine (9) to zero (0) recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that executive clemency be denied in the case of Michael Benge, A276-821.

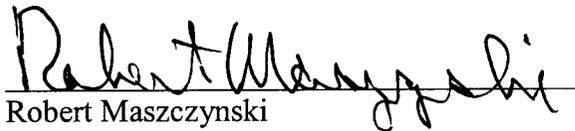
Michael Bengé, A276-821
Death Penalty Clemency Report

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

Ohio Parole Board Members
Voting **Unfavorable**



Cynthia Mausser, Chair



Robert Maszczyński



Kathleen Kovach



Ellen Venters



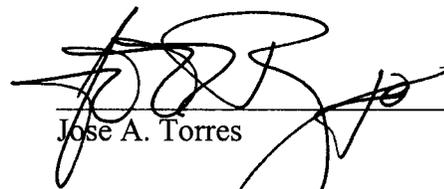
R.F. Rauschenberg



Bobby J. Bogan, Jr.



Trayce Thalheimer



José A. Torres



Cathy Collins-Taylor

Michael Bengé A276-821

My name is Kathy Johnson, Judy Gabbard ~~was my sister~~ ² We come from a very large family. There were 9 of us. Our mother raised us on her own. Our father walked out on my mother and his children, ~~We didn't have a lot~~ ^{OFFICE OF VICTIM SERVICES} as children. Our mother would always tell us we were rich, because we were rich in love. We had each other and that was all the riches we needed. Our mother was very streaked we had to come in when the street lights came on. We were not allowed to stay with friends unless our mother knew the family. She always tried to keep us safe. She would always say when kids run the roads and parents don't know where they are. That is what gets them into trouble. My mother was always proud of her children. Anyone from friend family member even strangers would always tell her she had good kids. She taught us to respect other. And never take any thing that didn't belong to us.

When Judy was 15 she meet the boy next door. Hubert had just moved in. He lived in the upstairs apartment. His living room window was across from Judy's bedroom window. They would talk a lot. They started seeing each other, got married and had a child. They seemed to get long great for years. They both worked. Through the year Hubert cheated on Judy. He cheated on her so much Judy told him she was done, she had enough and they separated.

Judy moved in with our youngest sister Jenny. Jenny was single and like to go out. She took Judy to Cinema Lounge Bar. Judy had never went to a place like that before. She meet Mike Bengé there. I remember her calling me and telling me she met a nice guy. He would buy her gifts, something she had never received before. Her ex-husband never did that. She called me and said Mike Bengé went to jail for a month or 45 days. She said it was on a warrant he had for not going to court. I told her he is not a good person. If he is in jail he's a bum. She could do better then that. She told me he was a really nice guy. She wanted me to met him she said I would like him.

After he got out of jail, She stopped by one of our many family gatherings. She brought him. I had a eery feeling about him. I did not care for him much. I didn't know what it was, but something just didn't seem right. She acted like she was happy so I did not say anything to her, Her happiness is all that mattered to me. One holiday I asked Mike Bengé if he had to go to his family. He said no. His family wasn't close like ours. They didn't want anything to do with him. I felt bad for him, I just couldn't understand how a family did want to be together. That's all we knew was each other. It was always important for us to be together and our children grow up together.

Judy and Mike Moved in together they moved on Tuly rd. She seemed happy. But there was a darker side to Mike. He started hitting Judy, he would just get mad over nothing. He was on top of Judy beating her. Her daughter Candy had to witness these incidents.

Judy was a wonderful person, so full of life. She loved life her family and friends, She was always there for anyone who needed her. Everyone who met her loved her. Judy was very good with kids, she was good to Michael Benge Children. She would always include them in everything they did. She treated them as if they were her own. Many times they would call Judy and want there dad to pick them up. Judy kept telling Mike, he just wouldn't do it. She called me several time telling me that Mike would not pick up his kids, She did not know what to tell them. She felt bad for them. She did not want to lie to them. They were begging her to tell there dad, Judy told the kids there dad said he would call. Judy felt bad because Mike never called never went to pick them up.

Judy was one of the happiest people I knew. Always singing and laughing. I do not thing she ever had a frown on her face, Not until 2 weeks before he killed her. Judy called me up, it was getting late I had to work the next day. She ask me if I could come over she needed to talk to me. I ask her if it could wait until tomorrow. She said it was very important. I could her it in her voice something was wrong. I went to Judy's I can tell something was wrong. Just by looking at her. Judy told me she threw Mike out about 3weeks ago. She said she could not take it any more. She said she was afraid of him. He threaten to kill her and her kids.. And her family She told me he was always trying to steal from her. He did still her gold earrings and took them to the pawn shop. He tried to steal her TV and VCR. She said she called the police to get a restraining order on him, They told her its not worth the paper it is written on. She ask them to get him out of her house they told her they couldn't. He lived there to. She did tell the police I will get him out of here. She took all of his clothes and threw them on the sidewalk. Judy told me she changed the locks on her doors, and put traps on them so she could here if he tried to get in. The next morning she woke up and he was in her bed, (After all Mike use to work for Gillky windows.) Judy lived in fear for weeks before her death. She told me she missed our cookout because he had hit her. She had a black eye. She didn't want us to know. She said she was afraid of Mike. She missed thanksgiving, and Christmas also. She said he had been hitting her. She said he finally left. I told Judy to stay away from him. On January 29, (my Birthday) I talked to Judy she said Mike ask her if he could stay until Saturday. His tax check would be in that day and he will get him an apartment. I begged her not to let him stay. Stay away from him. She did not

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Liston. She was my sister I was support to protect her. I didn't protect her. I have nightmares I see him betting her. I am on medication. It doesn't really help. She was my sister it was my job to protect her. That's all we had was each other. Please do not grant Michael Benge Clemency for the murder of my sister. Please carry out his execution.

Kathy Johnson

Hello. I am Steve Gabbard. My mom was Judy Gabbard. She had 2 kids, 5 sisters, and 3 brothers before she was killed and taken from them. Now she has 6 grandkids and 3 great-grandkids that will never know her. All they know are what they are told by us. She would have loved to have seen her kids grow up, to see and play with her grand kids.

She was a hard worker. She worked all the time. She went to school and was so proud when she got her G.E.D. Then when she got it she started going to school for all kinds of stuff -- she just wanted to learn it all. I remember short hand was kicking her butt. I remember the typing; you could hear her on the typewriter click, click, click all night long. After that she would go to work but she got it.

Then came the guitar and singing. I didn't think she was going to get this; it was awful. But she got it too. She started playing and singing in church. She played at Tylersville Road Church of God. It's funny how her playing drove me nuts and got on my nerves. Now I play and sing today. I would love to play and sing with my mom. That would be cool. I still have that guitar. It used to drive me nuts, but now it's the most priceless thing I have. There was nothing she couldn't do if she wanted to.

She was really into my baseball games when I was a kid; she never missed a game. She would trade hours at work just to make my games. Now my sister's kids play baseball and I coach them. She would love that. She has missed so much of our lives, and we've missed hers,

This is all so hard on me. I don't like to talk about it. I didn't want to write this letter, and share my feelings or memories. I feel the memories are mine and I don't want to share them. So most of the time, when someone starts talking about my mom I change the subject. I don't want to share my mom or my feelings. I can't stand it. Sometimes I just lay in bed and think about her, but I don't tell anybody how I feel or what I think.

I feel so much anger sometime I scare myself. I feel like I failed as a man to protect my mom. I have never wanted to hurt anyone, but some of the things I think about doing to Mike just isn't right. This needs to stop. But I can't stop the feelings of anger and hurt. It's like a piece of me is gone sometimes. Sometime I just fade away and I'm not here anymore. I'm with my mom talking to her, telling her how I feel and what I think.

I still talk to her from time to time in my head. I just wish I knew if she could hear me. I know she is with God but nobody knows how this all works and if she can. I just hope she can. I look at her sisters some time and have to walk away, because I see her in them and it upsets me. She raised them; they're more like brothers and sisters to me than aunts and uncles.

I look at my sister and I feel so bad. She doesn't have her mom to teach her how to be a woman. She needed her mom. We all needed her. It makes me over-protective when my wife or daughter goes somewhere. If they are gone too long I get scared; I know it's silly but I can't help it. I drive them nuts. I just know what can happen. It's not safe; we need to be more aggressive with criminals. If you hurt someone, you need to know you are going to pay with your life -- then you're going to deal with God.

She helped so many of her friends and family. We all needed her so much. There was more life taken than my mother's that day. Mike killed a bit of all of us and our kids, friends and family.

Every time I see something like this on the news, I know how they feel and the way it will change their life. But I still see it every day. Kids lose moms, and moms lose kids. It makes me sick and I know their life got ripped away from them. It's sad to know how it tears them apart and all they will deal with.

This is America, the greatest nation in the world, and we still can't fix this. We keep killers on death row for years and years. They get appeal after appeal. I don't get it, and I don't think the rest of America gets it.

They say he found God. I never dreamed I would be glad to hear that, but I am. It must be my mom and Aunt Jo in me. We have dealt with this too long. It's time for him to deal with God. If he has found God then he should have no worries. We don't need him here on Earth. God can take care of this and he will. I know this, and trust God to do so.

I just hope his family will turn to God also. That's what Mom would want. She loved Mike's kids, and they were good kids. This all has to be tough on them, but it needs to end. I know this will not bring my mom back. But justice needs to be done for me, my sister, her sisters and brothers, her friends, and America.

My name is Jenny Sizemore. I am Judy Gabbards baby sister. My mom had nine children, & when Mike Benge killed Judy, he didn't only kill her, he killed apart of everyone of us.

It's very difficult to write on paper your feelings & your pain you have when you lose a loved one. You go through so many ^{different} emotions, like sadness, hurt, anger, depression & so much pain that never goes away. You just have to learn how to live with the emptyness.

Some days are harder than others. Somedays ~~you~~ I can hear a song on the radio that reminds me of Judy or see someone that looks like her & it brings me to tears & somedays everything reminds me of her & I cry all day. Alot of times I wonder what she would be doing today. Living without Judy is like living without a heart. My sister helped raise me. So to me she was not only my sister, she was my best friend & a mother figure too. I Love her with all my heart. She was there when I needed advice or if I just needed someone to talk to. She had a very kind

heart & always happy & smiling. She was so full of life. What gave Mike Bengie the right to take that away.

My family was a very close family. We would get together every weekend & grill out & play softball. People was amazed ~~of~~ how often we got together. They would laugh & say we made up Holidays just to be together. A lot of people wished there family was a close as ours. ^{Judy was the one that} But when ~~our~~ ^{kept us all together}

~~Judy's~~ ^{Judy's} life was brutally taken everything changed. We not only don't get together on weekends, we don't even get together on actual holidays. It's not the same with a piece missing & that piece is Judy.

It's kinda like turning the TV on & theres no picture. Theres no since in watching TV, or driving your car but theres no gas.

I guess you can't drive your car, or even just breathing, but your gasping for air. How do you live without air? Judy was my air, my heart, my everything. My family just don't know how to live without air & a heart. I guess you can say we're all dead inside.

My mom was always happy & alive. She use to walk alot & go places, but when Judy

was murdered she became a homebody & never left the house. She became sad & depressed. She mourned & stressed so bad over the loss of Judy that she lost the sight in her eye. The stressed caused her one eye to go totally blind. So when Mike Bengge murdered my sister, he damaged all of us in our own way. I think if he was that miserable he should of took his own life & left hers alone. She deserved to live. She has ^{a family} that loves & misses her dearly, & 2 children that needed her. She has 2 grandkids that she will never get to see. She'll never get to hug & kiss them, or take them out for ice-cream, like grandmas do. She can't even go to there ballgames. She'll never even get to say 'I Love you!' So what gives Mike Bengge the right to see his children & family or even talk to them on the phone. I don't think thats fair. We have to go visit my sister at the gravesight & Mike still gets to see his family smile & hear them laugh. I don't think he should be able to see his family either. I feel they should of took his rights away when he took Judy's life, cause where is my sisters rights to see her family.

If I wrote on this paper all the damage

& pain Mike has caused on each one of my family members when he murdered Judy. I would be writing a book, cause he has caused more pain & heartache & stress & loss of sleep & nightmares & tears & we've even lost each other.

We lost the world when we lost Judy & we can't get it back. We walk around with our hearts ripped out. So Mike Bengel didn't only kill my sister, he killed her whole family. He doesn't have the right to live either.

August 25, 2010

Parole Board

Re: Clemency for Michael Bengé

Michael Bengé was convicted by a jury of his peers in the murder of Judith Gabbard in January of 1993 and was sentenced to death. He remains in an Ohio Penitentiary while Judith and her family are separated by an untimely and brutal murder at his hands. Why does our judicial system afford a brutal murderer the right to appeal numerous times and then at the 23rd hour still have the chance for clemency?

Judith's sister, Kathy, cared for my 90 year old father at my home and I had numerous conversations with her concerning this case. As I talked to Kathy I felt her anguish and that of her family members, over the death sentence which would take years to come to fruition. She told me of the fear her sister experienced at the hands of this man just weeks before her demise. How could our judicial system cause such pain to these individuals but seek justice for the accused?

Michael Bengé is sentenced to die on Wednesday, October 6, 2010. As a parole board, I ask you to feel the grief of this family and their long awaited justice in the death of their loved one. Give Michael Bengé what he deserves and what the jury 17 years ago recommended....death. It's long overdue!

Deanna Carr
Hamilton, Ohio

My name is Debbie Vizgirta, I am one of Judy Gabbards sisters dearest friend. I have know Kathy and her family from many years.

I remember when Mike Benge killed Judy. My friend and her family were devestated.

Judy was a wonderful person so full of life. She was always so happy. I was at some of there family gatherings, They ghad a lot of them.

I had never seen such a happy family. You could see the love they had for one another.

When I heard about Judy my heart went out to my friend kathy and her family. I did not understand how anyone could have done this to such a wonderful person.

Please do not grant Mike Benge Clemency for the murder of Judy Gabbard. Judy deserves Justice. Please give my friend and her family closure

Thank you
Debbie Vizgirta
513-258-5002