

DATE TYPED: May 24, 2007
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IN RE: CLARENCE CARTER, OSP #A213-146

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

Date of Meeting: May 17, 2007 and May 24, 2007

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

IN RE: CLARENCE CARTER, OSP #A213-146

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with 2 Specifications

DATE, PLACE OF CRIME: January 11, 1989 in Cincinnati, Ohio

COUNTY: Hamilton

CASE NUMBER: B890531

VICTIM: Johnny Allen

INDICTMENT: February 1, 1989: Count 1: Aggravated Murder with 2 death penalty specifications: specifically that the offense was committed while the subject was a prisoner in a detention facility and that prior to the offense the subject was convicted of Aggravated Murder.

PLEA: Not guilty

VERDICT: July 26, 1989: The Jury found the subject guilty of Aggravated Murder and guilty of the first specification. The Court found the subject guilty of the second specification.

SENTENCE: August 1, 1989: Sentenced to DEATH

ADMITTED TO INSTITUTION: August 2, 1989

TIME SERVED: 17 years, 9 months

AGE AT ADMISSION: 27 years old

CURRENT AGE: 45 years old

DATE OF BIRTH: March 9, 1962

PRESIDING JUDGES: Honorable Richard A. Niehouse

PROSECUTING ATTORNEY: Arthur M. Ney, Jr.

FOREWORD:

Clemency in the case of Clarence Carter #A213-146 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 May 8, 2007, Parole Board Member Jim Bedra interviewed Mr. Carter at the Ohio State Penitentiary in the presence of his counsel, Joseph Wilhelm. Observing the interview via teleconference were Kim Rigby and Cathy Wilder from the State Public Defender's Office; Ron Springman from the Hamilton County Prosecutor's Office; Heather Gosselin and Tom Madden from the Ohio Attorney General's Office; and Judy Coakley, Executive Assistant from ODRC.

A Clemency Hearing was then held on May 17, 2007, with nine (9) members of the Ohio Parole Board participating. Mr. Carter was represented by Joseph Wilhelm of the State Public Defender's Office. Testimony in support of clemency was also provided by H. Fred Hoefle (attorney), LeMark Carter (brother), William Walton, Jr. (half-brother) and Desiree Carter (niece). Arguments in opposition to clemency were presented by Hamilton County Assistant Prosecutor Phil Cummings, and Assistant Attorney General Tom Madden. Testimony in opposition was also provided by the victim's sister Crystal Miller.

The Parole Board considered all of the testimony, the information disseminated by presenters at the hearing, prior investigative findings, judicial decisions and the supplemental materials provided by Assistant State Public Defender Joseph Wilhelm and Assistant Attorney General Tom Madden on May 22, 2007. With these, the Board deliberated upon the propriety of clemency in this case. With nine (9) Board Members participating, six (6) Board Members voted to provide an UNFAVORABLE recommendation for clemency and three (3) Board Members voted to provide a FAVORABLE recommendation for a commutation to the Honorable Ted Strickland, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (Case# B890531): The following account of the instant offense was obtained from the Ohio Supreme Court opinion decided July 22, 1992:

In December 1988, Clarence Carter, defendant-appellant, and Johnny Allen were inmates in Range "E" at the Jail Annex to the Hamilton County Courthouse. Allen was being held on a theft offense. Carter had been found guilty of aggravated murder on December 9, 1988, and was awaiting sentencing. On December 28, Carter struck and kicked Allen numerous times over a twenty to twenty-five minute period, necessitating Allen's hospitalization. On January 5, 1989, Carter was sentenced to life imprisonment for the prior aggravated murder. On January 11, 1989, Allen died as a result of Carter's assault.

Inmate Joseph Carroll testified that he and Allen were watching television on a mid-December evening when Carter came in and switched channels. Allen said to Carter, "Don't we vote on this?" Without saying anything, Carter punched Allen in the eye, then resumed watching television. Allen left to clean up the blood flowing from a cut above his eyebrow. Inmates Calvin Johnson and Phillip Brewer confirm that Allen and Carter exchanged words, and that Carter struck Allen. However, Johnson and Brewer assert that Carter was watching TV, and Allen changed the channel. Allen did not report this incident to jail authorities.

Carroll further testified that about a week before December 28, Carter found a broken metal spoon handle in a hole in the shower ceiling. After a brief discussion with Brewer, Carter returned the handle to its hiding place.

On December 28, after lunch, Johnson saw Carter retrieve the metal handle from the shower ceiling. Johnson asked Carter what he was going to do. Carter did not reply. About ten minutes later, around 1:10 p.m., the confrontation which led to Allen's death began in "E" range, a common area into which approximately twelve cells open.

According to Carroll, Allen was in his cell when Carter told him it was his turn to sweep the floor. As Allen walked past Carter to get a broom, Carter "jumped on him, punched him, [and] knocked him down." As Allen lay on the floor, Carter "leaned over him, punched him, kicked him and choked him." Several times during the assault Carter stopped and walked away before returning to the attack. Twice he used a mop to wipe blood off his tennis shoes. During the assault Carroll said to Carter, "[d]amn C.C., you don't like him, do you." Carter replied "no," and went "back down to where Johnny Allen was, punched him, kicked him some more, stomped on him."

After the second beating, Allen managed to get up and sit on a bench, but Carter came back, knocked him off the bench, and continued to kick and choke Allen. Allen never threw a punch or provoked Carter.

Inmate Calvin Steele described Carter's initial blow to Allen as a "sucker punch," delivered suddenly and without warning. Carter struck Allen ten or fifteen times. Allen never struck or attempted to strike a blow at Carter. At one point, Carter returned to his cell and stuck his own leg with some kind of object; he then came back and stomped on Allen's head with his foot. Carter's assault on Allen lasted twenty or twenty-five minutes. When Steele asked Carter to stop, Carter told Steele to "[g]et my ass back downstairs." (Steele was standing outside the range in the "bull run," the guard's access way.)

Richard Cunningham saw Carter hit Allen four or five times, then choke Allen, who lay on the floor. As he was beating Allen, Carter said, "[t]hat m..... f..... tried to stab me." Carter seemed to be in a rage, but appeared to know what he was doing.

Cunningham testified that “Carter started kicking him [Allen] down the range by his head, and by his ribs, and he was pulling his head in my bars and stomping his head like a pop can on the floor. And his head was bouncing up off the floor. Blood was everywhere. Guys was on the range saying: Come on, CC, you are going to kill the man. Quit. Leave him alone. Carter wouldn't let up. He kept on doing it and doing it, he wouldn't quit.”

Carter claimed that Allen assaulted him with the shank and that he, Carter, merely defended himself, being carried away with rage. According to inmate Robert Chapman, a defense witness, the fight began when Allen, holding the metal spoon handle, began hitting Carter. However, Chapman acknowledged that he previously told investigators he was asleep. Howard “Tub” Burns, a high school friend of Carter, heard Carter yell, “Tub, get the police.”

Brewer said he saw Carter and Allen arguing on December 28, and Allen was holding some kind of metal object in his hand. After a few seconds, Brewer returned to his cell. He explained, “[i]n a place like that you mind your own business, and that's what I was doing.”

Around 1:30 p.m., sheriff's deputies heard unusual noises, like an object being banged against steel bars, and went to investigate. When they arrived at “E” range, they found Allen lying face down on the floor, in a pool of blood. Deputy Raymond J. Loebker saw Carter drop the shank. Loebker described Carter as sweating, breathing heavily, but without any visible signs of injury. Sheriff's Lieutenant John Douglas saw the metal handle on the floor, four feet from Allen, and retrieved it for later examination.

Around 5:00 p.m., on December 28, Carter showed Detective John Hinrichs scratches Carter said he sustained in his fight with Allen. Carter had two or three scratches on his right thigh, scratches on his right arm, and a cut on his chest. None was deep or serious, and only the chest cut showed any sign of possible bleeding. Carter, muscular and strong, was in excellent physical condition.

Forensic examination revealed that Carter's socks, pants, and tennis shoes all contained type “O” human blood. Allen had type “O” blood, but Carter's blood type was not revealed at trial. Carter's T-shirt also had human blood, but the stain was not typed. Forensic examination revealed two human blood stains on the metal shank—one stain was type O, the other was undetermined. The shank had no fingerprints on it.

The jury had to assess the credibility of the principal witnesses under unusual circumstances. Only inmates witnessed the assault, and they all had prior felony records. Additionally, the prosecution made various beneficial arrangements with inmates who testified for the prosecution. Several inmates who testified for the defense had known Carter before they were incarcerated.

When found, Allen was unconscious and had difficulty breathing. His ribs were pulsating, and blood was running out of his mouth. At University Hospital, Doctor Christopher Miller, a resident neurosurgeon, found bruises and lacerations about Allen's head, face and neck. Blood exuded from behind Allen's eardrums, signifying probable basilar skull fractures. Allen had a low level of brain stem reflex functioning and was neither conscious nor able to communicate. Doctors connected life support systems.

Allen had suffered soft tissue swelling between his larynx and spine, but the cervical region was not fractured. A December 28 CAT scan revealed prominent soft tissue swelling over Allen's left front temporal region, a subdural hematoma between the brain's surface and the skull, and diffuse bleeding within the brain. Trauma was the cause of the injuries. However, deprivation of oxygen to Allen's brain could have been an additional factor.

According to Doctor Harry J. Bonnell, Chief Deputy Coroner, Allen's heart and breathing stopped on January 10th, but doctors revived him. A January 11th examination revealed that Allen was brain dead. Doctors then disconnected life support systems.

Dr. Bonnell performed an autopsy on January 12th. Allen was 5'10", and weighed 122 lbs. He died as a result of multiple bruises and swelling of the brain, caused either by blunt objects striking his head or by his head striking blunt objects. His brain had been deprived of oxygen prior to arrival at the emergency room. His injuries were consistent with his head having been banged against the floor or against steel bars. In Dr. Bonnell's opinion, these injuries were fatal, and Allen would have died within twenty-four hours of the trauma without medical intervention.

B884717: The subject is also serving a sentence in Case #B884717, the details of which are as follows:

On 8/13/1988, the subject, Clarence Carter, confronted the victim, Michael Hadnot and his girlfriend as the two walked down a street in Cincinnati. The subject hunted the victim down because the victim was working as a police informant and was going to testify against a friend of Carter's in an upcoming drug case. Reportedly, the subject was hired as a "hit man." The subject produced a handgun and shot the victim as he attempted to flee. He then shot the victim several more times in the head as he lay on the street, causing his death.

The subject was subsequently indicted for Aggravated Murder with firearm specification. On 12/9/1988, he was found guilty by Jury of this charge. On 1/5/1989, the subject was sentenced to Life, with 3 years actual for the firearm specification.

B884310: The subject is also serving a sentence in Case #B884310, the details of which are as follows:

On 8/14/1988, Michael Johnson and Renee Powell were attending a party. Michael Johnson decided to sleep in his car awhile before attempting to drive home. He was awakened when the subject, Clarence Carter, attempted to rob him. The victim chased the subject into an apartment. At about the same time, Renee Powell came outside and asked what was happening. The subject then ran at both of them with a baseball bat, and struck Powell in the head. Johnson then got a baseball bat out of the trunk of his car, and began fighting with the subject. The subject ran away after his bat broke, but returned with a shovel and struck Johnson in the head as he was checking on his unconscious cousin. He pretended to be unconscious, and the subject left the scene. Both victims were transported to the hospital and Renee Powell was admitted. She remained in intensive care for two days and was released from the hospital on 8/18/1988.

The subject was arrested on 8/28/1988. He provided a false name at the time of his arrest. He was subsequently indicted for 3 counts of Felonious Assault. On 2/23/1989, the subject was found guilty by jury of counts 1 and 3, and was sentenced to 12 -15 years on each count consecutive, and consecutive to Case #B884717.

B821248: The subject is also serving a sentence in Case #B821248, the details of which are as follows:

On 2/23/1982, the subject entered a Clark Gas Station in Cincinnati, Ohio where he pulled out a .22 caliber revolver and demanded money from the attendant. The attendant gave him \$70.00, and the subject fled in a car driven by a co-offender. The subject was arrested approximately one hour later after he and two other males were stopped as they drove around in the suspect car. A search of the vehicle resulted in the recovery of two loaded firearms.

On 3/23/1982, the subject was indicted for Aggravated Robbery. On 5/19/1982, the subject was sentenced to 4 - 25 years, concurrent with Case# B812415.

B812415: The subject is also serving a sentence in Case #B812415, the details of which are as follows:

On 4/20/1981, the victim, who was a friend of the subject, Clarence Carter, and would sometimes let him spend the night at his home, accused the subject of breaking into his home and taking his hat. The subject denied breaking into his house, and refused to return the hat. The victim then struck the subject in the mouth, knocking him to the ground. The subject then pulled out a knife and stabbed the victim in the chest and the forehead. He was subsequently charged with Aggravated Assault.

The subject pled guilty to Aggravated Assault. On 5/19/1982, the subject was sentenced to 6 months - 5 years, concurrent with Case #B821248.

APPLICANT'S STATEMENT:

Parole Board Member Jim Bedra interviewed Clarence Carter on May 8, 2007 at the Ohio State Penitentiary. Carter made the following statement regarding the instant offense and his prior Aggravated Murder conviction:

Carter discussed his prior Aggravated Murder conviction where he shot and killed Michael Hadnot. He stated he had been trafficking drugs for one Anthony Cook. He alleged Hadnot had also trafficked drugs for Cook. He further claimed that Hadnot stole drugs, money and documents from Cook. Both Carter and Cook were concerned about the stolen item, especially about the documents as they contained information about individuals involved in drug trafficking. He acknowledged discussing with Cook the need to retrieve the stolen items. Supposedly after a failed attempt to broker the retrieval of these items, Carter stated he took it upon himself to murder Hadnot. He denied taking any compensation for doing so. He fully admitted to killing Hadnot and to making the statement at the time of the killing that "this is a hit". He added his regret to killing Hadnot and knows it was wrong.

Carter admitted to killing Johnny Allen but insisted that Allen initiated the confrontation when he presented himself at Carter's bed holding a shank whereby Allen attacked him first. He claimed that Allen's strikes with the shank caused tears in his clothing and superficial injuries to various parts of his body. He stated he had been worried about Allen as other inmates warned him about threats Allen had made due to the TV incident. He admitted to striking Allen in the face during that TV incident. He admitted to "flipping out" as Allen attempted to stab him. He acknowledged that once the fight began he lost control of his anger. He vaguely recalled others telling him to stop but claimed he could not understand what people were saying to him due to his rage. He stated that he (Carter) yelled out for someone to call police.

He expressed remorse for killing Mr. Allen and for the pain he caused Allen's family. He stated he wished it never happened and asked the family for forgiveness. He asked that his life be spared as he is a changed person in that he now understands that violence is not the answer. He stated he has been in frequent correspondence with his two younger brothers and with other family members. He believes he has had a positive impact on their lives through his letters. He asks the Governor to commute his sentence to life without the possibility of parole.

PRIOR RECORD:

JUVENILE:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
1977 (Age 15)	Assault	Hamilton County, Ohio	Fined.
4/13/1978 (Age 16)	Assault	Hamilton County, Ohio	Six months probation.
1979 (Age 17)	Assault	Hamilton County, Ohio	Six months probation.
1979 (Age 17)	Aggravated Burglary	Hamilton County, Ohio	Four months at Glenville Boys School.

Other Adjudications: In 1979, the subject was charged with Disorderly Conduct and Resisting Arrest for which he received a fine.

Dismissed, Nolle and/or Unknown Adjudications: In 1978, the subject was arrested for Assault, the charge was dismissed. In 1979, the subject was arrested for Theft, the charge was dismissed.

ADULT:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
4/20/1981 (Age 19)	Aggravated Assault (B812415)	Cincinnati, Ohio	5/19/1982: .5-5 years 6/19/1984: Paroled 8/29/1986: Returned Parole Violator 6/17/1988: Reparoled 8/2/1989: Returned Parole Violator
2/23/1982 (Age 19)	Aggravated Robbery (B821248)	Cincinnati, Ohio	5/19/1982: 4-25 years; 6/19/1984: Paroled; 8/29/1986: Returned Parole Violator; 6/17/1988: Reparoled; 8/2/1989: Returned Parole Violator

9/17/1984 (Age 22)	Receiving Stolen Property	Cincinnati, Ohio	3 months jail, 2 years probation
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Details: The subject was found in possession of a watch that had been stolen in a burglary.

1/10/1986 (Age 23)	Carrying a Concealed Weapon (2 counts)	Cincinnati, Ohio	6 months jail
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Details: The subject was a passenger in a car stopped for a traffic violation. The police patted him down and found a four inch lock blade knife in one pocket and a set of brass knuckles in another pocket.

8/13/1988 (Age 26)	Aggravated Murder (B884717)	Cincinnati, Ohio	1/5/1989: Life
8/14/1988 (Age 26)	Felonious Assault (2 counts) (B884310)	Cincinnati, Ohio	8/2/1989: 12-15 years
12/28/1988 (Age 26)	Aggravated Murder (B890531)	Cincinnati, Ohio	INSTANT OFFENSE

Other Convictions:

On 2/24/1982, the subject was arrested for drug abuse. According to available records, he paid out this charge.

Dismissed, Nolle, and Unknown Dispositions:

On 7/21/1980, the subject was charged with Assault; this charge was later dismissed. On 9/17/1984, the subject was charged with Aggravated Burglary; he was acquitted of this charge. On 8/28/1988, the subject was charged with Falsification in Case #88CRB23618; he was also acquitted of this charge.

INSTITUTIONAL ADJUSTMENT:

Clarence Carter was admitted to the institution on August 2, 1989 under inmate #A213-146. The subject was enrolled in educational classes while at the Southern Ohio Correctional Facility (SOCF). His work history includes holding the positions of barber, recreation worker and porter. He is currently a porter at the Ohio State Penitentiary (OSP). While at the Mansfield Correctional Institution (ManCI), the subject participated in AA/NA meeting. More recently, he participated in a "Christmas Card for Kids" community service project at OSP.

His disciplinary record over the last 17 + years includes nineteen (19) rules infractions of varying degree. The last rules infraction occurred on 5/13/2002, and was for fighting. He spent 7 days in disciplinary control as a result of this infraction.

ARGUMENTS IN SUPPORT OF CLEMENCY:

Assistant State Public Defender Joseph Wilhelm appeared at the clemency hearing on Mr. Carter's behalf and advanced the following arguments in support of a commutation of Mr. Carter's sentence to Life Without Parole:

- Carter's offense is not the "worst of the worst" as there are serious doubts whether Carter killed Johnny Allen with prior calculation and design. The inmate witness testimony used by the prosecution has since been proven to be unreliable. In addition, these witnesses received significant consideration in their own criminal cases in exchange for their testimony against Carter. Allen's death was likely the result of a fight between inmates that went too far. Moreover, the jury never heard evidence that Allen expressed pre-fight threats against Carter. More reliability in an Aggravated Murder conviction is needed to carry out a Death sentence.
- Carter is not the "worst of the worst" offender. The jury was not presented with a wealth of compelling mitigation evidence about Carter. The jury only heard Carter's brief unsworn statement. The jury did not hear evidence of Carter's "organic brain dysfunction" or his borderline IQ. The jury knew that Carter had behaved violently, but it was given no explanation why he did. The jury was not informed that Carter was taught violence by his role models, or that Carter's life-course was altered by racism, following his family's move to a so called better white neighborhood.
- In addition, since his incarceration, Carter has adjusted well to prison and is not a threat to the security of the institution. He is currently eligible for honor pod status. Carter has a conscience and realizes that what he has done is wrong and is very remorseful for his actions. Carter decided to submit an affidavit on behalf of his co-defendant in the other Aggravated Murder conviction attesting that the co-defendant was not involved in the offense. He did so against the advice of his

counsel and knowing that he would give up a valuable legal argument on his own behalf. The co-defendant's attorney, Fred Hoefle indicated that he had never experienced a criminal defendant commit such a brave and courageous act. Carter gave up his best defense to the death sentence and submitted an affidavit on the co-defendant's behalf because it was the "right thing to do".

- The Parole Board knows more about the case than the jury that convicted Carter and recommended the Death penalty. The Board is aware of the act of kindness toward his co-defendant, as well as the fact that Carter's trial counsel made a terrible decision to only submit Carter's unsworn statement in the mitigation phase. The Board has been informed of the reasons why Carter acted violently of which the jury was unaware.
- A comparison of Carter's case to the other death row inmates who killed while under detention demonstrates that this death sentence is unjust. Clemency is proper because efforts to more fully develop legal claims were cut short by the judges who reviewed Carter's appeals. The death penalty should be used only for the very worst offenses and the very worst offender. Carter's crime is not the worst of the worst. Just as important, Carter is not the worst of the worst.

Three members of Clarence Carter's family spoke on his behalf. They described Carter's childhood as violent and abusive and indicated that he followed the wrong crowd. Family members indicated that they believe that Carter should serve the rest of his life in prison in lieu of a death sentence.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Assistant Hamilton County Prosecutor Phil Cummings and Assistant Attorney General Tom Madden presented the following arguments in opposition to clemency:

- Carter's conviction is legally supported and has survived nearly two decades of judicial scrutiny. Carter admits his actions caused the death of the victim, but his request for clemency makes a legal argument that he is not guilty of Aggravated Murder. He has been making that argument for nearly 20 years and has been unsuccessful as it is not supported by the record.
- There is evidence within and outside of the trial record that supports the conviction for Aggravated Murder. Carter was awaiting sentencing on a previous Aggravated Murder that occurred four (4) months prior. Obviously, Carter is a man capable of prior calculation and design. Additional facts that have remained consistent and support the Aggravated Murder conviction include that the offense involved a continual beating. Carter himself admitted in his interview with the Parole Board Member that the offense was interrupted which demonstrates prior calculation and design beyond the trial record.

- The victim of the offense was not an aggressor but was the type of person who avoided confrontation. Carter's criminal record demonstrates that he was a completely opposite person. He has no respect for the law and is a danger to anyone he comes into contact with. His prior criminal record includes not only a prior Aggravated Murder conviction, but additional assaultive and violent offenses dating back to his juvenile years.
- The decision by Carter's trial counsel to only present his unsworn statement in the mitigation phase may very well have been an intentional maneuver to prevent the jury from hearing additional aggravating factors regarding his background. It is just as likely that defense counsel did not want the jury to know of Carter's prior Aggravated Murder and Felonious Assault convictions. The prior Aggravated Murder specification was tried to the judge only. Carter was interviewed by a psychologist prior to trial who was not called by the defense to testify. It is plausible that the psychologist was not called to testify because he did not have anything favorable to say. A similar tactical decision was equally likely made regarding calling Carter's family to testify during mitigation. If they had been called to testify, they would have been subject to cross-examination and the prosecutor had "plenty of ammunition".
- In just over a six month rampage, Carter's violent nature left behind four victims, including two dead and one seriously wounded. There is no doubt of Carter's guilt as he admits beating Johnny Allen and the incident was witnessed by several inmates incarcerated at the Hamilton County Jail. Since his incarceration, Carter has committed numerous rule infractions including fighting. Carter has not offered any reason that would justify the extraordinary grant of clemency by the Governor of the State of Ohio.

VICTIM'S REPRESENTATIVES:

Crystal Miller, the sister of victim Johnny Allen read a statement from her mother. Ms. Miller then gave her own statement indicating the deep loss her family has endured due to the murder of her brother. She indicated that she is in support of the death sentence being carried out in this case and wants justice for her brother.

CONCLUSION:

Following careful examination of all available factors in the case of Clarence Carter, including a hearing conducted on May 17, 2007, six (6) of the Parole Board Members voted to make an UNFAVORABLE recommendation regarding clemency. The reasons for this majority vote are as follows:

- The evidence overwhelmingly establishes Carter's guilt in the Aggravated Murder of Johnny Allen and that both death penalty specifications, i.e. prior conviction of aggravated murder and killing an inmate in a detention facility have been established for the death sentence to apply in this case.
- The jury found that Carter was guilty of Aggravated Murder beyond a reasonable doubt. The jury was not required to accept the state's theory of the case in order to make such a finding. Even if it can be said with any certainty that the state's theory based on the inmate witness testimony is unreliable, that does not in and of itself make the conviction unreliable, as the jury was free to find prior calculation and design based on its own or opposite theory of the case.
- The jury was aware of consideration given to the inmate's who testified against Carter in their own criminal cases, and still found guilt beyond a reasonable doubt. This is not a case where "jailhouse informants" were used and favorable plea bargains received for such testimony were unknown to the jury.
- Carter made a self-reporting statement in his interview with a Parole Board Member indicating he indeed killed the victim by beating him to death. Moreover he acknowledged that he took a break to wash his face and resumed the deadly beating. Prior calculation and design certainly could be established based on these facts and regardless of which inmate started the initial fight. This point of fact gives credence to an act of prior calculation and design which is a required element of Aggravated Murder. It too is possible for the jury to have rejected the Prosecutor's theory of prior calculation and design and instead relied on this assessment to reach the same conclusion.
- Even accepting all of the mitigation presented regarding his organic brain disorder, low IQ and family background as reliable, it is insufficient to outweigh the aggravating circumstances in this case, particularly the fact that Carter was awaiting sentencing on an Aggravated Murder conviction that occurred only four (4) months prior and was admittedly a murder-for-hire.

- All reviewing courts have agreed that Carter received proper representation at trial and during subsequent appeals. His convictions and death sentence have been upheld after many years of judicial affirmation. There was nothing presented at the clemency hearing to suggest any manifest injustice.

Three (3) of the Parole Board Members voted to make a FAVORABLE recommendation regarding Carter's request for commutation of his Death sentence to Life Without Parole. The reasons for the minority vote are as follows:

- Counsel for Carter presented credible evidence sufficient for three Members of this Board to question any sustained confidence or reliability in the jury's recommendation of the death penalty. The imposition of the death penalty should demand a greater certainty, confidence and reliability as to testimony presented at trial. Instead, the jury relied on what later appears to be serious contradictory and inaccurate testimony by inmate witnesses. Counsel for Carter asserts that new [post-conviction] information raises serious concerns about the reliability of Carter committing his crime with prior calculation and design.
- Aggravated Murder is predicated on the element of prior calculation and design to commit murder. The dissenting Board Members do not believe that element is clear enough to warrant the execution of Carter. There is no doubt Carter is responsible for killing Allen during a brutal jailhouse fight between inmates. Yet conflicting testimony from inmate witnesses diminishes with any certainty the existence of prior calculation and design. These inconsistencies are well documented not only in court testimony but in later affidavits submitted by counsel, where inmates Carroll and Griffin/Steel recant damaging statements made at trial against Carter. In fact, Griffin/Steel later reversed himself again, resulting in a conviction of Perjury. It is well established by the record and by the prosecution's acknowledgement at trial that Carroll and Griffin/Steel were vying for a favorable outcome in their own criminal cases for their testimony in the Carter trial. Their contradictory statements seriously devalue their credibility during all phases of the process. Their word cannot be relied upon for truthfulness yet their damaging testimony was accepted by the jury. There is no fault to place on the jury as they did not know what we know today. Additionally other inmate witnesses, Chapman and Brewer, testified that it was Allen not Carter who had a shank. Inmates Isome and Johnson offered testimony that Allen had made serious threats against Carter. Johnson also testified that during the altercation he heard Carter yell for someone to call the police.

- Dissenting Members of the Board gave great weight to the arguments put forward by Assistant Public Defender, Joseph E. Wilhelm. His assertions of inconsistent testimony presented at trial have been validated by documented corroboration. The dissenting Members of the Board concurred with these findings. We cannot conclude with any certainty that the element of prior calculation and design is present in this killing; therefore we cannot in good conscience encourage the state to carry out a death sentence.
- The majority suggests an alternate theory than that offered by the prosecutor at trial to establish the element of prior calculation and design. That is to say, Carter's premeditation intent may have occurred during a break period in the fight where he then formed his intent to finish Allen off by killing him. By all accounts, including that by Carter's during his interview with a Board Member, there was indeed at least one cessation during the fight when Carter went to wash up before it resumed again. The dissenting Board Members believe his "state of mind" at the beginning of the fight was likely the same level of rage throughout the ordeal. Carter was unable to control his anger over what he perceived as threats from Allen. As we cannot fully rely on conflicting inmate witness testimony, we must at the least consider the possibility that Mr. Allen may have been the initial aggressor as attested to by Carter and others.
- The dissenting Board Members have given great weight to the following opinion from the Honorable Herbert Brown. Counsel for Carter submitted an affidavit from retired Justice on the Ohio Supreme Court, the Honorable Herbert Brown, sworn to on May 14, 2007. Justice Brown served when Carter's case was reviewed on direct appeal in 1992 and authored the opinion for the court affirming Carter's conviction and death sentence. In his sworn affidavit, he acknowledged his review of the clemency application and exhibits submitted by Carter's counsel to the Ohio Parole Board. He further concludes that based on that review, "I believe that a sentence reduction to life without parole would be appropriate for Clarence Carter".
- The jury did not hear testimony during trial of the pre-fight hostility between the two men that took place days before the fatal beating. Again, conflicting accounts about an incident between the two over a TV program are clouded as to who initiated the argument. But with certainty we know that Carter did in fact assault Allen by punching him in the face. This pre-fight hostility between the two inmates is significant as Edna Munch, the jury foreman, stated in a post-conviction the following: "If Allen was not as innocent as he was portrayed, I would have liked to have heard about him. If Allen had threatened or provoked Clarence I would have liked to

have heard about that too". We seriously question whether the jury would have recommended the death penalty if they knew what we now know.

- Carter's family provided testimony giving us a clearer explanation of how the course of his life led to his violent conduct. This is not to excuse his behavior but only to give some moral reasoning for his actions. They fully acknowledge the harm he has caused to all of his victims and their families and share the opinion that he should never be released from prison. Unfortunately, defense counsel at trial did not call on family at the mitigation phase of the trial. The jury only had the unsworn statement by Carter to consider. We agree with current counsel that the family statement in mitigation could have resulted in a comprehensive understanding of Clarence Carter, lending to some possibility of a different dispositional outcome.
- Clarence Carter cooperated with the Board during his interview held on May 8, 2007. His comprehensive statement is contained above in this report. He admitted to killing Johnny Allen but insisted that Allen initiated the confrontation when he presented himself at Carter's bed holding a shank whereby Allen attacked him first causing superficial injuries. The dissenting Board Members find his explanation of the crime as plausible, yet we cannot be certain of the explanations presented by any of the witnesses including Carter's.
- The dissenting Members are left with many questions that no one may be able to answer. Why would Carter plan a murder with a shank present and then not use the shank? Why would Carter plan a murder and do so using a method that would take 10-40 minutes in an environment where deputies could be at the scene within seconds to suppress such a plan? And why did Carter call out during the fight for someone to call police as testified to by one witness, unless he wanted the fight to stop before it became fatal? These questions further suggest that his actions are not consistent with a Aggravated Murder with prior calculation and design.
- Under Senate Bill 2, Ohio's current sentencing law, a jury has the option to recommend a sentence of Life without parole. Given all the mitigation presented, one can only speculate as to whether that may have occurred in this case had that been an option.

The three dissenting Board Members find that the testimony presented by counsel is sufficiently persuasive to warrant a favorable recommendation for clemency. Our recommendation in no way mitigates against Carter's brutal murder of a fellow inmate. There is no doubt he should be punished severely for his crime. Manifest injustice cannot be found by having Carter serve the rest of his life in prison. The minority Members of

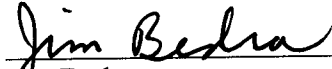
the Board vote to recommend a FAVORABLE grant of clemency. Justice is best served in this matter by commuting Clarence Carter's sentence from death to life without the possibility of parole.

RECOMMENDATION:

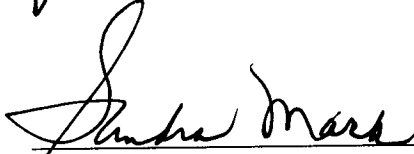
Following consideration of all available information, the Ohio Parole Board, with nine (9) members participating, recommends to The Honorable Ted Strickland, Governor of the State of Ohio, by a majority vote of six (6) to three (3) that Executive Clemency be denied in the case of Clarence Carter.

Clarence Carter A213-146
Death Penalty Clemency

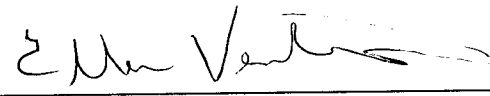
Ohio Parole Board Members
Voting **FAVORABLE**



Jim Bedra



Sandra Mack, Ph.D.

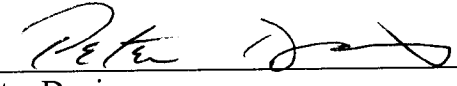


Ellen Venters

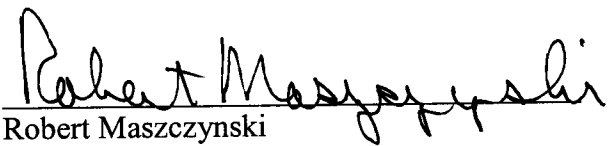
Ohio Parole Board Members
Voting **UNFAVORABLE**



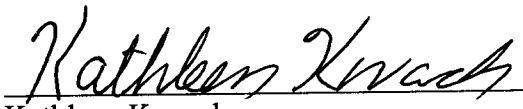
Cynthia Mausser, Chairperson



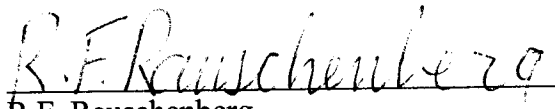
Peter Davis



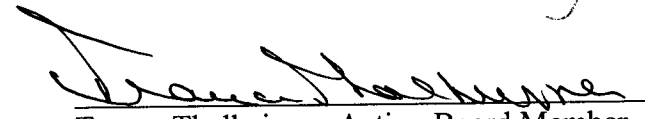
Robert Maszczyński



Kathleen Kovach



R.F. Rauschenberg



Trayce Thalheimer, Acting Board Member