

DATE TYPED:  
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**IN RE: SIDNEY CORNWELL, OSP #A340-473**

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

Date of Meeting: October 13, 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: Sidney Cornwell, OSP #A340-473**

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with death penalty specification and firearm specification; Attempted Aggravated Murder with firearm specification (3 counts).

DATE, PLACE OF CRIME: June 11, 1996 in Youngstown, Ohio

COUNTY: Mahoning

CASE NUMBER: 96CR525

VICTIM: Jessica Ballew (Age 3)  
Donald Meadows, Surviving Victim  
Sam Lagese, Surviving Victim  
Marilyn Conrad, Surviving Victim

INDICTMENT: July 26, 1996: Count 1: Aggravated Murder with death penalty specification and firearm specification; Counts 2-4: Attempted Aggravated Murder with firearm specification.

TRIAL: May 12, 1997: Found Guilty by Jury as indicted.

DATE OF SENTENCE: May 23, 1997

SENTENCE: Count 1: DEATH;  
Counts 2-4: 10-25 years with 3 years actual incarceration. All counts to be served consecutively to one another and consecutively to all other sentences imposed.

ADMITTED TO INSTITUTION: May 28, 1997

JAIL TIME CREDIT: 5 days

TIME SERVED: 13 years, 4 ½ months

AGE AT ADMISSION: 20 years old

CURRENT AGE: 33 years old

DATE OF BIRTH: April 22, 1977

JUDGE: Honorable R. Scott Krichbaum

PROSECUTING ATTORNEY: James A. Philomena

**FOREWORD:**

Clemency in the case of Sidney Cornwell, A340-473 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 September 27, 2010, Sidney Cornwell was interviewed via video-conference by the Parole Board at the Ohio State Penitentiary. A Clemency Hearing was then held on October 13, 2010 with eight (8) 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 eight (8) members participating, the Board voted seven (7) to One (1) to provide an Unfavorable recommendation for clemency to the Honorable Ted Strickland, Governor of the State of Ohio.

**DETAILS OF THE INSTANT OFFENSE (96CR525):** The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided September 22, 1999:

During the early morning hours of June 11, 1996, Sidney Cornwell, and some associates who belonged to a neighborhood gang in Youngstown drove up to an apartment building on Oak Park Lane with the intention of shooting a rival gang member. When the intended victim was not seen, Cornwell opened fire on the occupants of an apartment, killing a three-year-old child and wounding three adults. Cornwell was subsequently convicted of aggravated murder and attempted aggravated murder, and sentenced to death.

On the afternoon of the previous day, Cornwell and other members or associates of the "Crips" gang had been involved in a shootout with members of the "Bloods" gang on Elm Street at New York Avenue in Youngstown. One of the associates of the Crips, Edward McGaha, was grazed on the head by a bullet during the gunfire exchange. McGaha saw Richard "Boom" Miles, a member of the Bloods, and Michael Williams leave the scene, but did not see either of them shooting. During the shootout, McGaha saw Cornwell using a black gun. Police later recovered six 9-mm Luger shell casings from the shooting scene at the corner of New York Avenue and Elm Street.

Later that afternoon, McGaha was released from the hospital and went to his mother's home on Elm Street. While he was standing outside in front of the house with several people, including Cornwell, a carload of Bloods jumped out and opened fire on them. According to McGaha, Cornwell returned gunfire with the same black semiautomatic

weapon he had used at the earlier shootout.

Shortly thereafter, McGaha, Cornwell, and others gathered at a New York Avenue house where a man named "Heavy" lived. Also present at Heavy's house were Gary Drayton, Leslie Johnson, Edward Bunkley, and Denicholas Stoutmire. The talk among the group centered on retaliation for the earlier shooting of McGaha. The plan of action was to kill Boom Miles. Although McGaha later admitted on cross-examination that he knew that Boom was not the person who had shot him, he went along with the plan to seek out and kill Boom.

That night, Bunkley and Stoutmire stole two vehicles, a Buick and a Pontiac Bonneville, in order to facilitate the group's search for Boom. During this time, the rest of the group remained at Heavy's place, drinking and smoking marijuana. When Bunkley and Stoutmire returned to Heavy's with the stolen cars, the group (minus Heavy) went out to search for Boom around Youngstown. By this time Antwan Jones and Damian Williams had joined the group. The group used a third car, a Chevette belonging to a friend.

Stoutmire drove the stolen blue Bonneville while Williams rode with him in the front passenger seat. Johnson sat in the back seat behind Williams, and Cornwell sat in the driver side back seat behind Stoutmire. According to one witness, the only people carrying weapons in the Bonneville were Williams, who had a .45 automatic pistol, and Cornwell, who had a semiautomatic 9-mm black gun. However, Bunkley testified that the other two passengers in the Bonneville also had weapons. Nevertheless, Bunkley did corroborate several witnesses' testimony that Cornwell was carrying a 9-mm weapon.

After driving around Youngstown for about an hour, the three cars proceeded to Oak Park Lane because Stoutmire thought Boom might be there. Susan Hamlett lived in Apartment No. 5 in the apartment building at 4 Oak Park Lane in Youngstown. Hamlett's friend, Marilyn Conrad, and Conrad's son also lived with Hamlett, along with Hamlett's nephew and two nieces, one of whom was three-year-old Jessica Ballew. Hamlett was familiar with Boom and knew that he frequented the Oak Park area. Earlier that evening, Boom had played with the children who lived in Hamlett's apartment, but Hamlett did not see him after that.

At approximately 2:00 a.m. on June 11, 1996, Hamlett was outside on her porch talking to a friend, Donald Meadows. Jessica Ballew came to the doorway on the porch to get a drink of water. At that time, three cars drove up Oak Park Lane. The first two cars went past the apartment, but the light blue Bonneville stopped in front of the apartment, and a voice came from the car asking for Boom. According to Damian Williams, who was seated in the Bonneville with Cornwell, the voice from the car was Cornwell's. Both Hamlett and Meadows responded that Boom was not there. Cornwell asked again where Boom was, and Hamlett said that he did not live there. Cornwell then replied: "Well, tell Boom this." A volley of shots (more than five, less than ten) was fired at the apartment. Jessica Ballew sustained two gunshot wounds, including a fatal one to her head. Meadows was wounded, as were Conrad and a visiting friend who was inside. The three vehicles fled the scene, and Damian Williams was dropped off because he "didn't want anything to

do with a baby getting killed.”

Youngstown police officer Joseph Wess soon received a call regarding the shooting at Oak Park Lane. He then noticed three cars, two of them fitting the descriptions he had just received. He pursued the vehicles and saw the Bonneville parked in the driveway of a vacant house. With his car lights off, Wess pulled up behind the Bonneville. Then Wess turned on his headlights, and all of the occupants jumped out of the Bonneville and ran away. Wess pursued one suspect, who he said jumped out of the driver's door, catching him after a brief foot chase. That suspect turned out to be Sidney Cornwell, who was immediately arrested. Upon conducting a search of the Bonneville, Wess found, among other items, a spent 9-mm shell casing. However, no gun was found in the Bonneville.

On July 26, 1996, a grand jury indicted Cornwell for aggravated murder (prior calculation and design) and three counts of attempted aggravated murder. Each count also carried a firearm specification. In addition, a death-penalty specification alleged that Cornwell had committed aggravated murder as part of a course of conduct involving the purposeful killing of, or attempt to kill, two or more persons (R.C. 2929.04[A][5] ).

At trial before a jury, Donald Meadows, one of the victims of the Oak Park Lane shooting, identified Cornwell as the man who had shot him. Damian Williams, one of Cornwell's accomplices in the blue Bonneville on the morning of June 11, also identified Cornwell as the sole gunman in the fatal shooting at Oak Park Lane.

Officer Robert Mauldin testified that he and other officers recovered several 9-mm shell casings from the area of Elm Street and New York Avenue on June 10, 1996, and from the area of Oak Park Lane, Apartment No. 5, on the early morning of June 11. Although Mauldin stated that .380 shell casings were also found at the scene of the Elm Street and New York Avenue shooting, only 9-mm shell casings were recovered from the Oak Park area. Mauldin also identified two 9-mm shell casings that were recovered from the Bonneville that was at the Oak Park shooting.

Michael Roberts, a forensic scientist with the Ohio Bureau of Criminal Identification and Investigation, testified that, to a reasonable degree of scientific certainty, all ten 9-mm Luger shell casings recovered from both the Elm Street and Oak Park Lane shootings came from the same handgun. The murder weapon was never recovered. After deliberation, the jury found Cornwell guilty as charged.

At the mitigation hearing, nine witnesses testified on Cornwell's behalf, including his mother, three siblings, and other relatives. Psychologist James Eisenberg concluded that Cornwell had grown up in a violent and chaotic family, which caused him serious problems of identity and dependency.

The jury recommended death, and the trial court imposed the death sentence on Cornwell. The court then sentenced Cornwell to prison on his other convictions.

## **PRIOR RECORD**

**Juvenile Offenses:** As a juvenile, Sidney Cornwell was placed on probation for Drug Abuse and Disorderly Conduct by the Mahoning County Juvenile Court. No further information is available. He has no other known juvenile arrest record.

**Adult Offenses:** Sidney Cornwell has the following known adult arrest record:

<b><u>Date</u></b>	<b><u>Offense</u></b>	<b><u>Location</u></b>	<b><u>Disposition</u></b>
06/11/1996 (Age 19)	Aggravated Murder with specifications; Aggravated Murder with firearm specification (3 cts.) (96CR525)	Youngstown, Ohio	06/14/1993: Count 1: DEATH; Counts 2-4: 10-25 years with 3 years actual on each count; all sentences consecutive. INSTANT OFFENSE

## **Other Convictions:**

On 5/4/1996, Cornwell was charged with Driving Under Suspension in Youngstown, Ohio for which he was sentenced to 60 days jail (57 days suspended), \$500 fine and costs (\$400 suspended).

## **Dismissed, Nolle and/or Unknown Dispositions:**

Dispositions are unknown for a 6/18/1995 and 7/12/1995, Hit/Skip and No Operator's License and a 6/19/1995, No Operator's license.

Formal charges were not filed regarding a 5/4/1996 arrest for Receiving Stolen Property in Youngstown, Ohio.

## **Institutional Adjustment:**

Sidney Cornwell was admitted to the Department of Rehabilitation and Correction on May 28, 1997. His work assignments while incarcerated at the Mansfield Correctional Institution included Barber, Laundry Worker, Porter and Recreation Worker. Since his transfer to the Ohio State Penitentiary, his work assignment has been as a Porter. Cornwell was also a student at both locations. In December 2007, he obtained his GED. He has participated in community service projects while incarcerated. Cornwell also actively participates in religious services programs, including worship services and bible studies. He completed a Stress Management Program in January 2009 and "Film Group Project I" in March 2010. He is currently enrolled in "Film Group Project II."

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

- 01/28/1999: Rioting or encouraging others to riot. Cornwell was involved in a planned take over of his unit. He and four other inmates were overheard by another inmate planning to take over their unit. The plan included slipping out of their handcuffs and overpowering the Corrections Officers. Cornwell received 15 days in disciplinary control for this rules infraction.
- 05/02/1999: Threatening bodily harm to another, with or without a weapon. Cornwell was found guilty for yelling under his door and making threats that he would break the door down. Cornwell received 10 days in disciplinary control for this rules infraction.
- 02/26/2000: Fighting – with or without weapons, including instigation of, or perpetuating fighting. Cornwell was found guilty for fighting with another inmate. He received 7 days in disciplinary control for this rules infraction.

Cornwell has received approximately six (6) additional conduct reports since he was admitted to the Department of Rehabilitation and Correction in 1997. These offenses include Disrespect to Staff (1999 & 2001), Disrespect to Staff and Creating a Disturbance (2001), Disobedience of a Direct Order (1999), Disobedience of a Direct Order and Possession of Contraband (2001) and Possession of Contraband (2008).

#### **APPLICANT'S STATEMENT:**

Sidney Cornwell was interviewed by members of the Parole Board via video-conference on September 27, 2010. During the interview, Cornwell expressed deep remorse that his actions led to the death of three year old Jessica Ballew.

Cornwell explained that he joined the Crips street gang when he was fifteen years old. He was not formally initiated into the Crips, but became involved with them after they stood up for him during a fight he was engaged in with a member of the Bloods street gang. Cornwell responded that on the day of the crime, he was an enforcer for the Crips. Cornwell admitted being involved in the chain of events that started on June 10, 1996 and ended with the shooting at 2:00 am on June 11, 1996.

Cornwell also stated that the facts as presented by the state were for the most part accurate. He explained that earlier on June 10, 1996, Edward McGaha, Phillip Fuzell and he were walking down the street. They then were approached by a car. One of the occupants of the car was Richard "Boom" Miles, a known member of the Bloods street gang. Boom got out of the car with a shot gun and began shooting. McGaha was "grazed in the head." Cornwell and his associates returned fire, and Boom got back in the car and fled. The group took McGaha to the hospital to be treated. When McGaha was released later that day, the group returned to McGaha's home. As they sat out on the front of the house, they saw a group of Bloods approach from down the street. A second shoot out occurred between the groups, however, no one was shot. An hour later, members of the Bloods returned and started shooting at the house again. Cornwell and the others returned fire. No one was injured in this incident.

Cornwell and his associates left McGaha's home and proceeded to Heavy's house, another Crips gang member. There they made plans to hunt down Richard "Boom" Miles and any other Bloods they could find. Although they did not discuss what they were going to do if Boom was found, Cornwell stated that it was possible that Boom was going to be killed. He candidly admitted that he would have shot to kill Boom if they would have found him. As they were getting ready, the group smoked marijuana and drank alcohol. Two of the men went out to steal the cars they needed for the undertaking. Three cars were brought back, including a sky blue Pontiac Bonneville. Once the cars were obtained, the gang members got into the cars. Denicholas "D" Stoutmire drove the Pontiac Bonneville, with Damian Williams located in the front passenger seat, Leslie "Nut" Johnson seated behind Williams and Cornwell seated behind the driver. The group left in the three cars, looking for Boom and any other Bloods they could find, but after a few hours, they were not successful in locating Boom or any Bloods. They then decided to drive to a house that was known to be used by Boom for drug sales. At approximately 2:00 am on June 11, 1996, the three cars approached the house via the back alley. The first two vehicles passed the back porch of the targeted house, but did not stop. However, Stoutmire stopped the Pontiac Bonneville. Cornwell remembers seeing two people on the porch (Donald Meadows and Susan Hamlett). Although, Cornwell did not see her, Hamlett's niece, three year old Jessica Ballew was also in the porch by the door. Cornwell told the Parole Board that it was dark and hard to see.

Cornwell rolled down the window and asked if Boom was in the home. Meadows and Hamlet responded that he was not. Cornwell retorted "tell Boom this" and began shooting. Cornwell indicated that he shot five to six times, then the car left the scene. Cornwell told the Parole Board that his intention was to scare the people on the porch and make them go inside the house. When questioned why he shot in their direction if all he wanted to do was scare them, Cornwell responded that he was not thinking.

As they were driving away, Cornwell remembers hearing Stoutmire say "I think you hit a baby." The group then drove to the north side, where Williams was dropped off at his house. As they continued driving, a police car approached from behind. They then fled the car, and a foot chase ensued. Cornwell was arrested after he was unable to climb over a yard fence. However, prior to being caught, Cornwell dropped his 9 mm on the other side of the fence and started walking back. This gun was never recovered. His arrest occurred approximately 30 minutes after the shooting.

Cornwell told the Parole Board that he denied his involvement to family members for approximately the first nine years of his incarceration. He stated that he could not accept responsibility for all those years, because he could not own up to the offense and because he was "in denial." He could not believe that his shots had hit the three year old girl. Cornwell stated that he had not seen the girl in the dark that night. During the interview, Cornwell expressed that he has asked God for forgiveness and has found inner peace. His involvement with religion helped him overcome the anger that he often felt.



During his time in the institution, Cornwell finished high school and severed ties with his previous life of crime. He said that he feels ashamed of his involvement with the Crips and his prior criminal behavior. Cornwell stated that he would like to receive a commutation and have his life spared. He stated that although he understands his actions caused the death of the victim, he does not believe that he intended to kill anyone. He is deeply remorseful for the offense, and indicated that it has been very difficult to admit his responsibility, but it was the right thing to do.

**ARGUMENTS ADVANCED IN SUPPORT OF CLEMENCY:**

A written application requesting clemency was submitted on Cornwell's behalf. In addition, on October 13, 2010, counsel for Cornwell appeared at the clemency hearing and supplemented the written arguments with an oral presentation. Both in his written application and through counsel Rob Lowe and Andrew King of the Ohio Public Defender's Office, Cornwell asserts that clemency in the form of a commutation is appropriate for the following reasons:

- **Cornwell was abused as a child and repeatedly exposed to domestic violence.**

At age sixteen, Beverly Cornwell Terry, was a single mother living on public assistance. She married Sidney Cornwell, Sr. in 1971 and had three more children with him. Sidney Cornwell, Jr. was the youngest of those. Ms. Cornwell told the Parole Board that she smoked marijuana and that her husband abused marijuana, LSD, alcohol and cocaine.

Mr. and Ms. Cornwell had a tempestuous and abusive relationship. Cornwell's childhood and adolescence were marked by the following risk factors: chaos, neglect, family violence, family drug abuse, drug sales, paternal alcoholism, physical abuse, parental divorce, childhood teasing about his physical appearance, and lack of parental supervision.

At the clemency hearing, Ms. Cornwell stated that the abuse was so bad that she considered aborting her third baby, a decision that her family convinced her not to make. She also obtained a job with GM with the objective of becoming financially independent and capable of leaving her abusive husband. In 1981, Ms. Cornwell decided to permanently escape the violence by divorcing Sidney Cornwell. Initially, the kids stayed with her. However, at one point, Mr. Cornwell, Sr. went to her house and took the kids with him to Pennsylvania. Ms. Cornwell did not fight custody of the children and ended up paying child support.

Sidney Cornwell, Sr.'s drug habit increased while in Pennsylvania. It resulted in an increase of violence against the kids, negligence in their care and Cornwell's involvement in the drug dealing world. Cornwell was sent back to his mother a few years later. Back in Youngstown, Cornwell failed in school and continued his involvement with drug sales, then became involved with the Crips by age fifteen.

Cornwell's counsel presented the testimony of Cornwell's family members to the Board. Shanel Phillips (Cornwell's oldest sister) and Marcus Cornwell (Cornwell's oldest brother) corroborated the conditions that existed in the Cornwell household. Marcus Cornwell testified that he feels like he let his brother down when he left the house to live with another family in Pennsylvania. Marcus stated he was the last one that could have taken Cornwell away from the life he was in. Cornwell's counsels also presented the testimony of Byron Wilcox. Mr. Wilcox told the Parole Board that he met Cornwell in 5<sup>th</sup> grade. Mr. Wilcox said that they both grew up in the streets with no role models.

- **Cornwell suffers from untreated testosterone deficiency and Klinefelter's Syndrome.**

Cornwell's counsel argued that his behavioral development and maturation were severely impaired as Cornwell's life chances were constrained by Klinefelter's Syndrome. This syndrome, they argued, clearly can affect a person's physiological, psychological, intellectual, and social functioning.

At age thirteen, Cornwell was 5'6" and weighed 225 lbs. He also had size DD cup breasts. This made him a target of harassment. To remedy this, Cornwell decided to seek medical help. Cornwell was also diagnosed with Testosterone Resistant Syndrome, Hypotestosteronemia (low levels of testosterone) and Macromastia (enlarged breasts). He was admitted to a hospital for surgery to reduce the size of his breasts. Doctors removed 1,227.8 grams and 1,308.0 grams separately of breast tissue. The scars that resulted from the surgery were so substantial that Cornwell found it necessary to tell people that the scars were the result of fights.

Although these physical symptoms are signs of Klinefelter's Syndrome, he was never evaluated or tested for this genetic disorder. His Klinefelter's Syndrome went undiagnosed and untreated during his entire childhood, yet it likely played a key role in his social, academic, and mental development. He required extra attention to succeed in school, but he did not get it. Instead, he suffered from ridicule and a total lack of understanding by family members, who thought he was lazy and referred to him as "fat ass."

Because of the Klinefelter's Syndrome, counsel argued Cornwell likely suffered prolonged periods of frustration, which could explain why he began acting out violently when he was uprooted and returned to Youngstown.

- **Risk factors throughout Cornwell's childhood led him to participate in gang activities.**

As part of the clemency presentation, Cornwell's counsel argued that the previously stated risks factors had a substantial impact on Cornwell's formative years and subsequent development. These factors also influenced Cornwell's behavior and his involvement in the Crips. Mr. Lowe and Mr. King argued that

Cornwell's trial attorney was ineffective when he failed to develop that argument and when he failed to call an expert witness on street gangs during the mitigation phase of Cornwell's trial.

Cornwell, his attorneys argued, was the victim of severe neglect by his parents, physical abuse, psychological abuse, extensive ridicule and social rejection not only by his peers but also by his own family. As a result, he began living more and more in the streets, where he became involved in drug sales and ultimately became a member of the Crips street gang. The Crips became Cornwell's surrogate family, and replaced the positive role models and goals of a "normal" teenager with activities and role models that are antisocial and pro-criminal.

C. Ronald Huff, Ph.D. testified at the clemency hearing. Dr. Huff is a Professor of Criminology, Law and Society and of Sociology at the University of California. Dr. Huff stated that he has conducted extensive research on the subject of gangs for the past 30 years and is considered to be an expert on the study of gangs in the United States. Dr. Huff evaluated Cornwell's file and conducted a personal interview with Cornwell on September 1, 2010. Dr. Huff told the Parole Board that social, psychological and environmental socialization factors failed Cornwell. Dr. Huff also testified that it was his opinion that the testimony and other evidence presented to the jury during the mitigation phase did not sufficiently convey to them the impact that several risks factors had on Cornwell's formative years and his subsequent development. If the risks factors had been presented to the jury, Dr. Huff argued, the jury likely would have reached a different decision.

- **Cornwell suffers from neurocognitive deficits.**

Cornwell was recently evaluated by psychologist Dr. Nicholas Doninger. Dr. Doninger interviewed Cornwell and conducted neuropsychological testing. Cornwell's counsel argued that Dr. Doninger's findings support the conclusion that Cornwell suffers from deficits in executive functioning.

Dr. Doninger's conclusions suggest that Cornwell's performances generally fall within the average range with respect to basic academic skills. However, learning and delayed recall indices for visual material were in the mildly to moderately impaired range. Dr. Doninger also concluded: 1) Cornwell's fine motor dexterity, as well as motor strength, were mildly to moderately impaired bilaterally; 2) His performance was impaired across most measures of executive functioning; and 3) Cornwell's history of prenatal substance exposure, head trauma, substance abuse, developmental vulnerabilities, and chromosomal abnormality contributed to his deficits in executive functioning.

By the time Cornwell murdered Jessica Ballew, counsel argued, Cornwell lacked the supportive environment crucial to overcoming these disadvantages.

- **Cornwell' age at the time of the crime favors mercy in this case.**

Cornwell was 19 years of age at the time of the murder. Cornwell's counsel argued that his youth and parental teachings must carry significant weight in determining what sentence is ultimately appropriate for him for this crime. They also argued that his ability to properly evaluate situations and make good choices was severely impaired. Moreover, through neglect and abuse, Cornwell was taught to protect himself by using violence.

- **The trial jury never heard crucial mitigating evidence of Cornwell's life.**

Cornwell argues that his trial counsel failed to conduct a complete and thorough investigation into his medical history. As Judge Moore concluded in her dissent in the Sixth Circuit Court of Appeals' review of the case, trial counsel knew that Cornwell was hospitalized at age thirteen for a double mastectomy, but never located the medical records or provided them to his expert, Dr. Eisenberg. Had trial counsel investigated Cornwell's medical history and provided the records to the mitigation psychologist, Cornwell's testosterone deficiency and genetic disorder would have been presented to the jury through Dr. Eisenberg. This would have provided the jury with a far different impression of Cornwell. As it was presented, the only explanation given to the jury for Cornwell's surgery was that it was cosmetic, which allowed the prosecution to argue that he was fat and lazy and chose the breast reduction surgery as the "easy way out". The jury did not hear that Cornwell suffered from a medical condition that he could not control, and for which he never received treatment. It is likely that the jury would have viewed Cornwell in a more favorable light had they known of his medical condition, and may have recommended a lesser penalty than death.

- **Cornwell has adapted to confinement.**

Cornwell's counsel argued that his client is not the same person today as he was at 19 years of age. Cornwell has been incarcerated on Ohio's death row since 1997, shortly after his 20th birthday. He is currently 33 years old. Cornwell has a few serious disciplinary control incidents that occurred between 1999 and 2000. He also has some other minor conduct reports. However, Cornwell's positive adjustment is demonstrated by the fact that he has consistently held a job since 1999, he has volunteered twice to speak with Corrections Administration graduate students about life on death row, and he has actively attended worship services and bible study. Cornwell also has resided in the extended privileges pod since May, 2007.

Cornwell's counsel presented the video testimony of Reverends Bob Gentile and Lyle K. Orr, both chaplains at the Ohio State Penitentiary. Rev. Gentile stated that he has worked with Cornwell for years. He stated that Cornwell is sincere in his faith and has the ability to help others with his wisdom of gangs and his own life experience. Rev. Gentile said that he has been helped himself by Cornwell. Rev.

Lyle K. Orr made a plea for Cornwell's life by arguing that Cornwell's life has real positive value in the institution, and that allowing him to continue that life will make for a more peaceful and safe environment for all in the institution.

Cornwell's family members were present at the clemency hearing and called Cornwell a changed man who has found faith and maturity in the years since entering Ohio's death row.

- **Cornwell's death sentence is disproportionate to other Mahoning County homicides, and his case is not the worst of the worst.**

While the murder of Jessica Ballew is tragic, and Cornwell deserves a serious punishment for killing her, this crime is not the "worst of the worst." A comparison of his crime to that of Anthony Anderson/Kevin Calwise and Michael Davis indicates that Cornwell's crime is not the worst.

- **Life without Parole was not an option for the Jury.**

Life without parole was not a sentencing option when Cornwell was sentenced to death in 1997. In 1996, the Ohio Legislature amended O.R.C. § 2929.03 to allow for a sentence of life without parole in capital cases. Until this change was adopted, jurors had only the sentencing options of death or life with the possibility of parole after twenty or thirty years. This law took effect July 1, 1996, and was applicable to crimes committed thereafter. Cornwell's crime took place June 11, 1996, only nineteen days before life without the possibility of parole became a sentencing option. A commutation to life without parole is the appropriate remedy to correct this disparity.

- **A black capital defendant in Mahoning County is more likely to receive a death sentence than a white defendant.**

Cornwell's counsel argued that a black individual is 71.4% more likely to receive the death penalty in Mahoning County than a white individual. Since 1981, when Ohio's current death penalty statutes were enacted, Mahoning County has sentenced fourteen individuals to death. Of those fourteen death sentences, ten were imposed upon black individuals and four upon white individuals. Of the ten black individuals sentenced to death, only three of the offenses involved victims who were black. The other seven were interracial crimes. Only one of the four white defendants' offenses involved an interracial crime.

#### **ARGUMENTS ADVANCED IN OPPOSITION TO CLEMENCY:**

The Mahoning County Prosecuting Attorney Paul Gains and Assistant Attorney General Thomas Madden presented arguments in opposition to executive clemency for Sidney

Cornwell. Extensive written materials and exhibits were provided prior to the clemency hearing. Major arguments in opposition to clemency include:

- **The facts of the case demonstrate that the shooting was not accidental.**

The evidence clearly establishes that Cornwell pointed a semi-automatic 9mm to the occupied back porch at Oak Park Lane and deliberately shot at the victims. As a result, he wounded three adult victims and killed a three year old toddler, Jessica Ballew. Prosecutor Gains called Cornwell a gangster who shot to kill with hopes of impressing older gang members and submitted the facts of the case as proof.

On June 10, around 3:00 p.m., Cornwell, McGaha, and Bunkley, all members of the Crips, were shot at by Richard "Boom" Miles as they were walking in the area of Elm St. and New York Ave. Richard "Boom" Miles was a known member of the Bloods. Cornwell returned fire with his black 9 mm. During the shooting, a bullet grazed McGaha's head. McGaha was taken to the hospital and released the same day.

A second shooting took place later that day. McGaha, Cornwell, and other Crips, were hanging out at McGaha's home. A carload of Bloods passed by and opened fire on them. Cornwell again returned gunfire with his black semiautomatic 9 mm. McGaha, Cornwell, Bunkley, Gary "G Love" Drayton, Leslie "Nut" Johnson, and Denicholas "D" Stoutmire decided to gather at "Heavy's" house. At Heavy's house, the group hatched a plan for revenge. The main objective of the plan was to hunt down and kill "Boom" Miles and any other "Bloods" they encountered. Cornwell, Prosecutor Gains argued, was an active participant in the discussions.

While making their plans, the group of Crips sat around drinking alcohol and smoking dope. At some point, Bunkley and Stoutmire stole a Buick and a Pontiac Bonneville. The group also borrowed a third car. Thereafter, the group began their search for "Boom," and other Bloods around Youngstown. Stoutmire drove the stolen Pontiac Bonneville. Damian Williams rode in the front passenger seat. Johnson sat behind Williams, and Cornwell sat in the driver's side back seat behind Stoutmire.

The group searched various areas around Youngstown to no avail. Stoutmire then suggested they might find Boom at an apartment located on Oak Park Lane. This was a known hangout for Boom. Around 2:00 a.m., the cars proceeded to Oak Park Lane. The three cars parked in a driveway and discussed kicking in the door and searching for Miles. That plan was right away abandoned, and they decided to drive by the alley behind the apartment.

As three cars drove up to the back porch of the target location, Susan Hamlett was on her porch talking to her friend Donald Meadows. Her three year old niece Jessica Ballew had come downstairs and was asking for a glass of water. Jessica was standing in the doorway on the porch as the cars drove up. The first two cars drove past the back porch and continued driving. However, the Pontiac Bonneville

stopped in front of the occupied porch. Cornwell asked Susan Hamlett and Donald Meadows if “Boom” was there. Susan Hamlett said that Boom was not there. Cornwell responded by saying “Well, tell Boom this.” At which time, Cornwell opened fire spraying bullets across the porch and into the residence. Cornwell fired five or six shots. Jessica Ballew sustained two gunshot wounds to her face and chest and died almost immediately. Donald Meadows, Marilyn Conrad, and Sam Legese also suffered gunshot wounds. Donald Meadows was shot in the leg when he attempted to flee.

Prosecutor Gains explained that the trial Jury had the opportunity to view the scene of the crime. That jury view of the crime scene allowed them to understand the actual distances between the car and the porch. Prosecutor Gains said that it is a one lane alley without sidewalks or any substantial amount of ground between the road and the back porches. Prosecutor Gains explained that Cornwell was about three feet from the porch and could literally reach out from the car window with his hand and touch the back porch. Prosecutor Gains also pointed out that despite Cornwell’s claim that he did not see Jessica Ballew, the evidence shows that the driver of the car could see her. The driver, Stoutmire, reacted to the shooting by saying that there was a baby on the porch. After hearing Stoutmire, Damian Williams insisted on being dropped off because he didn't want anything to do with a baby getting killed.

- **The jury and trial court rejected similar arguments presented at the mitigation phase.**

During the mitigation phase, Cornwell called nine witnesses to establish mitigating factors. His mother, grandmother, two sisters, brother, and a friend, testified on his behalf. Furthermore, a psychologist and spiritual advisor also testified for Cornwell. Several of Cornwell’s family members testified that he had a bad childhood. In fact, the jury heard that due to his father’s abusive behavior, his parents divorced when he was a child. His sisters, mother, and brother all testified that his father Sidney Cornwell Sr. was physically abusive, was a drug addict, and neglected his children when they were taken to live with him in Pennsylvania. The jury also considered testimony indicating that Cornwell’s school performance was better in Pennsylvania than in Ohio, he was overweight and ridiculed by friends and schoolmates causing embarrassment, he had a large chest and underwent an operation to reduce the size of his breasts; he functioned in the low to borderline range of intelligence, he returned to Ohio as a teenager, but his mother was unable to control him, and he was of a young age when he committed the offense. There was also significant evidence presented that Cornwell was drawn to gang life to escape his abusive and dysfunctional family life.

Specifically, Dr. James Eisenberg, a psychologist, testified that Cornwell was low functioning and was not provided structure as child, so Cornwell sought guidance and acceptance from gangs, and was vulnerable to the influence of gangs. Dr.

Eisenberg also concluded that Cornwell had grown up in a violent and chaotic family, which caused him serious problems of identity and dependency.

On cross-examination, Dr. Eisenberg admitted that Cornwell did not suffer from any mental disease or defect. Dr. Eisenberg also testified that Cornwell was capable of appreciating the criminality of his conduct and conforming his conduct to the requirements of the law.

Despite the presentation of the mitigation, the jury found that the aggravating circumstances outweighed the mitigating factors and unanimously recommended that Cornwell be sentenced to death. The trial court accepted that recommendation and imposed a death sentence indicating that the evidence of mitigation “does not in any way diminish, or explain, or even begin to mitigate a course of conduct that this defendant engaged in to purposely cause the death of and attempt to cause the death of two or more persons...”

Cornwell is now presenting the same arguments in his request for clemency. The Board and Governor should similarly reject these arguments and maintain the properly imposed sentence of death.

- **Every court that has considered Cornwell’s claims has affirmed his conviction and sentence.**

As part of the State’s response, Prosecutor Gains and Assistant Attorney General Madden argued that Cornwell has been afforded thirteen (13) years of appellate review. Every federal and state court has upheld his conviction and death sentence. A review of those cases attached to the State’s response show that the following issues have been considered by the courts: 1) defense counsel’s failure to competently interview family and friends about his character, history, and background; 2) defense counsel’s failure to investigate the possibility of diagnosing Cornwell with Klinefelter’s Syndrome; 3) defense counsel’s failure to present expert testimony relating to the gang culture that Cornwell associated with; and 4) the psychological evaluation done for mitigation was not done with sufficient depth or breadth to adequately assess the nature and extent of Mr. Cornwell's psychological difficulties.

Assistant Attorney General Madden argued that appellate review of Cornwell’s conviction determined that there was no suggestion in the record that Klinefelter’s Syndrome could cause a person to become violent. Appellate courts determined that Klinefelter’s Syndrome is one of the most common chromosome abnormalities in humans. In addition, the jury heard testimony describing Cornwell’s symptoms, such as his weight problem, his large breasts, his learning difficulties, the teasing by other children, his poor performance at sports, and his low self esteem. In the end, reviewing courts rejected arguments that had the jury learned that Cornwell suffered from Klinefelter’s Syndrome, they would have



spared him the death sentence. The reviewing courts decided instead that the additional testimony or evidence would have been repetitive and cumulative, and it was not likely that the verdict would have been different if the evidence had been presented to the jury.

Further the appellate court found that it was not unreasonable for defense counsel not to present an expert on gang culture. Counsel, the court concluded, may have decided not to concentrate on this fact because it would have highlighted Cornwell's life of crime. Instead, counsel focused on mitigating factors such as his unstable life.

- **Cornwell has committed serious infractions while incarcerated.**

On January 28, 1999, Cornwell was involved in a planned take over of his unit. Inmates Cornwell, Coley, Green, Murphy and Williams were overheard by another inmate planning to take over their unit. The plan included slipping out of their handcuffs and overpowering the Corrections Officers. Cornwell received 15 days in disciplinary control for this rules infraction.

On February 26, 2000, inmate Braden allegedly interrupted a conversation Cornwell was having with another inmate. Cornwell reacted by attacking and beating Inmate Braden. He received 7 days in disciplinary control for this rules infraction.

### **VICTIM'S REPRESENTATIVES:**

Virgil Ballew, Jessica Ballew's father testified at the clemency hearing. Mr. Ballew said at the hearing that he does not blame Cornwell's family for the murder of his daughter. But stated that Cornwell killed his baby and he did not have the chance to see her grow up. He stated that he forgives Sidney for what he did, and it is now up to God.

Ms. Connie Ressler, the victim's aunt stated that Cornwell made the wrong choice that night and the three (3) year old Jessica Ballew died. Ms. Ressler then read a letter written by Ray Kennedy. Mr. Kennedy was the victim's older brother. He is now 21 years old. In his letter, Mr. Kennedy explains that he was at the house when the shooting took place. He remembers seeing his sister laying on the porch and being told that she was dead. Ray also asks Governor Strickland to follow through with Cornwell's execution day.

### **PAROLE BOARD'S POSITION AND CONCLUSION:**

The Ohio Parole Board conducted an exhaustive review of all arguments and exhibits submitted by the parties. The Board also considered the information presented at the clemency hearing. Seven (7) of the eight (8) Parole Board Members found the following factors pivotal in making an unfavorable recommendation regarding clemency:

- Cornwell was a member of the Crips street gang by fifteen (15) years of age. On June 10, 1996, Cornwell and other Crips were in multiple shootouts with Bloods. Cornwell and the other Crips developed a plan to seek out Bloods with the intention of killing them. His objective was clear, to find and kill Boom and/or any other Bloods as revenge. When the cars arrived at the apartment frequented by Boom, it was only Cornwell that questioned the occupants of the back porch and the only one that opened fire.
- Cornwell's lack of intent to kill argument is unpersuasive, as Cornwell was within arm's length of the occupied back porch when he decided to fire his gun in the direction of the apartment and when almost all his shots hit a victim.
- The conviction and sentence in this case have received extensive consideration by the reviewing courts for the last thirteen (13) years, and have been upheld. There also appears to be no manifest injustice in the conviction or sentence.
- The mitigation presented regarding Cornwell's Klinefelter's syndrome, age, his violent childhood and his good institutional adjustment is outweighed by the aggravating factors in this case. Specifically, the mitigation is outweighed by the fact that Cornwell was approximately three feet from the occupied porch when he decided to fire his 9 mm semi-automatic gun in the direction of the porch. Out of five (5) to six (6) shots fired, five (5) found their target. Two of those shots hit the three (3) year old girl that was standing by the door. Three (3) other shots injured three (3) other innocent victims. We believe that the aggravating circumstances in Cornwell's case support that death is the appropriate sentence.

### **DISSENT**

After consideration of all information presented, I make a favorable recommendation for clemency in the form of a commutation of the death sentence to life without parole for the foregoing reason:

- I concur with the dissent in the Sixth Circuit's opinion and the conclusion that "a diagnosis of Klinefelter Syndrome would have a reasonable probability of affecting the outcome of the penalty phase and rendering the state-court finding of

no prejudice objectively unreasonable because (1) having a genetic disorder is itself a strong mitigator and was a subject not addressed at the penalty phase, (2) a mitigation case centered on a genetic disorder, as opposed to an overweight individual who is lazy by nature, would induce much more sympathy from the jury, and (3) Klinefelter Syndrome could indeed reduce Cornwell's blameworthiness, something that the weight-based evidence did not accomplish."

- Cornwell's diagnosis of Klinefelter's Syndrome is evidence that the jury was not aware of or presented with. I cannot conclude that it would have made no difference to the outcome of the penalty phase, as it seems reasonably probable that a juror may have viewed Cornwell, and the other mitigation evidence presented, in a more favorable light. This evidence is significant enough to question the reliability of the outcome of the penalty phase and conclude that the exercise of executive clemency is warranted.
- I agree with the majority of the Board that the aggravating circumstances in this case are compelling. For this reason, I can only recommend a commutation to life without parole, and do not recommend a commutation to a life sentence with parole eligibility.

**RECOMMENDATION:**

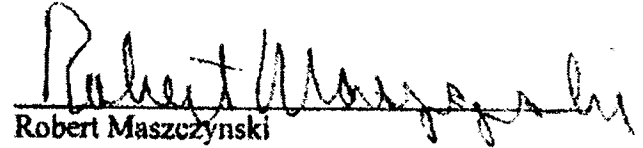
The Ohio Parole Board with eight (8) members participating, by a vote of seven (7) to one (1) recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that executive clemency be denied in the case of Sidney Cornwell, A340-473.

Sidney Cornwell, A340-473  
Death Penalty Clemency Report


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

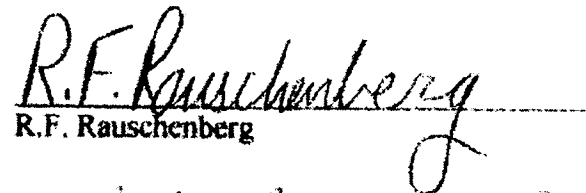
  
Cynthia Mausser, Chair

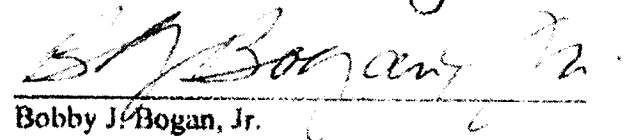
Ohio Parole Board Members  
Voting **Unfavorable**

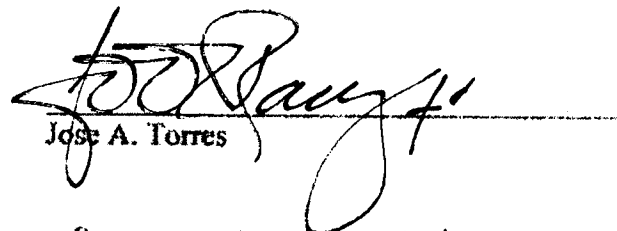
  
Robert Maszczyński

  
Kathleen Kovach

  
Ellen Venters

  
R.F. Rauschenberg

  
Bobby J. Bogan, Jr.

  
Jose A. Torres

  
Cathy Collins-Taylor

Dear Mr. Strickland,

I am writing in reference to the October 13th clemency hearing for Sydney Cornwell.

My name is Ray Kennedy and I am the brother of Jessica Ballew, I am asking you to walk in the shoes of a 7 year old. Jessica and I were very close, she was my little shadow, then one night in June 1996, I heard alot of yelling and then I heard all kind of gun shots, then I remember looking out the window, there was jessica laying on the porch and blood was coming out of her, then I was told my sister was dead. I would wake up night after night having night mares seeing my sister on that porch and so scared that those bad guys were going to find me and kill me. I blamed myself for so many years because I didn't protect my little sister. I can not tell you what a living hell my life was at 7 years old. I have gone through many years of counseling and I had alot of love from my grandparents, but it did not change the fact that my sister died and I still blamed myself, it was not until a few years ago that I realized it wasn't my fault, but the fault of Sydney Cornwell. That being said I am asking you to follow through with his execution day on November 16, 2010. You see Sydney has changed the lives of so many people, I am now 21 years old and I can still close my eyes and live that night all over again.

I was not able to protect Jessica all those years ago, but now I can ask you to finally give justice to her and do not do a stay of exacution. Finally give Jessica the rights that she deserves and she didn't get that night in 1996.

Ray Kennedy

To Whom it May Concern:

My Name is Beatrice Ballew, I am Jessica's grandmother.

I remember a phone call on June 11, 1996, at 3:30 A.M., when my son was hysterical and crying that his baby girl was dead. Now every time the phone rings in the middle of the night, you relive that night all over again. I don't know if any of you have ever received a call like that, but it is a terrible night mare that never goes away. Jessica was so full of life, and in a split second she was gone from a senseless shooting. I am asking you to follow through with the execution for Sydney Cornwell, on November 16, 2010. I understand he has finally come to terms with his actions that night, but it will never bring Jessica back to her family. That is why I am asking you to please not to give him a stay! Jessica deserves at least that!!

Beatrice Ballew

To whom it may concern

My Cousin Jessica Ballew was ~~shot~~ murdered in a gang related shooting on June 11th 1996 she was only 3 years old. She was a very beautiful, Blue Eyed, red hair, Playfull, Happy little girl who never got to live her life she never got to go to school or make friends! Jessica never even got to know her brothers or sisters. She was shot to death because of gang retaliation! How could anyone take such a small child's life? That is the question I would love to have the answer to. What gave that man the right to take my cousin Jessica's life. Who made him God that day!! Because of those young punks who thought they were kool, carried guns & thought they ruled the world my cousin Jessica lost her life! Nothing will ever bring her back to us.

Thank you  
Rabe Williams

To whom it my concern

On June 11<sup>th</sup> 1996 my niece  
Jessica Ballew was shot to death  
on the front porch of the home she  
lived in!! she was only 3 years old!!  
she never got to live her life to grow  
up with her siblings!! Because of gangs  
retaliating against each other  
Do to an earlier shooting that day!  
My niece did not deserve to die  
or to pay for someone else's stupidity. The  
man that murdered my niece should have  
to pay with his own life!! He doesn't  
deserve to live after taking my niece's  
life!! He should have been put to  
death along time ago!!! His sorries  
Don't bring my niece back!!

Thank you  
Alice Anderson