

DATE TYPED: August 29, 2008
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IN RE: RICHARD WADE COOEY, II - OSP #A194-016

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

Date of Meeting: August 25, 2008

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: RICHARD WADE COOEY, II - OSP #A194-016

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with Specifications (2 counts), Kidnapping (2 counts), Rape (4 counts), Aggravated Robbery (2 counts), Felonious Assault

DATE, PLACE OF CRIME: September 1, 1986 in Norton, Ohio

COUNTY: Summit

CASE NUMBER: CR86-09-1109A

VICTIMS: Wendy Jo Offredo, Age 21
Dawn McCreery, Age 20

INDICTMENT: Aggravated Murder with Death Penalty Specifications (4 counts), Kidnapping (2 counts), Rape (4 counts), Aggravated Robbery (2 counts), Felonious Assault

TRIAL: Three (3) Judge Panel

VERDICT: November 18, 1986: Guilty of the indictment (2 convictions of Aggravated Murder under R.C. 2903.01 (A) were merged into the two convictions under R.C. 2903.01(B).

SENTENCE: DEATH consecutive with 48-140 years

ADMITTED TO INSTITUTION: December 10, 1986

TIME SERVED: 260 months

JAIL TIME CREDIT: 99 days

AGE AT ADMISSION: 19 years old

CURRENT AGE: 41 years old

DATE OF BIRTH: June 9, 1967

below, Dickens threw a large chunk of concrete over the side. The concrete hit Wendy's car, forcing her to pull over.

Cooley and his two friends went to offer assistance to Wendy and Dawn. All five of them got into Cooley's car, and Cooley drove to a shopping mall, where they found a pay telephone on which Wendy called her mother.

While Wendy was talking to her mother, Dickens saw money in her purse. He suggested to Cooley and Horonetz that the three of them rob Wendy and Dawn. Cooley replied, "I'm game if you're game."

Everyone got back into the car, and the group left the mall. When they realized Cooley was not returning to the site of the "accident," the women asked Cooley where he was going. He pulled out a knife and ordered them to "shut up." He then gave the knife to Dickens, who opened it and held it on the women. Dawn gave up her purse, while she and Wendy asked their assailants not to hurt them. Cooley told Horonetz to tie Dawn's hands, whereupon Horonetz demanded to be let out of the car, and Cooley let him out.

After letting Horonetz out, Cooley drove to an isolated wooded area in Norton, Ohio, where Dickens raped Wendy. Cooley later admitted to police that he tried to have sex with Dawn, but claimed that he stopped. However, the coroner's examination indicated that Dawn had oral and vaginal intercourse before death.

After he was finished with Dawn, Cooley had oral and vaginal sex with Wendy. While he was with Wendy, Cooley said, "Hey, Clint, put on the Bad Company tape." After Cooley was finished with Wendy, he and Dickens put the women back into the car. Dickens then told Cooley that he had not been "really worried," although the women knew what he and Cooley looked like; however, now that they knew Dickens' first name, they would have to be killed.

Dickens and Cooley brought the women back outside. Dickens began to beat Dawn with a nightstick belonging to Cooley. Meanwhile, Cooley grabbed Wendy in a choke hold, rendering her unconscious. He tied his bandanna around her ankles to keep her from kicking him. Dickens then tossed Cooley a shoelace, and Cooley strangled Wendy with it while Dickens strangled Dawn with his other shoelace. Cooley also beat both women with the nightstick.

Cooley and Dickens then stole Wendy's jewelry, dragged the bodies away from the road, and hid them in the weeds. After brushing away their tire tracks with branches, they went to a car wash to get rid of the bloodstains on themselves and the car. Finally, they discarded the purses.

The bodies were found later on September 1. The Summit County Coroner concluded that Wendy and Dawn had died of multiple blows to the head-Wendy received at least three blows and Dawn at least eleven-with strangulation also contributing to Wendy's death. He also concluded that both women had had oral and vaginal intercourse.

The day the bodies were found, Cooley visited David Jones. He tried to sell Jones two watches (one made of black plastic), and other jewelry that was stained with blood. Cooley explained to Jones how he had acquired them: "He said one of his buddies dropped a rock off of a bridge onto the girl's car and that they robbed them and raped them and then dumped them off behind Rolling Acres [Mall]." Cooley also boasted that Jones "should see a billy club now that it wasn't the original color."

That evening, Cooley had a visit from Terry Grant. He confided to Grant that he had killed the women, describing "how he beat[ed] [*sic*] them three times and strangled them with shoelaces." Cooley then showed Grant the nightstick, telling him "this was the stick that he beat[ed] [*sic*] the girls with." The stick was wrapped in black electrical tape. The tape had blood on it.

On September 2, Cooley retrieved the purses and brought them to his house. When Terry Grant came to visit that day, he found Cooley, Dickens, and Horonetz burning the purses and a pair of Cooley's gym shorts.

On the evening of September 2, Akron detectives arrested Cooley at home. Cooley was wearing a watch later identified as Wendy's. He asked the arresting officers if he could take it off and leave it with his grandmother. They refused permission. Other officers then obtained a warrant to search Cooley's house and car. They found the nightstick in his room and several pieces of Wendy's jewelry in the pockets of a jacket in the car.

While the officers were searching, Cooley was being interrogated by an Akron police officer and a police detective. They questioned him from 10:00 p.m. to 12:34 a.m. (during which time Cooley guided them to Dickens' house), from 1:55 a.m. to 2:14 a.m., and from 2:45 a.m. to 3:16 a.m. There was also some conversation, of indeterminate length, between 2:14 a.m. and 2:45 a.m.

The Summit County Grand Jury indicted Cooley for the aggravated murder of Wendy Offredo, charging him with violating R.C. 2903.01(A) and (B). Each aggravated murder count carried three specifications of aggravating circumstances: R.C. 2929.04(A)(3), R.C. 2929.04(A)(5), and R.C. 2929.04(A)(7). The indictment also charged Cooley with kidnapping Wendy with purpose to engage in sexual activity with her against her will, R.C. 2905.01(A)(4); vaginal and oral rape, R.C. 2907.02(A); and aggravated robbery, R.C. 2911.01(A)(1) and (2). Cooley was also charged with an identical array of crimes against Dawn McCreery. Finally, he was charged with felonious assault, R.C. 2903.11(A)(2), with regard to dropping the chunk of concrete on Wendy's car.

Cooley was tried by a three-judge panel of the Summit County Court of Common Pleas, which convicted him of all charges and specifications. After Cooley was convicted, the two convictions of aggravated murder under R.C. 2903.01(A) were merged into the two convictions under R.C. 2903.01(B). After the mitigation hearing, Cooley was sentenced to death for each murder. The Court of Appeals for Summit County affirmed the convictions and sentence.

APPLICANT'S STATEMENT:

Richard Wade Cooley was interviewed by Board Member Robert Maszczyński on August 14, 2008 at the Ohio State Penitentiary. Present were his counsel Eric Allen and Dana Cole. Parole Board Chair Cynthia Mausser and Board Members Jim Bedra, R. F. Rauschenberg and Ellen Venters participated in the interview via video-conference.

Mr. Cooley provided a lengthy statement describing the mitigation he believes supports the granting of clemency. He was denied due process by the ineffective assistance of both trial and appellate counsel; a lack of any evidentiary hearing regarding this claim is rare in a death penalty case. From the waiver of trial by jury through the mitigation and penalty phase of trial, Mr. Cooley asserts that counsel could have better represented his interests. Similarly, and due to a "shifting legal landscape", appellate counsel was also ineffective. Mr. Cooley, although admitting choking Wendy Offredo unconscious, denies participation in the bludgeoning that was the actual cause of both victims' death. The tape removed from the club and discarded in a field would have yielded only the codefendants fingerprints had any effort been made to retrieve this important evidence. He believes that he should suffer no greater penalty than codefendant Dickens. Mr. Cooley was responsive to questions from the Board Members which largely centered on his actual role in the offense.

PRIOR RECORD:

Richard Wade Cooley, II has no prior record of criminal convictions or juvenile adjudications. However, a Pre-sentence Investigation Report prepared by the Summit County Probation Department in 1986 did note the following contacts with law enforcement and/or juvenile authorities:

December 17, 1981: Stow Police Department; Criminal Mischief; Referred to Intake Worker and Restitution. Cooley vandalized a van at Marhoffer Chevrolet.

June 12, 1984: Private Referral; Assault; Charge dismissed. Cooley accused of chasing down and beating up victim who had called him names.

August 10, 1986: Munroe Falls Police Department; Gross Sexual Imposition. No further action, case closed. Cooley, nine months prior, was referred for sexually abusing a two year old male relative. Cooley denied the incident. Reportedly, Cooley had the victim perform oral sex on him. Counseling instituted instead of formal charges being filed. Cooley was not cooperative with counseling, but case was closed with no further action.

INSTITUTIONAL ADJUSTMENT:

Mr. Cooley was admitted to the Department of Rehabilitation and Correction on December 10, 1986. His work assignments while incarcerated at the Mansfield

Correctional Institution included Porter, Material Handler, Recreation Worker and Food Service Worker. Since his transfer to the Ohio State Penitentiary in 2005, Mr. Cooley has participated in programming to include Beyond Anger, Stress Management, Anger Management, Resolving Conflict, Commitment to Change, Recovery Services Programming, Rage, Recidivism & Recovery, Managing Money and New Commitment to Change. Mr. Cooley remains confined at level 5, "high maximum" security since his 2005 escape attempt. He resides alone in a pod designed for several inmates. He has recently been afforded more commissary and recreation privileges. He receives occasional visits from his sister and attorneys.

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

- 10/24/1987 – Mr. Cooley broke his sink in his cell using his bed. He received 10 days in disciplinary control for this rules infraction.
- 10/14/1999 – Fighting – with or without weapons, including instigation of, or perpetuating fighting. Mr. Cooley was involved in a fight with another inmate for which he received 11 days in disciplinary control.
- 3/7/2005– Escape. On 2/3/2005, Mr. Cooley escaped from the Mansfield Correctional Institution Death Row housing unit in which he was confined and from the Death Row outdoor Recreation area. He was also found guilty of tampering with the ceiling in the Recreation area. Mr. Cooley received 15 days in disciplinary control and was placed in a Level 5 security status at the Ohio State Penitentiary.
- 9/20/2005 - Misuse of Authorized Medication. Mr. Cooley had four (4) pills in his cell. He received 8 days in disciplinary control for this violation.
- 5/12/2008 – Refusal to Accept an Assignment or Classification Action. Mr. Cooley refused a cell move for which he was placed in disciplinary control for 5 days.
- 7/24/2008 – Threatening Bodily Harm to another, with or without weapon. Mr. Cooley made verbal threats regarding a staff member. On 7/22/2008, Mr. Cooley flooded his toilet. Mr. Cooley received 7 days in disciplinary control for these rules infractions.

Mr. Cooley has received approximately 20 additional conduct reports since he was admitted to the Department of Rehabilitation and Correction in 1986. These conduct reports did not result in Disciplinary Control. These offenses included Possession of Contraband, Disobedience of Orders, Disrespect to Staff and Destruction of State Property.

ARGUMENT ADVANCED IN SUPPORT OF CLEMENCY:

The recent application for Executive Clemency focuses on several key issues, and requests that the 2003 application be incorporated as part of this request. The recent application offers the following additional arguments in support of clemency:

Ineffective Assistance of Trial Counsel:

- Trial counsel was appellate counsel and never raised ineffectiveness on appeal. Subsequent petitions were denied without a hearing under erroneous and improperly applied legal standards.
- The dishonesty of police officers during initial interrogation was never pursued by trial counsel.
- Mr. Cooley was unaware of the ramifications of waiving a jury trial to include future appeals and the opportunity of a single juror to give him life.
- A presentence investigation was requested contrary to ABA guidelines and professional opinion that the report is not a substitute for mitigation prepared by trial counsel.
- Entering a plea of Not Guilty by Reason of Insanity, a *de facto* admission of guilt, was done without consulting Cooley and opened the door to otherwise inadmissible evidence that was ultimately fatal to the defense effort.
- Trial counsel lacked a cohesive defense strategy and failed to investigate and present mitigation effectively. Extensive mitigation has been developed since trial as described in the 2003 Clemency application.
- Trial counsel failed to object to consideration and reliance upon impermissible aggravating factors.

Ineffective Assistance of Appellate Counsel:

- The same lawyers who handled his trial handled his appeal to the Summit County Court of Appeals.
- Appellate counsel violated a basic duty proscribed by ABA guidelines to consult with their client.
- New lawyers found errors that were not raised on appeal and were thus subject to a more stringent review standard.
- The claim of ineffective assistance of appellate counsel was never considered due to changes in the law regarding how to raise an appellate lawyer's ineffectiveness. No court, state or federal has ever addressed appellate counsel's failures.

Lack of Due Process:

- The Ohio Supreme Court, in the direct appeal, found multiple errors suggesting a strong likelihood that the sentencing decision would be overturned since the Ohio

Supreme Court reversed other death sentences involving impermissible aggravating circumstances.

- When the Ohio Supreme Court did not reverse the death sentence it effectively placed the presumption that another sentence might have been imposed on the defendant.
- If the State errs in a manner that benefits them, it must be the State that proves the errors don't matter.

Changing societal interests, attitudes, and law:

- The legal system failed Richard Cooley and executive clemency exists to afford relief from the inappropriate operation or enforcement of criminal law. Public welfare is better served by a grant of executive clemency.
- After 22 years on death row, execution will not serve societal interests. Any deterrent effect would be negligible and the state's interest in retribution has largely been satisfied by the long period of uncertainty Mr. Cooley has spent awaiting execution.
- Mr. Cooley is not the same person who received a death sentence so long ago. Assuming that society's interests would have been served by the execution of the nineteen year old Richard Cooley who was sentenced to death in 1986, the same cannot be said today. He is a different man, remorseful, and would never find himself in the situation leading to the two girls' deaths.
- Ohio, like other states, has moved away from death and toward life imprisonment as evidenced by declines in sentences of death since the implementation of the life without parole option.

Cruel execution process:

- Ohio's execution protocol and practices are substantially likely to inflict cruel and unusual punishment.
- Again caught in the shifting legal landscape, Mr. Cooley was found to have filed too late for relief from pending litigation regarding the appropriateness of Ohio's execution protocol.
- A Common Pleas judge has since found that the execution process is flawed.

STATE'S POSITION REGARDING CLEMENCY:

- The State of Ohio, through the Summit County Prosecuting Attorney and the Ohio Attorney General, remain opposed to clemency. Their written response provides an update to judicial rulings since 2003 and incorporates their 2003 submission.
- A three judge panel lawfully imposed the death penalty on Cooley.
- His conviction and sentence have not been reversed after twenty-two years of judicial scrutiny by every level of both the state and federal courts. Although the Ohio Supreme Court found errors, it conducted its own review and weighing of the aggravating and mitigating factors and determined that death was an appropriate sentence.
- Claims of ineffective assistance of both trial and appellate counsel have also been reviewed without any finding of ineffectiveness. Reviewing courts consistently held that Cooley has been unable to demonstrate how he was harmed by trial and appellate representation.
- The aggravating circumstances of the offense outweigh anything offered in mitigation. After disabling their car Cooley and his codefendant, under the guise of offering assistance, kidnapped, robbed, raped and brutally murdered both Wendy Offredo and Dawn McCreery. An "X" was carved into the abdomen of each girl before their bodies were tossed in the woods. Efforts were made to cleanse the crime scene and dispose of evidence.
- Mr. Cooley has never expressed remorse and has given contradictory statements regarding his involvement in the offense usually projecting blame on codefendant Dickens.
- On February 3, 2005, Mr. Cooley attempted to escape from the Mansfield Correctional Institution. He was able to escape the secure death row area and was apprehended between perimeter fences. The attempt involved significant planning in the construction of a ladder and other items. Attempting to escape from death row confirms Cooley's dangerousness and inability to conform, and further demonstrates that he is not likely to accept a Life Without Parole sentence if clemency were granted.

VICTIM'S REPRESENTATIVES:

Robert McCreery, brother of Dawn McCreery, and John Offredo, brother of Wendy Offredo testified concerning the impact of the offense on their family, their community, and themselves. They remain opposed to clemency.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Parole Board reviewed documentary evidence presented both in support and in opposition to clemency. This review included submissions and findings from the July 8, 2003 clemency hearing. Testimony from those presenting at the most recent hearing was carefully considered and discussed. After extensive deliberation, the Ohio Parole Board reached unanimous decision.

There has never been a question of Mr. Cooley's guilt. He argues in support of clemency that his participation in the offense falls short of inflicting the fatal blows, his counsel was ineffective at several stages, due process was denied, societal interests have changed and the execution protocol is cruel. Yet, every reviewing Court has found the evidence against Cooley overwhelming and the subsequent death sentence appropriately imposed. We question, as we did in 2003, the reliability of Mr. Cooley's version of the offense after considering the record in its entirety.

Had Mr. Cooley's trial counsel pursued alternative trial tactics or developed and presented more extensive mitigating factors at trial, it seems unlikely another penalty outcome would have resulted given the considerable aggravating factors. Even considering the mitigating factors of young age, lack of prior record, cruelly abusive childhood, mental disorder and substance abuse at their extreme fails to explain a causative factor for the behaviors exhibited during an offense of exceptional brutality occurring over a period of several hours. Others with similar backgrounds often lead law-abiding lives; some engage in criminal behavior of far less magnitude or engage in antisocial behaviors short of criminal conduct.

Twenty-two years of exhaustive judicial scrutiny at both the state and federal level has failed to sustain many of the claims, including ineffective assistance of counsel, raised by Mr. Cooley in support of clemency. Despite findings by the Ohio Supreme Court that aggravating factors were weighed inappropriately at the penalty phase of trial, no Court has found the errors sufficient to impact the appropriateness of the penalty decision. Given the extensive review afforded Mr. Cooley, we find the claim of lack of due process without substance.

Societal interests and attitudes concerning punishment are always in flux. Punishment is a topic on which few can agree. We look to the legislative and judicial branches of government for a system of laws to both define and ensure fair and consistent application of the law to criminal defendants. Nothing in our independent inquiry into the appropriateness of clemency for Richard Wade Cooley suggests that any manifest injustice has occurred or that mitigating factors known today outweigh the aggravating circumstances of the offense. A sufficient, justifiable basis for mercy cannot be found.

Richard Wade Cooley, II - OSP #A194016
Death Sentence Clemency

RECOMMENDATION:

The Ohio Parole Board with seven (7) members participating, by a vote of seven (7) to zero (0) recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that Executive Clemency be denied in the case of Richard Wade Cooley, II.

Richard Wade Cooley, II - OSP #A194016
Death Sentence Clemency

Ohio Parole Board Members
Voting **FAVORABLE**

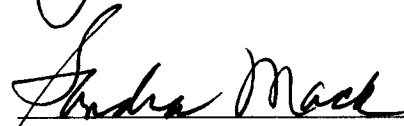
Ohio Parole Board Members
Voting **UNFAVORABLE**



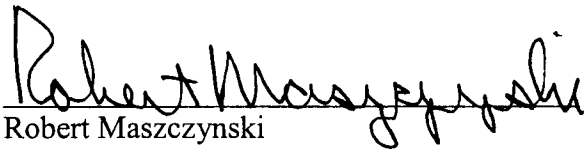
Cynthia Mausser, Chairperson



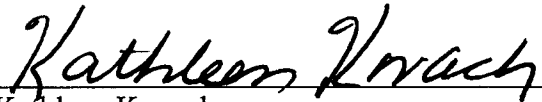
Jim Bedra



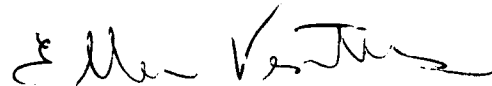
Sandra Mack, Ph.D.



Robert Maszczyński



Kathleen Kovach



Ellen Venters



R.F. Rauschenberg