

DATE TYPED: October 21, 2013
DATE PUBLISHED: October 24, 2013

IN RE: RONALD PHILLIPS, CCI #A279-109

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

Date of Meeting: October 16, 2013

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: Ronald Phillips, CCI #A279-109

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder, Felonious Sexual Penetration,
Rape (3 counts)

DATE, PLACE OF CRIME: January 18, 1993 in Akron, Ohio

COUNTY: Summit

CASE NUMBER: CR93020207

VICTIM: Sheila Marie Evans – deceased

INDICTMENT: Count 1: Aggravated Murder with Capital Offense
Specification
Count 2: Felonious Sexual Penetration
Count 3: Endangering Children with Physical
Harm Specification
Count 4: Felonious Assault
Count 5: Rape
Count 6: Rape
Count 7: Rape

TRIAL: Found guilty by jury of counts 1, 2, 5, 6, and 7. Counts
3 and 4 dismissed.

DATE OF SENTENCE: September 14, 1993

SENTENCE: Count 1: DEATH
Count 2: Life
Count 5: Life
Count 6: Life
Count 7: Life

The death sentence is to be served consecutively to
counts 2, 5, 6, 7 and counts 2, 5, 6, and 7 are
consecutive to each other.

ADMITTED TO INSTITUTION: September 16, 1993

JAIL TIME CREDIT: 2 days

TIME SERVED: 241 months (does not include jail time credit)

AGE AT ADMISSION: 19 years old
CURRENT AGE: 40 years old
DATE OF BIRTH: October 10, 1973
JUDGE: Honorable James R. Williams
PROSECUTING ATTORNEYS: Lynn C. Slaby and Michael Carroll

FOREWORD:

A clemency proceeding in the case of Ronald Phillips, A279-109, was initiated by the Ohio Parole Board pursuant to Sections 2967.03 and 2967.07 of the Ohio Revised Code and Parole Board Policy #105-PBD-01.

On October 2, 2013, the Parole Board interviewed Phillips, who appeared via videoconference from the Chillicothe Correctional Institution. A clemency hearing was then held on October 16, 2013 with eleven (11) members of the Parole Board participating. Arguments in support of and in opposition to clemency were presented at that hearing.

The Parole Board considered all of the written submissions, arguments, and information disseminated by presenters at the hearing, as well as the judicial decisions. The Parole Board deliberated upon the propriety of clemency in this case. With eleven (11) members participating, the Board voted eleven (11) to zero (0) to provide an unfavorable recommendation for clemency to the Honorable John R. Kasich, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (CR93020207):

The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided November 22, 1995:

On January 18, 1993, Sheila Marie Evans, age three, died as a result of cardiovascular collapse due to, *inter alia*, severe, blunt force trauma to her abdomen. At the time, Sheila's mother, Fae Evans, was dating and occasionally cohabiting with appellant, Ronald Ray Phillips. In addition to Sheila, Evans had two other children, Sara, twenty-nine months old, and Ronald, Jr., appellant's infant son.

Shortly after 10:00 a.m. on the morning of January 18, 1993, Fae Evans took Ronald, Jr. to see the family physician for a routine physical examination. Appellant remained at Evans's apartment to care for Sheila and Sara. Evans returned to the apartment at approximately 11:25 a.m. and found appellant sitting in the kitchen. Soon thereafter, Evans called out to her daughters, but they failed either to respond or to appear. Appellant walked into the girls' bedroom and found Sheila lying on her bed motionless, pale and cold. He then lifted Sheila and carried her downstairs to his grandmother's apartment. Hazel

Phillips, appellant's grandmother, telephoned the 911 emergency operator, reported that Sheila was not breathing, and relayed instructions on performing cardiopulmonary resuscitation to appellant. Appellant in turn attempted to revive Sheila until medical assistance arrived.

Paramedics from the city of Akron responded to the 911 call within four minutes of being dispatched and immediately transported Sheila to Children's Hospital in Akron. Upon her arrival at the emergency room, Sheila was not breathing and had no pulse. The first physician to examine Sheila, Dr. Eugene Izsak, noted that she had multiple bruises on her torso, a distended stomach, apparent internal abdominal injuries, and a stretched anus with some acute, recent changes. Dr. Izsak's medical team continued cardiopulmonary resuscitation and was eventually able to obtain a pulse. Sheila was transported to the operating room after spending approximately one hour in the emergency room. Dr. Robert Klein performed emergency abdominal surgery, which revealed that Sheila's abdominal cavity was filled with a significant amount of free air and blood, and that a portion of her intestine, the duodenum, was perforated and gangrenous. Dr. Klein removed the dead portion of the intestine, and attempted to control the internal bleeding. Based upon his observations, Dr. Klein determined that the injury to the duodenum had been inflicted at least two days prior to Sheila's admission into the hospital. Despite the significant medical efforts performed at Children's Hospital, Sheila died later that day.

On January 19, 1993, Dr. William Cox, the Summit County Coroner, conducted an autopsy on Sheila. During his external examination of Sheila, Dr. Cox documented more than one hundred twenty-five bruises, many of which he identified as acute injuries that had been inflicted within a few hours of death. The bruising indicated that Sheila had been severely beaten about her head, face, upper and lower torso, arms, legs, and genitalia. He also detailed that the blows to Sheila's abdomen had resulted in severe internal trauma, including hemorrhaging in her stomach, intestine and other internal organs. Dr. Cox examined the section of Sheila's bowel that had been surgically removed, and determined that the injury to the duodenum had occurred approximately forty-eight hours prior to her death. During that forty-eight-hour period, Dr. Cox opined, Sheila would have suffered from intense abdominal pain, an inability to eat, vomiting, a high temperature, and listlessness. The beating Sheila suffered on the morning of January 18, 1993 caused the already necrotic and gangrenous duodenum to rupture. Dr. Cox concluded that Sheila died as a result of cardiovascular collapse stemming from the severe, blunt force trauma to her abdomen, and the numerous related complications.

Dr. Cox also discovered during the autopsy evidence of acute anal penetration. Based upon the presence of contusions and lacerations, Dr. Cox determined that Sheila had sustained repetitive anal penetrations over a period of time, and that the most recent anal trauma had occurred sometime during the morning of January 18, 1993. Given the absence of abrasions within the rectum, Dr. Cox further concluded that Sheila had been anally penetrated by a penis rather than by a finger or some other foreign object.

At approximately 3:00 p.m. on the day Sheila died, Detective Jan Falcone, an officer with the Juvenile Bureau of the Akron Police Department, interviewed appellant at the police station. Although appellant was not placed under arrest, Falcone read appellant his *Miranda* rights, which he waived. During the interview, appellant admitted that on Friday, January 15, 1993, or Saturday, January 16, 1993, he had spanked Sheila three times with an open hand. After the spanking, appellant noticed bruises on the girls' bottom, which surprised him. He said, "I really didn't think I spanked her that hard but I told Fae I would not do it anymore." Appellant indicated that Sheila had not felt well during the weekend, and that she had vomited several times.

Appellant also told Falcone that Sheila had been injured on several previous occasions. He recalled one incident in which Sheila fell on a railroad spike which penetrated either her vagina or anus. On another occasion, appellant claimed that Sheila hurt her "vagina and stomach area" when she jumped from a dresser to a bed and struck the corner of the bed. Sheila bruised her eye and cut her lip when she fell down a flight of stairs. Appellant denied having ever touched Sheila or Sara in their "private areas."

At some point during the interview, appellant was informed that Sheila had died. Falcone then asked appellant again what had happened to Sheila. Appellant responded that the night before Sheila's death, he had observed Evans in the girls['] bedroom standing over Sheila with both fists clenched after hearing Sheila scream, "Don't beat me." The interview ceased after that exchange, and appellant left the police station. In total, the interview lasted approximately seven hours, during which time appellant was provided with food, beverages, and several breaks.

On Wednesday, January 19, 1993, appellant telephoned the Akron police station in order to speak with the detectives who were investigating Sheila's death. Detective Ronald Perella, a detective assigned to the case, was attending Sheila's autopsy at the time appellant's call was received and thus was unable to immediately speak with appellant. The next morning, Perella and his supervisor, Sergeant Dye, drove to South Alternative School, where appellant was enrolled as a student. The officers met with appellant and asked him to return to the police department for further questioning. Appellant complied, was driven to the Juvenile Bureau of the police department, and taken to an interviewing room. Perella read appellant his *Miranda* rights, which he again waived, and asked appellant to share whatever additional information he wished to convey. Appellant then repeated the same information he had given to Detective Falcone on the previous day. The detectives questioned appellant as to why he had telephoned them if he simply wanted to reiterate his earlier statement. They also informed appellant that the coroner had performed an autopsy on Sheila, and therefore knew everything that had happened to her.

At that point, appellant asked Sergeant Dye to leave the room so that he could speak with Detective Perella alone. Dye agreed. Once they were alone, appellant told Perella, "I don't want to go to jail; I don't want to get pumped in the butt." Perella responded that "not everybody who gets arrested goes to jail, that there could be counseling but without knowing what [appellant] wanted to

talk about, that [Perella] couldn't promise him anything except to tell the prosecutor and the judge that he cooperated." Appellant then confessed that on the morning of January 18, 1993, he "lost it" and repeatedly hit Sheila. Appellant explained that he had called Sheila three times for breakfast and she had failed to respond. As a result, appellant went to the girls' bedroom, pulled the covers off Sheila, and began hitting her, throwing her against the walls, and dragging her by her hair. During the beating, appellant noticed that Sheila was not wearing underwear, which caused him to become sexually aroused. After beating Sheila, appellant stated he put Vaseline on her anus and inserted his fingers. While appellant admitted that he thought about anally penetrating the three-year-old girl with his penis on that morning, he denied doing so. Appellant did confess to anally penetrating Sheila with his penis on two prior occasions, but claimed that Evans had paid him to perform those acts. Toward the end of the approximately three-hour interview, appellant prepared a handwritten statement detailing the events to which he had verbally confessed. Shortly after he completed the written statement, appellant was arrested.

On February 1, 1993, the Summit County Grand Jury returned an indictment against appellant for one count of aggravated murder in violation of *R.C. 2903.01(B)* with a death specification pursuant to *R.C. 2929.04(A) (7)*, one count of felonious sexual penetration pursuant to *R.C. 2907.12(A) (1) (b)*, three counts of rape pursuant to *R.C. 2907.02 (A) (1) (b)*, one count of felonious assault in violation of *R.C. 2903.11(A)(1)*, and [***9] one count of endangering children pursuant to *R.C. 2919.22(B)* with a physical harm specification pursuant to *R.C. 2941.143(A)*. [footnote omitted]. Appellant entered a plea of not guilty to each count. Prior to trial, the state dismissed the felonious assault and child endangering charges. On August 18, 1993, a jury found appellant guilty on each of the remaining charges. Following a mitigation hearing, the jury recommended that appellant be sentenced to death for his conviction of aggravated murder. The trial court agreed with the jury recommendation and sentenced appellant to death. Additionally, the trial court imposed life sentences for each of the three rape charges and the charge of felonious sexual penetration.

PRIOR RECORD

Juvenile Offenses:

According to the Post-Sentence Background Investigation, Phillips does not have a juvenile record.

Adult Offenses: Ronald Phillips has the following known adult arrest record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
01/20/93 (Age 19)	Aggravated Murder Felonious Sexual Penetration Rape (3 counts) (CR93020207)	Akron, OH	INSTANT OFFENSE

Institutional Adjustment:

Phillips was admitted to the Ohio Department of Rehabilitation and Correction on September 16, 1993. His work assignment while incarcerated at the Southern Ohio Correctional Facility was as a Porter. While incarcerated at the Mansfield Correctional Institution, Phillips's work assignments included Material Handler 2, GED Student, and Barber. At the Ohio State Penitentiary, Phillips was a Porter.

Presently, Phillips is a Recreation Worker at the Chillicothe Correctional Institution. No program or community service completion was noted. Phillips did enroll in a GED program on August 28, 1997. However, it does not appear that Phillips has received his GED while incarcerated. According to the Post-Sentence Background Investigation, Phillips has a 12th grade education.

Since his admission, Phillips has accumulated the following disciplinary record resulting in Phillips placement in disciplinary control:

- 12/14/94: Fighting, with or without weapons, including instigation of, or perpetuating fighting. Phillips was fighting with another inmate on the yard. Both inmates were given direct orders to stop fighting but would not comply. This resulted in other inmates gathering around both Phillips and the other inmate, creating a disturbance due to yelling. Phillips received 6 days in disciplinary control for this rule infraction.
- 03/30/95: Being out of place. Phillips let another inmate enter his cell, which is not permitted. Phillips received 5 days in disciplinary control for this rule infraction.
- 12/20/96: Threatening bodily harm to another, with or without a weapon. Phillips threatened another Death Row inmate. Phillips was not given time in disciplinary control, but a separation order was completed between the two inmates.
- 12/03/05: Fighting, with or without weapons, including instigation of, or perpetuating fighting. Phillips was in a fight with another inmate. Phillips was cut by the other inmate during the fight. Phillips received 7 days in disciplinary control for this rule infraction.
- 05/11/06: Fighting, with or without weapons, including instigation of, or perpetuating fighting. Phillips was in a fight with two other inmates. Phillips did not obey officers' orders to stop fighting. Phillips received 15 days in disciplinary control for this rule infraction.
- 12/28/10: Fighting, with or without weapons, including instigation of, or perpetuating fighting. Phillips was in a physical altercation with another inmate. Phillips received 10 days in disciplinary control for this rule infraction.

- 07/11/13: Disobedience of a direct order. While an officer was trying to complete a cell search, Phillips picked up several items and started to walk away and yelled at the officer stating he was being harassed. The officer gave Phillips a direct order to stop yelling and Phillips yelled, "Fuck you, I am not being shook down, this bullshit is going to stop." Phillips received 7 days in disciplinary control for this rule infraction.

Phillips has received the following conduct reports that did not result in placement in disciplinary control. Those rule infractions include:

- Disobedience of a direct order, disrespect, and encouraging or creating a disturbance in 1994. When ordered to come to the recreation door to be cuffed, Phillips threw a basketball at the door the officer was standing behind.
- Disobedience of a direct order in 1994. Phillips was purposefully walking slowly and holding up all inmates on the recreation chain.
- Disobedience of a direct order in 1996. Phillips had paper covering the windows in his cell after being ordered not to cover the windows.
- Disobedience of a direct order and encouraging or creating a disturbance in 1997. Phillips was standing in the visiting room yelling at other inmates.
- Disobedience of a direct order and disrespect to an officer in 1998. While being escorted to recreation, Phillips was given an order to stop talking. Phillips stated to the officer, "Your mama's a bitch and you are a coward."
- Disrespect to an officer in 1999. While passing out food trays, Phillips told an officer that he was going to "write him up" and that it would be best for him to "bid out of DR3." Phillips then cursed at the officer.
- Possession of contraband (chemicals) in 2000.
- Possession of contraband (blue shower curtain) in 2000.
- Possession of contraband (pornography) in 2006.
- Destruction, alteration, or misuse of property and possession of contraband in 2007.
- Phillips painted his cell door and had a book that had a false bottom in 2007.
- Possession of contraband in his cell in 2007.
- Disrespect of an officer in 2013. Phillips was disrespectful to an escort officer while discussing recreation.

APPLICANT'S STATEMENT:

On October 2, 2013, members of the Ohio Parole Board conducted an interview with Phillips via videoconference from the Chillicothe Correctional Institution.

The following individuals observed the interview via videoconference, but did not participate: Samuel Porter from the office of Governor John Kasich; Brenda Leikala from the Office of the Ohio Attorney General; Timothy Sweeney, attorney for Phillips; Gregory Hoover, attorney for Phillips; Lisa Lagos, attorney for Phillips; Kathryn Sandford, Assistant Ohio Public Defender; Brad Gessner, Assistant Summit County Prosecutor; Margaret Scott, Assistant Summit County Prosecutor; John Rayle, Parole Board Parole Officer; and Jerrold Montgomery, Parole Board Parole Officer.

Ohio Parole Board Chair Cynthia Mausser opened the interview by introducing herself to Phillips. She then introduced Phillips to the other Parole Board members. Chair Mausser identified the individuals who were observing the interview, but were not participating. She explained to Phillips the purpose of the clemency interview and noted that his clemency hearing is scheduled for October 16, 2013.

Chair Mausser asked Phillips what he would like the Board to consider in determining whether to make a favorable or unfavorable recommendation for clemency in his case. Phillips stated that he is remorseful for killing Sheila. He noted that he was only 19 years old at the time of the offense and he has grown since coming to prison and described the growth process as a difficult one. According to Phillips, in the early years of his incarceration, he struggled with accepting responsibility for Sheila's death. Phillips described how, two days after Sheila died, he gave a written confession to killing her but then later recanted the confession. He spent years deceiving himself about his guilt. Part of his growth, Phillips explained, was accepting that confession as truthful and freely given, which he does today.

Phillips stated that there are many people who believe in him and want to help him. He is asking that the Board and the Governor show him mercy because he is a salvageable human being. Phillips believes that there is still much value within him to develop. He wants to continue to learn about, and better, himself.

Phillips insisted that, at the time he committed the crime, he was the product of the abusive environment in which he was raised, and he described that abuse in detail. He stated that, beginning at age four, he was raped by his father, and the sexual abuse continued for a period of one and one-half years. At seven years old, he was raped by a cousin. Phillips indicated that his father physically and verbally abused him to the point where he ran away from home at age 17. He continued to fear his father even after reaching adulthood.

Phillips alleged that his mother did nothing to stop his father's abuse. He described his mother as physically abusive toward him and his siblings and described how his mother would hit his older sister in the face and grab her by her hair. Phillips stated that his mother would hit him in the face with a belt.

Phillips described how the Summit County Children Services Board once removed him and his siblings from the family home. They were returned to their parents one year later.

According to Phillips, his parents taught him and his siblings to fear Children Services and instructed them not to talk to the authorities when they came to the home. Today, Phillips feels betrayed by his parents, people whom he trusted.

In addition to physical and verbal abuse, Phillips described other dysfunctional aspects of his childhood. He stated that his mother and father sold drugs from the family home. He claimed to have once witnessed a woman overdose on drugs. He was exposed to pornography at age nine, he alleged. Phillips indicated that he once saw a man get shot to death near his home. In addition, when Phillips was a teenager, a coworker robbed him at gunpoint. Lastly, he lived next door to a home where a 13 year old child was raped. Phillips described how his parents eventually took that abused child into their home. He witnessed things no human being should witness, he claimed.

Phillips stated that he recognizes today that no child should have to endure what he experienced as a child. It is for that reason that he so deeply regrets doing to Sheila what was done to him. He insisted that he abused and killed Sheila because he was, at that time, a product of his own upbringing. Phillips related that he thinks about Sheila often. Specifically, he thinks about how Sheila would be in her twenties today and possibly married with children. She deserved better and did not deserve to die.

Phillips contended that some of his brothers and sisters also ran afoul of the law as a result of their dysfunctional upbringing, though none have committed murder. His oldest brother has been in and out of prison several times, and he also has a younger brother who has served time in jail and an older sister who was committed to prison on drug charges.

Phillips insisted that it was many years before he could speak honestly about what occurred in his home, especially the sexual abuse, which had always caused him shame. Even after coming to prison, Phillips continued to fear his father. Phillips believed that his father would take retribution upon his siblings were he to reveal the abuse he suffered. It was not until his father died, just four years ago, that he could speak of the sexual abuse. He first disclosed that abuse to his mother following his father's death. Were his sentence commuted, Phillips would like to help others who, like him, were abused as children.

Phillips described how he first met Evans at a Thanksgiving party. Phillips was still in high school at the time. Evans was several years older than Phillips and already had two children from a prior relationship. Evans eventually became pregnant with Phillips's baby. She later moved into an apartment above the home of Phillips's grandparents. Phillips would sometimes stay at the apartment, which is where the crime occurred.

Meanwhile, Phillips recounted, he had a "wandering eye" and was pursuing other women, including Evans's sister, Mary Evans, whom he also impregnated. Phillips's babies were born to the two women within a month of one another. According to Phillips, his affair with Evans's sister was a source of tension between Evans and him. Evans was also becoming increasingly frustrated that Phillips was providing little support, financial or otherwise. According to Phillips, Evans would routinely voice her frustrations to Phillips's father, who would respond by physically and verbally abusing Phillips. Phillips claimed that he enlisted in the United States Army to escape the situation.

Phillips next provided a detailed description of Sheila's abuse and how it ultimately led to the girl's death. Phillips described how he was pressuring Evans for anal sex when Evans introduced the idea of Phillips having anal intercourse with Sheila. Evans was present for the first rape. According to Phillips, Evans restrained Sheila and held the child's hips up in the air while he sodomized the girl. One week later, Phillips again anally raped Sheila in Evans's presence. Phillips raped the child a third time on January 15, 1993, three days before Sheila died, again with Evans present.

On January 18, 1993, Phillips was home alone with Sheila. He prepared food for Sheila and her sister. When the children failed to come after Phillips called for them, he went to their bedroom. He pulled the covers off of the children, who were in bed. When Phillips observed that the children were not wearing underwear, he began yelling at them. Phillips described how he then began beating Sheila and dragging her around the home. According to Phillips, this assault lasted between five and ten minutes. At the same time, he was becoming sexually aroused, Phillips recounted. According to Phillips, he could not bring himself to rape Sheila that day so he instead put Vaseline on his finger and digitally penetrated the girl. Phillips described how he returned to the kitchen like nothing had happened. When Evans returned home, she and Phillips discovered that Sheila had stopped breathing. They called for an ambulance and began performing CPR on Sheila, to no avail.

Phillips insisted throughout the interview that when he was physically abusing Sheila and sexually assaulting her it never occurred to him that what he was doing was wrong. Today, he attributes his inability to recognize the wrongfulness of those acts to his own abusive upbringing.

At the same time, Phillips referred several times during the interview to a nephew who was five years old when Sheila died. Immediately prior to Sheila's death, that nephew had come to Phillips and told Phillips that he had witnessed Evans hitting Sheila. According to Phillips he became alarmed by this news. When asked by the Board why the news alarmed him, Phillips vacillated between two explanations. His first explanation was that he regretted that the boy had to witness the abuse, given what Phillips himself had endured as a child. His less noble, alternative explanation for his concern was that he did not want the authorities and his father to learn what his nephew knew. Phillips explained that if his father learned that Sheila was being physically abused, he would in turn assault Phillips. According to Phillips, that concern was well justified. He described how, on the day Sheila died, his father hit him in the mouth and told Phillips that, if he was involved in the child's death, he should receive the maximum penalty. Today, Phillips wishes that his nephew had in fact disclosed what he knew. If he had, Sheila might be alive today, Phillips mused.

Phillips described how he was first interviewed by the police on the day Sheila died. Phillips initially related to police the information that his nephew provided to him about Evans physically assaulting Sheila. Several days later, Phillips confessed his involvement in Sheila's death to police.

Chair Mausser next permitted each of the other Board members to pose questions to Phillips. Phillips was asked about institutional programs completed during his incarceration. Phillips responded that he obtained his GED, tutored, performed community service, and completed several programs, including Anger Management, Stress Management, and Commitment to

Change, among others. He also recited his job history. Phillips noted that he was the first inmate baptized at the Ohio State Penitentiary and is currently a deacon in the prison church. Phillips described his love of art and noted that he is currently an art instructor.

When asked if Sheila's sister, Sara, was ever targeted by him or Evans, Phillips responded in the negative, stating that Sheila was always the exclusive target of abuse. Phillips could not explain why Sara was spared the abuse that her sister suffered, noting only that he never had a thought of hurting Sara.

Phillips was asked about his contact with the two children that he fathered with Evans and her sister. Phillips indicated that he was contacted once by the daughter he conceived with Evans's sister. After exchanging letters, there was no further interaction between the two. After Phillips came to prison, Phillips's family attempted to locate the son that Phillips conceived with Evans, Ronald Jr., of whom authorities denied custody to the Phillipses' after Sheila's death. Phillips's family was never able to locate him. Phillips denied any contact whatsoever with Evans or her sister during his incarceration.

Phillips stated that he has maintained contact with some of his siblings. He is visited by his mother and a younger sister, and several ministers regularly visit him. He also has several pen pals.

Phillips was asked to reconcile his relatively poor institutional conduct, some of which was quite recent, with his insistence during the interview that he is a changed person with redeemable qualities. Phillips insisted that, notwithstanding that institutional record, he has in fact changed. Phillips stated that, were his sentence commuted to life without parole, he would have no difficulty adjusting to general population. Phillips credits the program Kairos, which he completed in August of this year, as the primary impetus for his positive change, as it helped him overcome his pride.

When asked whether he received a fair trial, Phillips responded in the negative. Phillips stated he lost trust in his attorneys during his prosecution and that his communication with them was poor. Phillips believes that because that communication was poor, he was never able to open up with his attorneys about the full extent of the abuse he suffered as a child. According to Phillips, his attorneys did nothing to help him overcome the shame he felt about raping a child and of being a child rape victim himself.

Phillips briefly discussed a suicide note that he wrote the night before he confessed to killing Sheila. He cannot today remember the contents of the note; however, he does remember indicating in the note that he intended to take his own life. Phillips noted that he attempted suicide in the county jail during his initial processing. According to Phillips, he was attempting to end the nightmare that was unfolding. He viewed suicide as an easy way out.

As the interview concluded, Phillips stated that he would like to have his sentence commuted to life without the possibility of parole. Though Phillips believes that he would someday be safe to release onto parole supervision, he believes that he should remain in prison for the balance of his life because prison is where he would be best positioned to help others.

Chair Mausser thanked Phillips for his participation and concluded the interview.

ARGUMENTS IN SUPPORT OF CLEMENCY:

At the hearing held on October 16, 2013, Phillips's attorneys, Timothy Sweeney, Gregory Hoover, and Lisa Lagos presented arguments in support of clemency supplementing the written application previously received.

Phillips's attorneys presented several arguments in support of clemency, all of which were interrelated. First, they argued that records of the Summit County Children Services Board (CSB) demonstrate that Phillips grew up in an abusive, dysfunctional environment. Second, Phillips's attorneys argued that Phillips became a product of the abusive, dysfunctional environment in which he was raised and that directly resulted in his abusing the victim, Sheila Marie Evans. Because of the way in which Phillips was raised, Phillips developed a disabling personality disorder that prevented him from perceiving his environment and responding to it rationally. He came to view violence and abuse as normal. Third, Phillips's attorneys argued that Phillips's trial counsel was ineffective in failing to investigate Phillips's childhood and to present his childhood abuse to the jury as mitigation evidence. That missed opportunity is critical because notes from the jury deliberations indicate that at least one of Phillips's jurors favored a sentence other than death. Lastly, Phillips's attorneys argued that Phillips has changed in positive ways since coming to prison and that his life is therefore worth sparing.

Argument #1: Phillips Grew up in an Abusive Environment

Lagos argued that Phillips grew up in a "house of hell." According to Lagos, Phillips was routinely abused, both verbally and physically. After beating Phillips, his father would laugh at the resulting bruises. Lagos stated that Phillips's father began anally raping him when he was four years old. A paternal cousin later raped Phillips when Phillips was seven. Both of Phillips's parents would routinely denigrate him, telling him that he was nothing.

Lagos described Phillips and his siblings as malnourished growing up. The children were regularly absent from school. The home conditions were extremely dirty. Lagos indicated that the floors of the family home were constantly covered in dog feces. All of the children were exposed to lead. The home itself was situated in a high-crime neighborhood. Other families used the home as a boarding house, resulting in overcrowding.

Lagos described how CSB was repeatedly involved with the Phillips family during Phillips's childhood and beyond. Lagos reported 17 separate contacts by CSB with the Phillips family. She described how CSB investigated Phillips's parents as a possible placement for Phillips's son, Ronald Jr. ("Rocco"), after Phillips and Rocco's mother, Evans, were sent to prison. In the end, CSB determined that Phillips's parents would not be an appropriate placement for Rocco due to CSB's repeated past involvement with the Phillips family, which Lagos then described in detail.

CSB's first contact with Phillips's family occurred in 1976 when he was only three years old. CSB was referred to the Phillips family after a family member reported that the family was living in deplorable conditions.

CSB was again referred to the Phillips family in 1978 when CSB received reports that the Phillips children were being physically abused and that the family was threatening neighbors. Phillips's father was hostile toward CSB investigators.

In May 1980, when Phillips was six years old, CSB again investigated the family, this time after receiving information that the children were being beaten and that the female children were not receiving necessary personal hygiene products. CSB was unable to substantiate any abuse, but CSB did note the children's poor appearance and the dirty conditions of the home.

In May 1981, Phillips's father admitted to hitting two of his children, Eddie and William Jr., with a belt. Phillips's father convinced Phillips's mother to refuse assistance from CSB. CSB notes that the family has a history of suspected child abuse in the form of physical punishment as well as neglect. CSB indicates, further, that there is limited evidence substantiating its suspicions.

By May of 1983, when Phillips was nine, there were two other families with a total of four children living in the Phillips home. Phillips's mother conceded to CSB that she had shown poor judgment in her interpersonal relationships and in her disciplining of the children.

In June 1983, CSB was again referred to the Phillips family following a report that Phillips's father was being mean to his oldest children and had punched his daughter, Tracy, in the face.

In September 1983, CSB again investigated the Phillips family, this time following allegations that the Phillips children were not being supervised and that Phillips's brother, Eddie, was afraid of his father and did not want to go home. CSB noted the deplorable conditions of the Phillips home, indicating that the home had cockroaches and was overcrowded. CSB also noted that there were other families living in the home, who were also CSB clients.

In October 1984, CSB investigated allegations that Phillips's father was pulling the children's hair and may have been molesting Phillips's sister, Mary.

The following year, in March, CSB received information that Phillips's sister, Tracy, who is developmentally disabled, was beaten by her mother with a broomstick. Tracy sustained physical injuries, leading her mother to confess to beating the girl.

In April 1988, when Phillips was 14, CSB removed him and his siblings from the home after the home was raided for drugs and authorities found weapons in the home. Phillips was temporarily placed with family that lived down the street from the Phillips home. Phillips's mother was sentenced to one year in prison for selling Ritalin that had been prescribed to the children. CSB noted that the home was filthy and in need of repairs. Once again, Phillips's father was verbally abusive toward CSB caseworkers. Lagos noted that, despite CSB's repeated involvement with the Phillips family, this was the first and only time that Phillips and his siblings were physically removed from the home.

In November 1988, CSB received a complaint that the Phillips children were wild and were beating other children. Phillips's brother, Eric, had been expelled from school for threatening

a teacher with bodily harm. Phillips's father once again responded angrily to CSB's involvement in the family's affairs.

Several years later, in November 1992, an adult parole officer assessed the Phillips's home as uninhabitable for human beings. He expressed concern for the children residing in the home and placed a call to the health department to inquire whether the home could be condemned.

In January 1993, CSB received information that Phillips's grandchildren may have been sexually abused by their cousins and that Phillips's father may have molested his son, Eric, and daughter, Tanya. Phillips's father responded angrily when questioned about the alleged abuse.

Lagos conceded that many of the claims investigated by CSB were never substantiated. Those claims went unsubstantiated, Lagos argued, because the family lived under a strict code of silence and a culture of denial. Phillips's parents, particularly his father, responded to CSB's interventions with hostility and stonewalling. The children were taught to distrust CSB and other outsiders.

Lagos argued that the credibility of CSB's observations was beyond question. She noted that the deplorable conditions described in the CSB reports were objective, real-time observations made by caseworkers committed to helping Phillips and his siblings.

Phillips's attorneys showed a videotaped interview they conducted with his mother, Donna Phillips. Lagos informed the Board that Phillips's mother was unable to personally appear before the Board due to mobility and other health issues. Lagos further noted that Phillips's siblings, William Jr. and Tanya, were available but were not comfortable discussing the abuse that occurred in their home. Lagos argued that they are still suffering under the Phillips family code of silence.

In her videotaped statement, Phillips's mother noted that Phillips's father was killed by a drunk driver on December 29, 2009. She has tried to keep the family together since. She indicated that she visits Phillips regularly, but it has become more difficult since he was transferred to the Chillicothe Correctional Institution. Phillips's mother noted that she is currently on dialysis. She next described how she had tried to get custody of Rocco after Phillips and Evans were sent to prison. According to her, she was denied custody because CSB wished to keep Rocco together with his half-sister, Sara, and the Evans family would not want Sara living with the Phillips family.

Phillips's mother described the sexual abuse that he suffered at the hands of his cousin when he was seven years old. The cousin was a teenager at the time and was residing in the Phillipses' home, she related. After learning of the abuse, Phillips's father removed the cousin from the home, but no one reported the abuse to the police. After his cousin abused him, Phillips became withdrawn, his mother reported.

Phillips's mother described how her son has changed during his incarceration. She described how he is heavily involved in the prison ministry. He has grown and is more mature. He is older now and has better judgment, she insisted. Phillips's mother asked that the Board and the Governor spare her son's life.

Lagos next played a videotaped interview that Phillips's attorneys conducted with Phillips's step-sister, Mary Phillips. Lagos told the Board that Mary Phillips was appearing via video statement because she was not comfortable discussing the painful memories of her childhood in person. Mary Phillips noted that she and Phillips shared the same mother and grew up in the same household. She stated that Phillips's father sexually abused her and her sister, Tanya. Tanya was forced to have a hysterectomy as a result of the abuse, Mary Phillips related. Phillips knew what was happening to his sisters.

Mary Phillips further reported that, throughout his childhood, Phillips's parents repeatedly told Phillips that he was no good and would never amount to anything. Her brother largely kept to himself in his room, building model cars. She described Phillips as the brightest of the children. He tried to avoid conflict.

Mary Phillips described the neighborhood in which she and Phillips were raised. According to her, the conditions were deplorable. Prostitutes solicited their clients directly under the kids' bedroom windows. The ground immediately outside of the home was littered with condoms. A girl in a neighboring home was forced to have intercourse with a dog. People in the neighborhood fought each other with knives. According to Mary Phillips, the police were largely unresponsive to calls from her neighborhood because they were afraid to respond.

Inside the home, she and her siblings were subjected to never-ending physical abuse, Mary Phillips recounted. The kids were forced to continually clean the home and were beaten if they did not comply. They were confined in the house like prisoners. Mary Phillips was not allowed to have a relationship with her natural father, she related.

There were many pets in the home, which were treated better than the children, Mary Phillips claimed. Phillips's father made the children remove his boots for him when he returned from work. He would routinely force the children to strip completely naked before whipping them. He would break dishes over their heads. She was afraid to return home from school, Mary Phillips remembered. Her mother went along with the abuse because she, like the children, was afraid of Phillips's father. Everyone lied to CSB. Some of her siblings would run away from home, but she did not for fear of the repercussions. She would sit in school afraid to go home. According to Mary Phillips, the childhood home she shared with Phillips was a "house of hell."

Mary Phillips described Evans as an easily agitated woman who lacked maternal instincts. Evans would have to be told when her children needed changed, for instance. Evans's children would run around unsupervised, Mary Phillips recounted.

Mary Phillips asked that the Board and the Governor spare her brother's life. He was young when he committed the crime, she insisted. She sees considerable change in her brother since he was committed to prison, noting her brother's involvement in the prison ministry. Mary Phillips partially blames herself for her brother's current situation. She believes that if she had spoken out earlier in her life, her brother might not have killed Sheila. Phillips was adapted to the abusive environment in which he was raised, she stated.

Lagos noted that none of the information that Mary Phillips shared in her videotaped presentation was heard by Phillips's jury. Phillips's trial counsel never asked Mary Phillips to testify. Had she been asked, she would have testified, Lagos indicated.

Lagos stated that Phillips's brother, William Jr., has picked up where his father left off, bullying his siblings Eddie and Tracy into canceling their scheduled interviews with Phillips's attorneys. Lagos pointed to affidavits from Eddie and Tracy wherein they describe their childhood home as abusive and sexually deviant. As further evidence of the far reaching effects of their dysfunctional upbringing, Lagos noted that Tracy's son currently faces charges for complicity to commit murder. The fact that Phillips's mother believes to this day that CSB denied her custody of Rocco in order to keep him together with his sister demonstrates the depth of the family's culture of denial, Lagos observed.

Argument #2: Phillips Became a Product of His Environment

Sweeney introduced Dr. Daniel Davis, a board-certified psychologist, who appeared in person for the clemency hearing. Davis noted that he became involved in Phillips's case in September 2013 and recently evaluated Phillips on October 4, 2013. That evaluation lasted four hours, and the findings from that examination are contained in a written report that has been submitted to the Board. Davis stated that his report is based upon 17 different sources of information, including Department of Rehabilitation and Correction mental health records, CSB records, educational records, prior psychological evaluations, and affidavits from Phillips's family members. Davis stressed that when conducting a forensic psychological examination, one needs as much information as possible. Information from sources external to the individual under examination is imperative, Davis insisted. Use of external sources is standard practice in the psychology profession, he related.

Davis stated that any behavior has to be viewed in the context of the actor's individual development. In Phillips's case, Phillips grew up in an environment of extreme psychosocial dysfunction. Davis noted that, in his 30 years of professional experience, he has been exposed to many individuals' backgrounds. Davis said he was struck by the intensity and multiplicity of abuse, chaos, and dysfunction in Phillips's background, which was among the worst he has seen.

Davis stressed that the environment in which Phillips was raised affected how he perceived the world into adulthood. Phillips grew up in an environment in which criminal activity, sexual deviancy, and physical abuse were not only acceptable but were the norm and shaped how he interacted with the world. The pro-social influences in Phillips's life, including his schooling, were insufficient to overcome what he was seeing and internalizing in the home. The fact that his family distrusted outside influences minimized the potential impact of those outside influences even further. Most of Phillips's role models were from his dysfunctional home environment, Davis noted.

The trauma that Phillips suffered as a child distorted his psychological development, Davis argued. Phillips was the victim of circumstances that he could not control. When children suffer the types of abuses that Phillips suffered, they tend to blame themselves because children are, by nature, egocentric. A child's abusive environment thus becomes incorporated into the child's conception of who he or she is as an individual. It certainly

colors how they see the world, Davis argued. In the end, someone who, like Phillips, is abused as a child is more likely to have an impaired ability to discern right from wrong, and to discern the normal from the abnormal. Abused children do not develop proper emotional controls. They can develop trust issues that make them defensive into adulthood.

Davis stressed the importance of Phillips's relative youth at the time of the offense. Davis opined that Phillips was not only young in terms of his chronological years, but also in terms of his psychological development. At the time of the offense, Phillips was functionally equivalent to an adolescent, Davis opined. Davis noted that Phillips was still living with his parents and had not yet completed high school, making him dependent upon his dysfunctional family. Davis pointed out that at 18 years old Phillips was still building models, a child's hobby. In short, Phillips was not an independently functioning adult.

Davis noted further that the human brain has yet to fully develop at the age of 19. It is not until the mid-20s that a person's brain is fully developed. One of the last areas of the brain to develop, Davis explained, is that part of the brain that controls executive functioning, which is the ability to reason, plan, and problem solve. With executive functioning underdeveloped, one is more likely to act out in impulsive and reckless ways. Davis noted that this understanding of the human brain's growth pattern developed some years after Phillips's trial in 1993.

Davis next addressed the fact that Phillips did not disclose childhood physical and sexual abuse until later in life. Davis noted that he typically views such late disclosures with a degree of skepticism. However, Phillips's psychological testing and his history of defensiveness are consistent with someone who discloses later in life, Davis opined. In addition, as a group, males are generally more hesitant to disclose sexual abuse than females. In short, Davis believes that Phillips is telling the truth when he claims to have been sexually abused as a child. However, Davis added, Phillips sustained so much psychological abuse as a child that Davis would conclude that Phillips's psychological development was impaired with or without the alleged sexual abuse in Phillips's history.

Davis emphasized the importance of the CSB records to understanding Phillips's childhood development. Davis suggested that the CSB records, which were not presented to Phillips's jury, could have been important mitigation evidence from the standpoint of helping the jury understand that Phillips's crime was the product of his upbringing and the psychological vulnerabilities that resulted from it. The records might have played a critical role in the jury's deliberations, Davis indicated.

Davis stressed that CSB's inability to substantiate many of the claims it investigated about the Phillips family is not unexpected. Every children services agency is limited in its ability to respond to all but the most obvious and egregious abuse. Moreover, it is common for abused children to lie to CSB for fear of retribution from their parents. Davis noted that CSB's frustration with its inability to respond to what it was seeing in the Phillips home is obvious from the records. According to Davis, CSB's refusal to place Rocco in the Phillipses' home speaks volumes about the conditions inside that home.

Davis addressed the fact that, despite the psychological trauma he experienced as a child, Phillips did not run afoul of the law before killing Sheila. According to Davis, the absence of

a prior criminal record is not surprising given that, throughout his childhood, Phillips coped with his abuse by withdrawing.

Davis indicated that he did not make any diagnoses in connection with his evaluation of Phillips. Davis noted that Phillips was previously diagnosed with mixed personality disorder with borderline and paranoid traits. Not everyone who is abused develops a personality disorder, Davis explained. However, among individuals with borderline personalities, one does see an elevated rate of child abuse, Davis continued.

Psychological conditions like that which Phillips has been diagnosed as having can be treated, Davis stated. Borderline personality disorder responds well to a combination of cognitive-behavioral therapy, social skills training, and stress reduction. Davis related that Phillips is open to the idea of treatment.

Davis identified a number of factors that, in his opinion, suggest a favorable prognosis for Phillips. Those factors include the fact that Phillips is growing older; has been able to adapt to the highly structured environment in which he finds himself; is not seriously mentally ill; and, though of low average intelligence, is sufficiently intelligent to benefit from counseling and to form a therapeutic bond with his counselors. Davis added that the fact that Phillips is now admitting to the physical and sexual abuse that he suffered as a child is another indicator that Phillips is maturing and experiencing positive growth.

Sweeney next played a videotaped presentation from Dr. Robert Smith, another psychologist. Smith had previously evaluated Phillips in 1995 and again in 2004. Smith stated that the most important information to come out of his evaluations was that Phillips grew up in an extremely dysfunctional environment, which included physical, sexual, and emotional abuse of Phillips and his siblings. According to Smith, Phillips's home environment affected his ability to form relationships and to distinguish between right and wrong. The structure and guidance that every child needs to develop normally were not provided in Phillips's childhood home.

Smith believes that Phillips was the victim of sexual abuse. Smith noted that Phillips's father was sexually inappropriate with several of the children. According to Smith, there is no reason to think that Phillips was spared similar abuse. Phillips's reluctance to disclose is not surprising to Smith. Phillips's fear of disclosure was consistent with his personality disorder. In fact, following his first evaluation of Phillips in 1995, Smith suspected that Phillips had been sexually abused notwithstanding Phillips's denials at that time. According to Smith, the immature defense mechanisms Phillips was relying upon in 1995—namely, avoidance and minimization—were indicative of prior sexual abuse.

Smith stated that individuals who, like Phillips, have personality disorders typically have horrific backgrounds. Phillips's abuse was particularly traumatic in its effects because it began when Phillips was young and was repeated over a period of years, Smith explained. Exacerbating the situation was the fact that Phillips was trapped in a chaotic environment that provided no escape from the abuse. The result is that Phillips grew up a confused, ashamed, angry, and guilt-ridden individual.

Smith acknowledged that Phillips's siblings, while routinely running afoul of the law, never committed the kind of heinous crime that Phillips committed. Smith explained that each person in a family is unique with individual skills and abilities. With his low IQ, Phillips may not have had the same verbal, intellectual, and coping skills that others, including his siblings, had. There are a number of other factors that could explain the disparity in criminal offending, including the age at which the sexual abuse began, Smith explained. Abusive behavior toward a 4 year old is going to affect the victim differently than it would a victim who is, say, 12 years old when the abuse begins. Lastly, Smith explained, everyone experiences different "resilient events," which intervene in a person's life as positive influences. Positive mentors are one example of such intervening events. In sum, siblings may have similar experiences, but they are never identical, Smith noted.

Smith stated that someone who, like Phillips, has a personality disorder with borderline and paranoid features is unable to trust others. They tend to gravitate to others with personality disorders, where they find symbiosis in the mutual dysfunction. This is why Phillips formed a relationship with Evans, Smith suggested. To someone like Phillips, abusing Sheila was not something that would be clearly wrong in his mind. Phillips's home life left him with no clear conception of right and wrong. Evans's own problems with sexual boundaries exacerbated the situation, Smith opined.

Like Dr. Davis, Smith stressed that Phillips was young and immature when he killed Sheila. While not mentally retarded, Phillips had significant limitations. Phillips was operating under the weight of a personality disorder for which there had never been a diagnosis no less a clinical intervention.

Smith believes that Phillips's prognosis is good. Phillips has had a lot of time to mature. Phillips has been helped by his time served in a structured environment without the dysfunction that characterized his childhood home. Phillips has become involved in a Christian group, Smith observed. The importance of Phillips's involvement with this group is not that Phillips has found religion, but rather that he has finally found associations that he trusts and with whom he is comfortable. Those kinds of pro-social associations are an important component to the recovery of someone who grew up in Phillips's circumstances, Smith argued. New associations serve to challenge the preexisting, distorted belief system that the person developed during childhood, replacing it with a new set of alternative values and beliefs. Smith also noted that Phillips has developed good relationships with the members of his legal team. All of those positive social interactions suggest that Phillips would adapt well to life in general population were his sentence commuted.

With adequate structure, stability, and interaction with trusted individuals, a person with a personality disorder can begin to share things they never shared before. This is why Phillips has recently begun disclosing his sexual abuse, Smith added.

Smith is surprised that Phillips's trial attorneys did not present the CSB records to the jury in mitigation. According to Smith, those CSB records are some of the most valuable pieces of mitigation available because of the true picture they paint of the offender's background. The records contain observations made in real time by caseworkers who are generally very credible and compassionate individuals, Smith observed. Smith noted that CSB's refusal to place Rocco in the Phillipses' home is evidence of that home's dysfunction.

Argument #3: Phillips's Trial Attorneys Were Ineffective

Sweeney argued that Phillips's trial attorneys, Kerry O'Brien and Michael Edminister, provided ineffective representation to Phillips by failing to fully investigate the CSB records and present them to the jury during the mitigation phase of Phillips's trial. Sweeney stressed that none of the mitigation being presented today was ever presented to the jury. According to Sweeney, O'Brien and Edminister should have known that the bedrock issue in Phillips's trial was going to be mitigation rather than Phillips's guilt or innocence. That makes their disregard of the CSB records all the more troubling, Sweeney contended. Without the CSB records, Phillips's jury could not have reached a reasoned, moral judgment as to whether Phillips is deserving of death. In Sweeney's opinion, that constitutes a complete breakdown of the criminal justice system.

Sweeney noted that, prior to Phillips's trial, Edminister had never been involved in the mitigation phase of a capital trial. According to Sweeney, trial counsel's investigator for the mitigation phase, Gerry Schultz, was completely inadequate. Schultz was a former police officer who specialized in accident reconstruction. According to Sweeney, Schultz added nothing of value to the case. Schultz did not begin his investigation until six days before trial commenced. Schultz's investigation commenced with a meeting between Schultz and Phillips at the county jail. According to Sweeney, it is not surprising that Phillips, who was generally paranoid and especially suspicious of authority figures, did not share his history of abuse with Schultz, a former police officer. In addition to the inexperience of Edminister and Schultz, the case was frustrated by the limited funds available to trial counsel. The trial court approved only \$500 for mitigation investigation.

Sweeney noted that in preparation for the mitigation phase, Edminister had approached CSB and learned that records existed in connection with Phillips's family. Edminister made a note in his files that read, "Very important file for mitigation purposes!!". Yet neither Edminister nor O'Brien ever obtained the CSB records, Sweeney related.

Sweeney pointed out that O'Brien testified during Phillips's federal habeas proceedings that he did not pursue childhood abuse as a mitigation strategy because Phillips was denying to him and others that he was ever abused. Sweeney urged that it was unreasonable for O'Brien to reject the abuse strategy simply because Phillips was denying any abuse. A 19-year-old child is not going to readily confess that he was sexually abused, Sweeney argued.

Sweeney suggested that the mitigation strategy pursued by O'Brien and Edminister—that Phillips was a good kid who had a bad day—was doomed to fail. It was a patent misrepresentation of Phillips's life. Clearly, Sheila's death was not the case of shaken baby syndrome gone awry that trial counsel attempted to portray it as, Sweeney argued. What the jury was looking for, Sweeney argued, was some viable explanation as to how Phillips could have come to do the heinous things that he did. The jury needed explanations like those provided by Drs. Davis and Smith during the clemency hearing. Yet trial counsel's psychologist, Dr. James Brown, offered nothing of the kind, Sweeney argued.

Sweeney noted that Edminister, who was leading the case on mitigation, had never even met Dr. Brown until the day of the trial. O'Brien had arranged for Brown's testimony without

Edminister's involvement. In short, O'Brien and Edminister lacked time, money, human resources, and cooperation from Phillips and his family. All of this, in addition to trial counsel's own missteps, frustrated the case in mitigation.

Sweeny argued that despite the weak case that trial counsel proffered in mitigation, notes made during the jury's deliberations, which Sweeney obtained from the court file, suggest that at least one juror was initially in favor of a sentence other than death. Sweeney speculated that this juror was likely struggling with the question of what in Phillips's background could lead him to kill Sheila in the way he did. Sweeney stressed that it would have taken only one juror to spare Phillips's life. One or more jurors, if properly informed of Phillips's tragic background, could have determined that Phillips deserved a sentence less than death, Sweeney argued. The existence today of the life without parole sentencing option, a sentencing option that did not exist when Phillips was tried, adds to the uncertainty that surrounds Phillips's death sentence, Hoover added.

Sweeney pointed out that one of the three federal appellate court judges who heard Phillips's appeal from the federal district court's denial of habeas corpus believed that Phillips's counsel was ineffective during the mitigation phase and that, if presented with the CSB records, at least one juror would have found that the aggravating circumstance did not outweigh the mitigation. Sweeney acknowledged that the two remaining judges (a majority of the panel) did in fact affirm the district court's denial of habeas corpus. However, Sweeney urged the Board to view that decision in the context of the case's legal posture. The two remaining judges ultimately denied Phillips relief not because they deemed trial counsel's performance effective, but rather because, in those judges' opinions, the Ohio Supreme Court did not act unreasonably when it previously concluded that Phillips was not prejudiced by trial counsel's performance. The federal court of appeals was hamstrung by a standard of appellate review that required it to show deference to the state supreme court on the issue of prejudice. A majority of the panel thus never even reached the question of whether trial counsel's performance was deficient, Sweeney argued.

Sweeney stressed to the Parole Board that it is not bound by the kinds of deferential standards of legal review that constrained the federal appellate court's analysis. He encouraged the Board to take a "fresh look" at trial counsel's performance in light of what we now know was contained in the CSB records.

Argument #4: Phillips Has Changed in Positive Ways Since Coming to Prison

Hoover stated that Phillips continues to grow and change as a person. Hoover displayed some of Phillips's art work for the Board, noting that art is one way in which Phillips believes that he can contribute to society. Phillips donates his art work to family, friends, and religious organizations. Art gives Phillips a sense of identity. It gives value to Phillips's life, Hoover explained.

Hoover reiterated that Phillips has become a very religious person. That fact is important because Phillips is now surrounded by a group of people whom he trusts, Hoover argued. According to Hoover, Phillips is committed to learning more about religion and continuing to grow.

Hoover played a videotaped statement from Roberta Gray, Phillips's friend and spiritual advisor. Gray first met Phillips in 2009 during Christian Christmas services at the Ohio State Penitentiary. Since then, Phillips has continuously attended services conducted by Gray's prison ministry. Gray reported that Phillips has always been respectful and polite during their interactions. She described Phillips as repentant and compassionate. Gray believes that Phillips is a person of character, whom she considers a brother and friend. Gray asked that Phillips's life be spared so that he can continue to spread the word of God.

The Board next heard from Jim Cole, another of Phillips's friends and spiritual advisors. Cole appeared in person. Cole has known Phillips since 2009. Cole reported that he has spent many hours with Phillips discussing his childhood, crime, and conversion to God, which Cole believes is genuine. Cole urged the Board not to view Phillips's crime in a vacuum but to instead view it in the context of how Phillips was raised and the man he has become. Phillips is not unredeemable, Cole insisted. Phillips's remorse is genuine. To execute Phillips, Cole argued, would be to execute a killer who no longer exists. Cole asked that the Board and Governor give Phillips, a damaged but redeemed man, an opportunity to positively influence the lives of other inmates.

Phillips's attorneys concluded their presentation by asking that the Parole Board grant Phillips's request that his sentence be commuted to life without the possibility of parole.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Brad Gessner, Summit County Assistant Prosecuting Attorney, and Brenda Leikala from the Ohio Attorney General's Office presented arguments in opposition to clemency.

Gessner stated that, following what was a lengthy presentation by Phillips's attorneys, he wanted to focus the Board's attention on the most important aspect of this case—namely, that the victim in the case is an innocent three-year-old child. Gessner observed that when Sheila was killed she was just beginning to reach the age where she could begin to make friends and to begin doing things independently of her parents, such as attending preschool. Sheila never had the opportunity to take up art, Phillips's beloved pastime. Sheila never had the opportunity to do those things, Gessner observed, because her life was ended by Phillips, a man who Gessner believes is a monster.

Gessner recounted how Sheila was beaten to death over a period of several days. He noted that Sheila had defensive bruises on her arms, which are indicative of the child fighting for her life. The first day Phillips anally raped Sheila was like a Christmas present to Phillips, Gessner observed. The jury found beyond a reasonable doubt that Phillips again raped Sheila on the day she died, Gessner stressed.

Gessner argued that trial counsel's decision not to introduce the CSB records during mitigation was a reasonable strategy. From Edminister's testimony during the habeas corpus proceedings, we know that trial counsel's initial strategy was to prove that Phillips had not raped Sheila with his penis on the morning of her death but had only digitally penetrated her. If counsel could disprove penile rape, Gessner explained, the capital specification of killing Sheila in the commission of a rape would no longer apply and Phillips would be spared the death penalty. Had Edminister and O'Brien been successful on that front, we would not be

gathered for a death penalty clemency hearing today, Gessner observed. Trial counsel's strategy was focused on defeating the death sentence at the guilt phase, rather than the mitigation phase, of trial.

The potential role Phillips's upbringing played in his crime was by no means lost upon Edminister and O'Brien, Gessner argued. In fact, that issue was a matter of public discussion. Gessner called the Board's attention to several newspaper articles from the time of the trial that made reference to allegations of abuse within the Phillips family and that raised the question of whether it led to Phillips's crime. Edminister did review all of the CSB records, though he was not allowed to take possession of them, Gessner stated.

Gessner urged the Board to consider the CSB records in context. Viewed in context, the records paint a picture quite different from that painted by Phillips's attorneys, Gessner argued.

According to Gessner, the CSB records paint the picture of a family living as they have chosen to live, content in the home's conditions. In any event, conditions may not have been as dire as Phillips's attorneys make them seem. Though the Phillipses' home was allegedly on the verge of condemnation twenty years ago, Phillips's mother still resides in that home and, in fact, provided her videotaped statement from that same home, Gessner observed.

Furthermore, there are indications in the CSB caseworkers' notes that Phillips's family, including his parents, had redeeming qualities. Phillips's mother is described by caseworkers as caring about her children and having compassion for them. According to CSB records, three of the children, one of whom was Ronald Phillips, were once reduced to tears at the thought of leaving their mother to go away to camp. Multiple referrals from neighbors went unsubstantiated by CSB, Gessner pointed out. In addition, many of the CSB records pertain to alleged problems occurring in the home *after* Phillips's arrest.

Though Phillips's father was sometimes belligerent toward caseworkers, Phillips's parents did follow caseworkers' instructions. For instance, Phillips's mother stopped taking in boarders after being advised by CSB to cease opening her home to others. Likewise, the family would make efforts to clean the home and to make necessary repairs when instructed to do so. After Phillips's mother went to prison, necessary improvements were made to the home so that the children could be returned to it. In short, every time CSB investigated the Phillips, the agency received a positive response from the family.

Most importantly, Gessner stressed, there is nothing in the CSB records that reference any abuse or threats of harm to Phillips himself. Given that the records make no reference to Phillips himself, given the absence of substantiation in the CSB reports, and given the positive statements about the Phillips family scattered throughout the records, it is readily apparent why trial counsel withheld the CSB records during the mitigation phase, Gessner argued. That was a rational strategic decision, Gessner suggested.

Strategy drives attorneys' choices, Gessner argued. Gessner pointed to Sweeney's decision to present statements from Phillips's mother via a videotaped interview rather than a live presentation at the clemency hearing. That, Gessner argued, is an example of strategy. Had Phillips's mother appeared before the Board, the Board might have asked her to refute or

substantiate the claim that her children were sexually abused by their father, Gessner observed. Not surprisingly, Sweeney chose not to pose that question to her during her videotaped interview. All of that is strategy, Gessner stressed. Gessner asked, rhetorically, whether it is fair that Phillips's current attorneys should be permitted to act strategically, but Phillips's trial attorneys could not.

Gessner and Leikala discounted the significance of the juror notes proffered by Phillips's attorneys as proof that at least one juror was initially in favor of a sentence less than death. Gessner and Leikala noted that there is no way of knowing if those notes were made during the jury's deliberations or sometime thereafter. For that matter, Leikala observed, there is no way of knowing if the notes were produced during Phillips's trial or were produced during someone else's trial, accidentally finding their way into Phillips's case file. Nothing authenticates the notes as being what Phillips's attorneys purport them to be, Gessner and Leikala urged.

Gessner argued that Phillips never showed any signs of impaired psychological development during his childhood. Phillips's school records show that he was sometimes in counseling and sometimes in remedial classes. He progressed to the point where he no longer needed remedial education. He was rarely involved in fights. The one time Phillips was suspended from school, Gessner related, was after he got into a fight with his high school sweetheart, who had learned that Phillips was involved with Evans, a woman seven years Phillips's senior whom he met at a party. Phillips was hardly the recluse that his attorneys described, hiding in his room building models, Gessner observed. Phillips was clearly not an antisocial individual.

Gessner expressed skepticism about the timing of Phillips's disclosures that he was abused as a child, noting that Phillips only began disclosing abuse as his legal situation became increasingly dire. Meanwhile, the psychologist hired by his attorneys, Dr. Smith, was laying the foundation for his present claims long before Phillips disclosed any abuse.

Gessner noted that Phillips never disclosed any abuse during his trial. If ever there was a time to disclose the abuse it would have been when Phillips was pleading with the jury for his life, yet he said nothing, Leikala observed. Following his trial, in 1995, Phillips was referred to Dr. Smith, at which time Phillips disclosed no abuse, sexual or otherwise. Despite the fact that Phillips disclosed no abuse to Smith, Smith's report concludes that Phillips was sexually abused. In 2004, Phillips was again referred to Smith, at which time Phillips tells Smith he is "prepared to share openly about his childhood and his family." Yet, during that 2004 evaluation, Phillips disclosed physical abuse but no sexual abuse. The first psychologist to whom Phillips discloses sexual abuse is Dr. Davis, who examined Phillips on October 4, 2013, two days after he was interviewed by the Parole Board. The timing of the disclosures, Gessner argued, is highly suspect.

Gessner reminded the Board of Davis's admonition that it is very important for psychologists to substantiate their client's claims through external sources of information. However, Davis fails to heed his own advice, Gessner observed, because there are no external sources substantiating Phillips's claims of childhood sexual abuse. The first time allegations of sexual abuse appear in any official report is Davis's own psychological report, dated October

4, 2013. Nowhere in the CSB records or anywhere else, is there any indication that Phillips was the victim of sexual abuse.

Gessner stated that after Phillips disclosed during his clemency interview that he had fathered a child with Evans's sister, Mary Evans, Gessner investigated further. Gessner learned that Evans's sister was just 15 years old when Phillips impregnated her. Mary Evans reported to Gessner that Phillips had raped her on several occasions and that the child was conceived during one of those rapes. Mary Evans also reported that, each time Phillips sexually assaulted her, Phillips threatened to hurt her or her family if she reported the rape. Gessner noted that even if consensual, given their age difference, Phillips's sexual encounters with Mary Evans would have constituted statutory rape.

Phillips himself did not learn that he fathered a child with Mary Evans until she filed for support in Florida, triggering a paternity test. By that time, Phillips was already incarcerated. Gessner also learned that the daughter Phillips conceived with Mary Evans did not initiate contact with Phillips, as Phillips alleged during the clemency interview. Rather, Phillips initiated contact with his daughter by writing *to her*. His daughter responded with a letter of her own, asking Phillips not to contact her anymore.

Gessner briefly addressed the argument made by Phillips's attorneys in their written application for clemency challenging the credibility of Dr. William Cox, the Summit County Coroner who testified at Phillips's trial that, in his opinion, Phillips raped Sheila with his penis on the day she died. The clemency application suggests that Cox may have been biased in favor of the prosecution because, at the time of trial, Cox was pursuing a private business venture for which he needed the assistance of the Summit County Prosecutor. Gessner refuted that allegation, insisting that there is no connection between Cox's medical opinion on the question of rape and Cox's business plans.

Gessner also addressed Evans's role in the crime, noting that there is no evidence that her involvement extended beyond failing to have Sheila treated for the injuries that Phillips inflicted upon her. There is no evidence that Evans offered Phillips money to rape Sheila or otherwise participated in the rapes, as Phillips alleges.

Leikala challenged the contention advanced by Phillips's attorneys that he accepts full responsibility for his crime. Leikala noted that, were Phillips accepting full responsibility, he would not now be arguing that he is a product of his environment, blaming his parents, denying that he raped Sheila on the day she died, or blaming Evans for encouraging the rapes.

Gessner observed that this case is as sad as they get. The acts committed against Sheila, a small child, constituted the worst form of capital murder. There is nothing in the record that mitigates, excuses, or justifies Phillips's conduct, Gessner argued.

Gessner noted that the community was deeply affected by Sheila's murder. He described how, in 1993, the county established Operation Teddy Bear in Sheila's memory, which is a program that makes teddy bears available to police and CSB caseworkers to distribute to children who have experienced traumatic events.

Gessner and Leikala concluded the State's presentation by asking that the Board recommend to the Governor that clemency be denied.

VICTIM'S REPRESENTATIVES:

Kim Lloyd, a friend of the victim's family, and Donna Hudson, the victim's aunt, read several letters written by members of the victim's family and by friends of the victim's family. Copies of the letters are attached.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Ohio Parole Board conducted an exhaustive review of the documentary submissions and carefully considered the information presented at the clemency hearing. The Board reached a unanimous decision to provide an unfavorable recommendation regarding clemency based on the following:

- Phillips's crime is clearly among the worst of the worst capital crimes. Its depravity is self-evident. The victim is an innocent three-year-old child whom Phillips used to sexually gratify himself, repeatedly sodomizing the child. As if subjecting the child to those vile sex acts were not enough, Phillips also brutally beat the child, repeatedly hitting her, throwing her, and dragging her by her hair. Words cannot convey the barbarity of the crime. It is simply unconscionable.
- Clearly, Phillips was raised in a dysfunctional environment. CSB's repeated involvement with the Phillips family and his mother's drug conviction substantiate that much. Whether Phillips was physically abused and, if so, the nature and extent of that abuse is less clear. There is a dearth of objective evidence substantiating Phillips's abuse claim. The fact that Phillips has only recently begun alleging sexual abuse certainly casts doubt upon the veracity of that allegation. The CSB records are the most credible source of information available about Phillips's childhood, but they reveal little about Phillips himself, focusing instead upon Phillips's siblings and the physical conditions of the family home. In the end, what the CSB records do reveal about *Phillips's* childhood, dysfunctional as it was, neither explains nor excuses his horrendous crime.
- The Board is not persuaded that Phillips fully accepts responsibility for his crime and has positively changed since coming to prison. Though Phillips stated during the clemency interview that he accepts responsibility for Sheila's death, he also spent much of that interview attempting to foist responsibility for Sheila's death onto one or another person, including two individuals who are now deceased: Evans, who he alleges initiated the abuse, and his father, who supposedly laid the foundation for it by psychologically damaging Phillips. Moreover, Phillips's poor institutional conduct belies the contention that he has positively changed since coming to prison. It is particularly troubling that Phillips's institutional conduct has been consistently poor throughout his incarceration, showing no signs of positive progression.

- The Board is not persuaded that trial counsel's failure to rely upon CSB's records during the mitigation phase of the trial constituted ineffective assistance of counsel. The effectiveness of Phillips's trial counsel has been extensively litigated in the courts, all of which have refused to overturn his death sentence on that ground. Beyond that, the Board cannot conclude with any degree of confidence that the outcome of Phillips's trial would have been different had those records been provided to the jury.

RECOMMENDATION:

The Ohio Parole Board with eleven (11) members participating, by a vote of eleven (11) to zero (0), recommends to the Honorable John R. Kasich, Governor of the State of Ohio, that Executive clemency be denied in the case of Ronald Phillips.

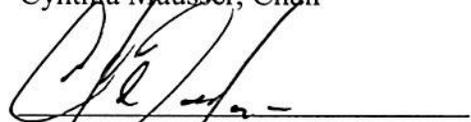
Adult Parole Authority

Ohio Parole Board Members
Voting **Favorable**

Ohio Parole Board Members
Voting **Unfavorable**



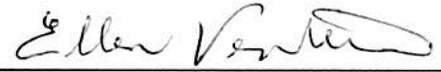
Cynthia Mausser, Chair



Andre Imbrogho, Vice Chair



Kathleen Kovach



Ellen Venters



R.F. Rauschenberg



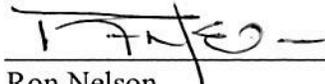
Trayce Thalheimer



Richard Cholar Jr.



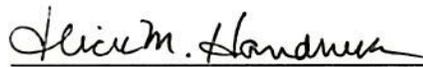
Marc Houk



Ron Nelson



Michael H. Jackson



Alicia Handwerk