

DATE TYPED: December 20, 2011
DATE PUBLISHED: December 21, 2011

IN RE: CHARLES LORRAINE, OSP #A194-013

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

Date of Meeting: December 13, 2011

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: Charles Lorraine, OSP #A194-013

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with death penalty specifications (2 counts), Aggravated Burglary (2 counts).
* Also convicted and serving a sentence in 85CR233 for Complicity to Burglary (3 counts) and Robbery.

DATE, PLACE OF CRIME: May 6, 1986 in Warren, Ohio

COUNTY: Trumbull

CASE NUMBER: 86CR182

VICTIM: Raymond Montgomery, age 77
Doris Montgomery, age 80

INDICTMENT: Counts 1 - 4: Aggravated Murder with 2 death penalty specifications; Counts 5 & 6: Aggravated Burglary.

TRIAL: November 19, 1986: Found guilty by Jury as indicted. Thereafter counts 3-4 were removed from the jury by the court.

DATE OF SENTENCE: December 9, 1986

SENTENCE: Counts 1 & 2: DEATH
Counts 5 & 6: 10-25 years

ADMITTED TO INSTITUTION: December 10, 1986

JAIL TIME CREDIT: 246 days

TIME SERVED: 25 years (does not include JTC)

AGE AT ADMISSION: 20 years old

CURRENT AGE: 45 years old

DATE OF BIRTH: October 12, 1966

JUDGE: Honorable Mitchell F. Shaker

PROSECUTING ATTORNEY: Prosecutor Dennis Watkins

CO-DEFENDANT: Perry Postlethwaite was indicted in 86-CR-185 for Obstruction of Justice and 2 counts of Aggravated Burglary. He pled guilty to 2 counts of Aggravated Burglary on 10/7/1986; the Obstruction of Justice count was dismissed. He was sentenced to 5-25 years. Postlethwaite was admitted on 12/23/1986, under inmate #R139426. He was granted parole on 11/1/1991 and received a final release on 5/4/1993.

FOREWORD:

Clemency in the case of Charles Lorraine, A194-013 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 November 29, 2011, Charles Lorraine was interviewed via video-conference by the Parole Board at the Ohio State Penitentiary. A Clemency Hearing was then held on December 13, 2011, with eight (8) members of the Ohio Parole Board participating. Arguments in support of and in opposition to clemency were then presented.

The Parole Board considered all of the written submissions, arguments, information disseminated by presenters at the hearing, as well as judicial decisions and deliberated upon the propriety of clemency in this case. With eight (8) members participating, the Board voted eight (8) 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 (86CR182): The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided June 16, 1993:

Raymond and Doris Montgomery, ages seventy-seven and eighty, were found stabbed to death in their home on May 6, 1986. That same day, applicant, Charles Lorraine, called the Warren Police Department. According to the detective he talked to, applicant asked whether he could obtain a lesser sentence on a burglary charge on which he had been found guilty and was awaiting sentence if he provided information concerning another crime. At the request of Warren Police Detective Howard Andrews, applicant went to the police station.

Soon after his arrival, applicant was read his rights and signed a waiver thereof. At this time he was not under arrest. After several hours of questioning, applicant admitted killing the Montgomerys. Applicant admitted on videotape that he had stabbed the victims to death. At trial, his statement was read to the jury:

“I knocked on the door, and Doris waved for me to come inside. The door was unlocked,

and I went in. Doris was laying [*sic*] in bed because she is partially paralyzed. Raymond was sitting on his bed which is in the dining room. I told Raymond that I left my necklace upstairs, and he went upstairs with me to look. When we got upstairs, Raymond was in front of me, and I took out the butcher knife from the back of my jeans, and I stabbed Raymond three times in the throat and chest. Raymond was gasping, and then he fell to the floor. I then went back down to the living room where Doris was in bed.”

“I stood behind Doris, and then I stabbed her about three times in the throat and chest. After I killed Doris, Perry [Postlethwaite] came up from the basement. Perry went upstairs and got Raymond's money from his wallet and came back down. I found about \$83.00 in Doris' sewing basket. Perry then went through a dresser and found a silver ring with diamonds. We then left and got into the stolen Cadillac and drove away. ”

According to the statement, after the murders applicant met friends at a local bar and bought them drinks with money taken from the victims. Applicant also stated that before he murdered the victims, he had burglarized another house in order to steal car keys and a car.

Perry Postlethwaite had pleaded guilty to two breaking and entering charges arising from his activity with applicant that night. Postlethwaite testified at applicant's trial that he had discussed with the prosecutor the effect his testimony could have on his sentence. Further, Postlethwaite testified that he had had no prior knowledge of the murders but that after the murders applicant called him to a local bar because he was buying. Applicant told Postlethwaite that he had killed two people. Postlethwaite testified that after the bar closed he accompanied applicant on his return to the Montgomery house and saw the body of Doris downstairs and that of Raymond upstairs. Postlethwaite testified that applicant ransacked the home and found more money, a gun, and other property.

Raymond's death was caused by stab wounds to the heart, the carotid artery, and the vena cava. Doris's death was caused by multiple stab wounds that produced hemorrhage and cardiac tamponade.

Applicant, nineteen at the time of the murders, was indicted on four counts of aggravated murder for the two murders. Each count contained two death penalty specifications: (1) that the offense was committed while applicant was committing aggravated burglary and the applicant was the principal offender in the murder; and (2) that the offense was part of a course of conduct involving the purposeful killing of two persons. He was also indicted on one count of aggravated burglary of the murder victims' home and another count of the home of Ruth Mercer (the burglary related to the car theft). All counts were tried together and applicant was convicted on all. The court of appeals affirmed his convictions and sentence of death.

PRIOR RECORD

Juvenile Offenses: Charles Lorraine has the following known juvenile arrest record:

<u>DATE</u>	<u>OFFENSE</u>	<u>LOCATION</u>	<u>DISPOSITION</u>
06/9/1981 (Age 14)	Delinquent/ Complicity to Burglary	Warren, Ohio	Plead True, costs, 3 days in J.J.C., placed on probation.
07/16/1981 (Age 14)	Delinquent/Criminal Trespass, Disorderly Conduct	Warren, Ohio	Plead Not True, set for contested hearing. 7/31/1981: case continued, released to parent under house arrest.
09/08/1981 (Age 14)	1. Unruly - Curfew 2. Unauthorized Use of Motor Vehicle 3. Aggravated Burglary 4. Theft	Warren, Ohio	1-3: Plead True, costs, Commitment to O.Y.C. suspended on condition of good behavior & restitution. 4. Dismissed
09/23/1981 (Age 14)	Delinquent/ Unauthorized Use of Motor Vehicle	Warren, Ohio	Detention hearing waived; Permanent commitment to Ohio Youth Commission; 12/17/1981: released; 2/2/1982: Order of 9/23/1981 Vacated and rescinded. Child placed in Wesley Group Home in Salem, Ohio.
1/14/1983 (Age 16)	Delinquent/ Breaking & Entering	Warren, Ohio	Plead True, costs, 30 days J.J.C. (5 days credit, serve 5 days, 20 days suspended on good behavior, to attend school regularly, placed on probation.
4/29/1983 (Age 16)	Delinquent/ Grand Theft, Burglary	Warren, Ohio	Plead True, Recommit to Dept. of Youth Services from 5/5/1983 to 7/12/1983; Early release granted with conditions of aftercare placement.
8/17/1983 (Age 16)	Delinquent/ Menacing	Warren, Ohio	Dismissed

10/4/1983 (Age 16)	Delinquent	Warren, Ohio	Failed to Appear, Warrant issued. See 12/30/1983 disposition.
12/30/1983 (Age 17)	Delinquent/ 1. Grand Theft 2. Escape 3. Conspiracy 4. Unauthorized Use Of Motor Vehicle 5. Criminal Trespass 6. Assault (2 counts) 7. Theft	Warren, Ohio	1-2: Plead True, recommit to Dept. of Youth Services; 3. Plead True, 10 days J.J.C. suspended; 4-7: Dismissed.
5/22/1984 (Age 17)	Early Release Hearing	Warren, Ohio	6/13/1984: Early release granted on condition of aftercare placement; 3/31/1985: Discharged from Dept. of Youth Services.

Adult Offenses: Charles Lorraine has the following known adult arrest record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
06/14/1985 (Age 18)	1. No Motor Cycle Endorsement; 2. Driving on Temporary Permit; 3. No Helmet	Warren, Ohio	1. \$10 fine & costs; 2. Unknown; 3. \$100 fine and costs.
06/28/1985 (Age 18)	Complicity to Burglary (3 counts), Robbery (85-CR-233)	Warren, Ohio	3/26/1986: 8-15 years; held in abeyance until 5/26/1986 & upon reporting to County Jail on 5/26/1986 original sentence of 8-15 years would be reduced to 3-15 years.

Details: During the month of June 1985, the applicant and codefendants Dwayne Gordan and Richard Lorraine, along with a juvenile accomplice, burglarized at least four (4) different residences where they ransacked rooms, stole cash, purses and their contents and other items of value. One subject would distract the victim at the front door, while the other subjects would enter or break into a back door and commit the thefts. In the robbery conviction, the applicant snatched a purse from under the arm of a 68 year old woman as she and her husband walked along the street.

05/6/1986 Aggravated Murder Warren, Ohio INSTANT OFFENSE
(Age 19) (2 counts);
 Aggravated Burglary,
 (2 counts)
 (86CR182)

Institutional Adjustment:

Charles Lorraine was admitted to the Department of Rehabilitation and Correction on December 10, 1986. His work assignments while incarcerated at the Southern Ohio Correctional Facility included Porter and while at the Mansfield Correctional Institution included Artist, Food Service Worker, Laundry Worker, Material Handler, Painter, Porter and Student. Since his transfer to the Ohio State Penitentiary, his work assignment has been as a Laundry Worker and as a Porter. Lorraine has participated in community service projects and religious service activities while at the Ohio State Penitentiary. He was enrolled in Pre-GED classes and Adult Basic Education classes at the Mansfield Correctional Institution from June 1999 to December 1999 and from April 2002 to August 2004.

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

- 03/11/1987: Encouraging or creating a disturbance. Lorraine created a disturbance by yelling at staff regarding some missing property. He received 15 days in disciplinary control for this rules infraction.
- 10/24/1987: Destruction, alteration, or misuse of property. Lorraine deliberately broke his sink and threw pieces of it on the range. He received 15 days in disciplinary control for this rules infraction.
- 07/21/1988: Encouraging or creating a disturbance. Lorraine created a disturbance by being involved in an argument with another inmate. He received 5 days in disciplinary control for this rules infraction.
- 02/14/1992: Throwing, expelling, or otherwise causing a bodily substance to come into contact with another. Lorraine threw human waste at another inmate. He received 7 days in disciplinary control for this rules infraction.
- 12/22/1995: Setting a fire; any unauthorized burning. Lorraine deliberately set a sheet and newspaper on fire. He received 7 days in disciplinary control for this rules infraction.
- 05/16/1996: Threatening bodily harm to another, with or without a weapon. Lorraine made disrespectful and threatening statements to staff members. He received 15 days in disciplinary control for this rules infraction.

Lorraine has numerous conduct reports that did not result in placement in disciplinary control. They include: Disobedience of orders in 1987 (2), 1988 (2), 1989 (2), 1993, 1994, 1995 (2); Possession of contraband in 1987, 1988, 1989, 1990, 1991 2003; Disrespect to staff in 1987 (2), 1988; Creating a disturbance in 1987 (2), 1988; Destruction of property in 1991, 1993, 1995; Threats to staff in 1990, 1993; Refusal to

carry out an assignment in 1990, 1991; Misuse of authorized medications in 1996 and Horseplay in 1990.

APPLICANT'S STATEMENT:

On November 29, 2011, an interview was conducted by eight (8) Board Members with the applicant via video conference from the Ohio State Penitentiary. The applicant shared with the Board that he was sorry for what he had done, takes responsibility for his crime and that he is guilty of the charges against him. He went on to state that he does not know why he killed the Montgomerys and shared that he had known them since he was 12 years of age. When he was younger, the applicant stated, he used to assist them by cutting their grass and shoveling the snow in their driveway. When the applicant became a teenager, he started to help the Montgomerys inside of their home and described his relationship with them as friends. The applicant stated that 25 years later he still has no idea why he killed this couple, commented that they would always give him money when he asked for it, and that he did not have to kill them to get money.

The applicant also shared that while he was under the influence of drugs and alcohol when he committed the offense, he does not blame the fact that he was under the influence of drugs for his actions. He also shared that he acted completely alone when he killed the Montgomerys, and that there are many aspects to the crime that he cannot recall. He does recall going to the home of Bill Medve, where he stole gloves and a butcher knife. Bill Medve then drove him to the Montgomery home because the applicant led him to believe that he was going to the home to get some money.

When the applicant arrived at the home, Doris Montgomery waved from her bed which was located in the living room for him to come inside. When the applicant was inside the home, he said that he needed to go upstairs and look for a necklace that he had left in their home. It was at this time that Raymond Montgomery followed the applicant upstairs and assisted the applicant in looking for the necklace. The applicant then stated he walked behind Raymond Montgomery and stabbed him multiple times until he fell down on the floor. After this, the applicant stated he went back downstairs, and Doris Montgomery asked him what had fallen while he was upstairs and then asked for her husband. It was at this time that the applicant walked behind Doris Montgomery's bed and stabbed her in the throat. He then took a pillow and put it on top of her face. After this, he went outside and saw that Bill Medve was gone so he ran home.

The applicant also admits to going to the Montgomery home on two occasions on the night of the instant offense. He did not recall when he stole the money and readily admitted that he was fully aware that Doris Montgomery kept her money beside the bed. He knew this because he had stolen from her before.

Additionally, the applicant admitted that he had originally stolen the gloves and the knife prior to the crime because he knew that he was going to kill the Montgomerys when he went to their home. He also admitted that he had victimized many elderly victims in the past.

The applicant also stated that he and his friend, Perry Postlewaite, went to the home of another elderly victim and stole her car. The applicant is not clear if this burglary occurred before or after he had killed the Montgomerys. He does recall going back to the Montgomery home with Perry Postlewaite to take additional items, such as guns and jewelry. Together, they attempted to pawn the jewelry. He sold the guns to his uncle. Lastly, he recalls eating shrimp with his friend Perry.

During his interview, the applicant stated to the Board that he deserves life without parole because he "is not a killer." He stated that he is asking for clemency and that he would take the execution if he had to. He also pointed out that he felt that he had a fair trial and that his attorneys did what they could to save his life. The applicant pointed out that he was willing to plead guilty and that he never tried to deny the crime.

In closing, the applicant stated that he has turned his life over to God and that his pastor and a woman he calls "Grandma Pat" are the most positive people he has in his life. He also indicated that his sister who has cancer is able to visit him once a month. He made it clear again that he was sorry for what he had done and apologized to the niece of the victim, as well as to his own family.

ARGUMENTS IN SUPPORT OF CLEMENCY:

A written application with supporting exhibits outlining arguments in support of clemency was provided to the Parole Board. On December 13, 2011, a hearing was conducted to further consider the merits of the application. State Public Defenders Randall Porter and Greg Hoover, as well as counsel Mark Triplett represented Charles Lorraine and presented arguments and witnesses in support of clemency.

Attorney Hoover argued that Lorraine had no chance in life. He stated that they were not going to argue that he is mentally retarded but shared that Lorraine had limited intelligence and a broken brain. Additionally, Lorraine was raised in a family that was plagued by addiction and never provided him with love or support.

Defense counsel presented video testimony of Attorney Ken Murray. Attorney Murray was one of three individuals that represented Lorraine at his trial in 1986. He stated that Lorraine's case was the first capital case he had ever tried, and that he has always been struck with many negative memories surrounding this trial. Prior to this case, Attorney Murray had only represented clients in two murder trials, neither of which was a capital case. Additionally, he never had any formal training in the area of capital crimes.

When assigned to the case, Attorney Murray was under the impression that Attorney Scott Kenney was to act as lead counsel in Lorraine's case, in that he was the head of the Capital Crimes Unit with the Public Defender's Office. Kenney had a lot of experience in capital cases. He also shared that a third attorney by the name of Michael Gleespen was assigned to assist in the case, but he, too, had only practiced law since 1984 and had only

been involved in one jury trial. Attorney Murray thought that the plan for representation would be to divide up the work load among the three attorneys to prepare for Lorraine's trial. Rather, the reality was that lead counsel Scott Keeney was never around, and Attorney Murray and Attorney Gleespen were left to do most of the trial preparations on their own, with very little knowledge or experience. Attorney Murray said that they only had five or six months to prepare for trial and that he often felt like he was "drowning." He believed that he lacked knowledge and had no investigative strategy to prepare for Lorraine's trial.

During preparation for trial, Attorney Murray said that interacting with Lorraine was very difficult. He felt that Lorraine was like a five- or ten-year old child who would simply "blurt things out" and that he did not respond in a normal or appropriate manner. Attorney Murray regrets that they did not get experts up front to focus on Lorraine's competency, emotions, and how he processed information due to his limited ability. Furthermore, Attorney Murray stated that it is now clear to him that Lorraine's brain was not like that of a normal person. At the time of the trial, Murray did not know how to deal with Lorraine's limitations.

In closing he shared that not a day goes by that he does not think of this case and is overwhelmed with guilt for the job that he failed to do. He blames himself and feels that if he had more knowledge, resources, and time that he could have made a very strong case for Lorraine's life to be spared.

Reverend James Donnan was presented next and appeared in person before the Board. He is the pastor of the Livingston United Methodist Church and is Lorraine's minister of record. Pastor Donnan has known Lorraine for the last five years. He started to communicate with Lorraine by way of letters to assist Lorraine with some of his spiritual questions. After a few letters were exchanged, Pastor Donnan began to visit Lorraine at the prison. It was at this time he became aware of Lorraine's limited cognitive abilities when he was trying to teach him about grace and forgiveness. Pastor Donnan was able to explain these concepts to Lorraine at an elementary level and was privileged to baptize Lorraine three years ago.

Pastor Donnan believes that Lorraine's religious conversion is authentic and asked the Board to show mercy and grant him clemency so he can spend the rest of his life within the general population of the prison system. He shared that Lorraine is very sorry for what he did and is unable to explain his actions. However he is prepared to meet God face- to- face if the scheduled execution goes forward.

Ms. Pat Livingston also appeared before the Board in person to offer testimony in support of Lorraine. She has been visiting him for the last five years and sees him approximately every six weeks when Pastor Donnan visits. She shared that she has seen many positive changes that Lorraine has made in his life.

Video testimony by Kathy Brewer, Lorraine's sister, was presented to the Board. She indicated that she was unable to appear in person because she was supposed to have

surgery. Ms. Brewer stated that she was the oldest sister and that she lived with her grandparents until she reached 11 years of age. Ms. Brewer said that her grandparents were very good to her and would often “pay” her parents money not to beat her. When Ms. Brewer moved back home, she said her father would do inappropriate things to her such as masturbate in her face. When she told her mother about the sexual abuse, she was not believed. She also indicated that her mother was responsible for her rape that occurred in her teenage years when she forced her to go out with an older man.

Ms. Brewer indicated that Lorraine was around eight years old when she moved back home. She recalls her brother smoking pot in the house and her mother telling him to go downstairs to smoke it because she did not like the smell. Her mother never tried to stop Lorraine from smoking pot.

Ms. Brewer described her mother as an evil person who would beat her on a regular basis. Additionally, her mother would play bingo five to six nights per week. She could never recall a time where her dad was not drinking. Her father became addicted to pain pills and he would have Lorraine and his brothers do whatever it took to get him more pills.

Ms. Brewer shared that her sister Melody was always treated the best by her mother. However, Lorraine and his brothers were often beaten with a belt, tree limbs, or whatever their mother could find. Ms. Brewer’s brother, Jimmy, left the home at the young age of 14 to escape the abuse. To this day, he has no communication with any of his family members.

Ms. Brewer concluded her video by telling the Board that she believes that Lorraine was not given a chance in life and that she has been experiencing chest pains and a lot of stress thinking about the fact that her brother could be executed. She feels that Lorraine did what he did not because he is mentally retarded but because he was under the influence of drugs.

Richard Lorraine, brother to the applicant, also made a videotaped statement that was presented to the Board. He indicated that their parents never said that they loved them. His mom played bingo all the time, and his dad was addicted to pain killers and would allow him to skip school if he got him pain medication. Richard stated that his mom locked them in the bedroom for hours and made them use a bucket as a toilet. He also said that when they were little, she would have them sit on the couch, run the sweeper, and tell them that she would “suck them up” if they moved.

Richard Lorraine never took a friend home to play because his mother was so mean. Additionally, the kids in their family never went to the dentist, had a toothbrush or received medical care. When Richard was 15 months old, his mother threw hot coffee on him causing him to have severe burns. He also stated that he and his siblings were in special education classes. Richard said that his brother Charles was a follower and could be talked into anything. Charles Lorraine was put in a special behavior class, which was located in a trailer behind the school, and the kids at school often made fun of him for being in this class.

Richard also stated that their parents did not care if they committed crimes as long as they gave the parents a portion of the money they obtained. He also recalls that his brother abused drugs morning, noon and night and would prostitute himself out to get money.

In closing, Richard Lorraine shared with the Board that he spent a lot of time with his brother and that executing his brother would have a great impact on him.

Dr. Jeffrey Madden who is a neuropsychologist with Ohio State University evaluated Lorraine with respect to the presence of brain injuries. Dr. Madden works at Ohio State University (Dodd Hall) where individuals with brain injury are treated. On November 28, 2011, Dr. Madden met with Lorraine for approximately seven hours and administered eight tests to Lorraine.

Dr. Madden appeared in person before the Parole Board to present his findings. He concluded that Lorraine did not mangle or otherwise manipulate test results. Dr. Madden relied on Lorraine's last IQ test score which was administered in 2009 and over time has consistently come up with a score of 76 or higher placing him in the borderline range of intellectual functioning (5th percentile). While Lorraine has had nine years of education, he reads at the 5th or 6th grade reading level.

Dr. Madden concluded that Lorraine has damage to his pre-frontal lobe and meets criteria to be diagnosed with an organic brain disorder. Additionally, he has a well-established history of borderline intellectual functioning and is not mentally retarded.

Dr. Madden discussed incidents in Lorraine's past that could have cause the acquired brain injury. Dr. Madden stated that at two years of age, Lorraine fell out of the family car and hit his head as his mother turned the corner. The car was going about five to ten miles per hour at the time. When Lorraine was between the ages of six to eight years of age, he fell out of a tree which was approximately 10 to 12 feet high and hit his head. It is not clear if he lost consciousness. Finally, Lorraine's brother Rick reported that about one year prior to his incarceration, Lorraine was badly beaten by several men at an apartment, causing his eyes to be blackened and leaving his face bloodied and swollen. Lorraine also self reported that he took many beatings about his head and face from his mother and father.

Dr. Madden also discussed Lorraine's .7 scores on the Hallstead Impairment Index. This score was consistent with Lorraine having an acquired brain injury. A score of .8 to 1.0 is considered severe. In 1986, CT and MRI scans were administered on Lorraine and read as normal. Dr. Madden pointed out to the Board that significant brain injury can occur without significant findings on the CT or MRI scans.

Dr. Madden found that Lorraine is damaged for two reasons - his low level of intelligence and his brain impairment. Structure is the optimal environment for Lorraine, and this is why he does so well in prison. It is also possible that Lorraine's injury is better today than it was at the time of the crime. Dr. Madden listed the following conclusions:

- Charles Lorraine is a 45-year old male with a history of Borderline Intellectual Functioning compounded by closed head injury, resulting in a level of cognitive disability considerably beyond that of Borderline Intellectual Functioning.
- This condition appears to have been present from around 1980.
- Charles Lorraine is incapable of sustaining independent living or employment and would be at risk for substance abuse.

Clinical and Forensic Psychologist Dr. Aracelis Rivera appeared in front of the Board to discuss the presence of risk factors in Lorraine's upbringing that may help explain his later criminal and violent actions. She met personally with Lorraine in prison and also reviewed third party information. Dr. Rivera began her presentation by stating that risk factors are a precursor to delinquency and violence and emphasized that protective factors act as a buffer to risk factors that are present.

Dr. Rivera discussed Lorraine's numerous risk factors that increased the likelihood that he would engage in violent behavior. These risk factors included the following domains:

- Individual related risk factors: this included a childhood history of hyperactivity, risk taking and antisocial behavior.
- Family related risk factors: this included low levels of parental involvement, maltreatment, poor family management practices, family conflict, poor family bonding, and parental attitudes favorable to substance abuse and violence.
- School related risk factors: this included academic failure, low bonding to school, truancy and dropping out of school. Academically, Lorraine was a failure, in part, due to his borderline intellect and learning deficits, and also because he lacked parent involvement and encouragement to succeed in school.
- Peer related risk factors: this included delinquent siblings and peers. Interpersonally, his peers and the adults with whom Lorraine associated were criminally involved.
- Community related risk factors: this included poverty, easy access to drugs, exposure to violence and neighborhood adults involved in crimes. Collateral sources have given multiple accounts of the Lorraines' needing money for food and to have their utilities turned on.

In conclusion to her presentation, Dr. Rivera pointed out that Lorraine displayed 22 of the 25 risk factors that exist, and that he has limitations in all five of the domains listed above. The larger the number of risk factors that one has equates to the greater the propensity toward violence. Charles Lorraine was exploited by those who were to protect him, he was treated as an object, and he had no protective factors.

The Board did question Attorney Randall Porter with regard to the prosecutorial misconduct claim that was made in the written application. He deferred the Board back to the written materials and judicial decisions that were submitted with Lorraine's application.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Dennis Watkins, Trumbull County Prosecutor, presented arguments in opposition to clemency. Additionally, he prosecuted Lorraine at his trial in 1986. This was also the second case he prosecuted where he had the advantage of having an interrogation that was videotaped.

Prosecutor Watkins stated that the evidence in this case is overwhelming, and it all points to the fact that Lorraine acted alone when he murdered the victims. He shared that death penalty cases are reviewed by the courts more than any other types of cases. This case was proven beyond a reasonable doubt, and 12 jurors properly found Lorraine guilty.

Prosecutor Watkins believes that this was a well-trying case and that Lorraine was represented by three qualified attorneys who were from the Trumbull County Public Defender's Office. He stated that just because two of the attorneys were young, does not mean that they were ineffective. In fact, defense counsel, at the time of trial, hired Dr. Jackson who was a Forensic Psychologist. Dr. Jackson testified to much of the same information that was presented today during the mitigation phase of Lorraine's trial and diagnosed him as having an antisocial personality disorder. Dr. Jackson had all of the same information available to him that Dr. Madden and Dr. Rivera testified to today at the clemency hearing.

Prosecutor Watkins also stated that 90% of what the Board heard by the defense was already known at the time this case was tried. Charles Lorraine had 12 witnesses that testified at the mitigation phase of his trial, and all of the information that was heard today was presented to the jury. The only new information is that which was self reported by Lorraine himself, when he recently claimed that he was sexually abused by a teacher and his school principal.

Prosecutor Watkins stated that Lorraine had a total of five individuals working on his case. In fact, he believes that Lorraine had more experts helping in his case than most defendants have during death penalty cases. He also had investigators that were working with the appointed attorneys to assist in locating additional background information.

The Prosecutor described Lorraine as a psychopathic killer who has no conscience and is a con artist from beginning to end. Out of the six children that the Lorraine family raised, he is the only one that turned out to be evil. Prosecutor Watkins does not believe that Lorraine's life was as bad as he describes. He came from a father who worked hard and was employed for 17 years with Trumbull County Metropolitan Housing Authority. His dad also coached baseball. The prosecutor also stated that the applicant was no longer welcomed to visit with his grandmother, Catherine Lovash, because he had stolen her social security money. Additionally, Lorraine's pregnant wife kicked him out of the home prior to the murders because he stole money from her. The money he stole was designated to be used to pay for the family's utilities and purchase food.

Prosecutor Watkins encouraged the Board not to believe Lorraine when he stated during his recent interview that he shot up on drugs for the first time on the day he killed the victims. Rather, the Board was asked to refer back to the testimony of Lorraine's own brother, stating that he had shot up many times before and used drugs morning, noon, and night.

At trial, Anita Carroll, Lorraine's aunt, testified during the mitigation phase of trial that she was with Lorraine on the Sunday prior to the murders, at St. Pius playing bingo with him. This is the evening before the Montgomerys were killed. She indicated that he did not seem drugged up and had no difficulty playing bingo. During the conversation, he told her that he was going to prison for 8 years (rare post-sentence bond) as soon as his baby was born. He then stated that the next time he goes to the pen it is going to be for killing somebody so they can give him a pill, and he could go to sleep.

Prosecutor Watkins also reminded the Board that Lorraine told witness Victor Peterman that he killed two people on the night of the crime. In fact he told him that he had to kill the female victim because she was the only witness.

Lastly, Prosecutor Watkins summarized the evidence by stating that armed with a butcher knife and gloves, Lorraine appeared at the Montgomery home and lured 76-year old Raymond Montgomery upstairs under the ruse of a lost necklace. He then stabbed him five times with a butcher knife that was 10 inches long. Next, he came downstairs and stabbed bedridden Doris Montgomery nine times as she lay totally helpless in her bed. Doris Montgomery was 80 years old and weighed 85 pounds.

Following the murders, Lorraine was in the partying mood, bragged to several people that he killed two old people, went drinking at a bar, sold his bloody pants for \$20, went back to the Montgomery home to take more items, pawned jewelry, and sold the guns he had taken from the home. He also broke into the home of another elderly victim with the co-defendant, stealing her car. After all of this, he had breakfast with his friend Perry Postlethwaite.

Prosecutor Watkins also played for the Board a portion of Lorraine's videotaped confession and pointed out that he did not appear to be under the influence. He also played a news clip that was from Lorraine's January 12, 2010, Atkins Hearing. In this video, Lorraine personally informed the court that he wanted to abandon his Atkins claim, and stated that he was not mentally retarded. He admitted to the news media that this claim was launched to prolong his death sentence from being carried out. On March 1, 2010, Judge Logan filed a seven-page judgment entry wherein he found "Lorraine is not mentally retarded pursuant to the Atkins/Lott standard." Lastly, Prosecutor Watkins showed the Board a videotape of the actual crime scene where the victims were murdered in their home. Prosecutor Watkins concluded by urging the Board to recommend to the Governor that clemency should not be granted to Charles Lorraine, as he is an undeserving applicant, and his death sentence should be carried out.

VICTIM'S REPRESENTATIVE:

Ms. Linda Couch, the niece of the victims, appeared before the Board. She indicated that her life was changed forever when she walked into the home of her aunt and uncle, finding them dead. She knew the moment she walked into the home and saw her aunt on the bed with a pillow over her face that something was drastically wrong. The home was ransacked, and her aunt's feet were hanging over the side of the bed. Ms. Couch was familiar with the home in that she would go there three times a week to assist her aunt in getting a bath.

Ms. Couch believes that Lorraine knew exactly what he was doing, and it hurts her to know that it has taken so long for his sentence to be carried out. When questioned by the police as to who would harm her aunt and uncle, Ms. Couch immediately told them Charles Lorraine because he had stolen money from her aunt in the past. Ms. Couch stated that she knows the victims suffered and that she wants closure to this chapter in her life.

The Board also received a letter from Alison Aleman, the victim's granddaughter. In the letter, she spoke of the many good memories she had of her grandparents. Ms. Aleman is retired from the California Attorney General's Office and spent 26 of her 30 years there prosecuting murder cases. She stated that she well knows the toll that capital cases have on the prosecutors, victims, and surviving family members. She and her sister plan on coming to Ohio to attend Lorraine's execution.

The Board also received a letter from John Montgomery, the brother of Raymond Montgomery. He shared that Raymond Montgomery was a Corporal in the United States Army in the 69th Tank Battalion and was awarded three Bronze Stars in World War II. He also pointed out that Raymond Montgomery still has a brother and two sisters that are living, are in their nineties, and are "waiting for justice" in this case.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Board reviewed and considered all information submitted both in support of and in opposition to clemency. After an exhaustive review of all materials, exhibits, and arguments presented by both parties, and extensive deliberation, the Board reached a unanimous decision to make an unfavorable recommendation to the Governor regarding Lorraine's request for Life Without Parole, after concluding the following:

- There has never been a question of Lorraine's guilt in these offenses. While the prosecutor's statements during parts of the trial may have constituted misconduct, it is hard to imagine that the outcome of the trial would have been different had those statements not been made. All reviewing courts have concluded that Charles Lorraine received a fair trial. It further appears that significant mitigation was presented.

- While evidence supports that Lorraine suffered from a difficult childhood which increased his likelihood of violence, he had five siblings who were able to overcome this difficult upbringing and lead relatively crime free lives.
- It is obvious from the facts of this case that Lorraine targeted this elderly couple because they were vulnerable. He gained their trust and then used this same trust as a means to enter their home, only to slaughter them and steal their valuables. He shared with the Board during his interview that he knew in advance that he was going to kill the victims. Unfortunately, to this day, he cannot explain why he committed these violent acts.
- Lorraine had a history of crimes against the elderly in both the juvenile and adult criminal justice systems, and was awaiting sentencing on other burglary and robbery offenses when he murdered the victims in this case.
- Testimony presented at trial and during the post conviction and appellate processes demonstrate that Lorraine does not suffer from mental retardation. Additional testimony presented at the clemency hearing as to his dysfunctional childhood and brain injury, do not outweigh the aggravating factors in this case. This was a brutal slaying of two vulnerable victims in their own home. A sentence short of the jury's finding of death and the court's imposed death sentence would demean the seriousness of this offense.

RECOMMENDATION:

The Ohio Parole Board with eight (8) members participating, by a vote of eight (8) 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 Charles Lorraine A194-013.

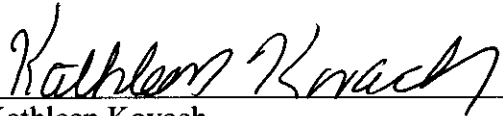
Charles Lorraine, A194-013
Death Penalty Clemency Report

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

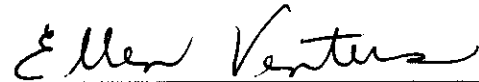
Ohio Parole Board Members
Voting **Unfavorable**



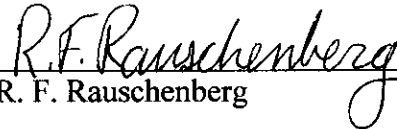
Cynthia Mausser, Chair



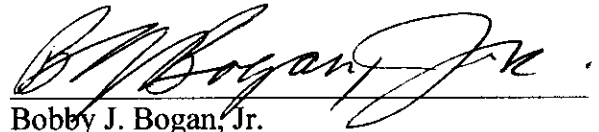
Kathleen Kovach



Ellen Venters



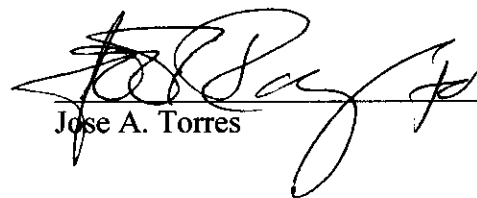
R. F. Rauschenberg



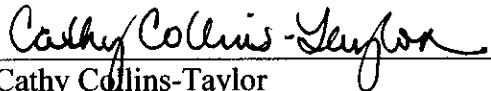
Bobby J. Bogan, Jr.



Trayce Thalheimer



Jose A. Torres



Cathy Collins-Taylor

(1)

THE DAY I WALKED INTO MY AUNT DORIS & UNCLE RAYMOND'S HOUSE HAS CHANGED MY LIFE FOREVER. I WAS HAPPY TO GO 3 TIMES A WEEK OR MORE TO GIVE AUNT DORIS A BATH & DO WHATEVER I HAD TO DO TO HELP THEM OUT. I WALKED INTO A HOUSE THAT WAS SILENT & SAW HER LIFELESS LEGS HANGING OFF THE SIDE OF THE BED. THE PILLOW OVER HER UPPER BODY, BUT I KNEW SHE WAS DEAD. THE HOUSE WAS RAMSACKED. I KNEW I HAD TO CALL THE POLICE AND MAKE A REPORT.

I CAN STILL REMEMBER SEEING THINGS ALL AROUND THE ROOMS. WHEN DET. MARSHO ASKED ME IF I KNEW ANYONE WHO COULD HAVE DONE THIS. I TOLD HIM CHARLES LORRAINE BECAUSE I KNEW HE WAS STEALING MONEY OFF OF AUNT DORIS ALONG WITH THE MONEY HE WAS ASKING FOR. BUT SHE WOULD NOT MAKE A CALL TO THE POLICE.

THE BIGGEST THINGS THAT HURT FROM HIS TRIAL WAS THE STATEMENT THAT

(2)

HE THOUGHT OF THEM LIKE HIS GRANDPARENTS. HE ALSO THOUGHT I WAS THEIR DAUGHTER.

HE ALSO SAID TO HIS AUNT THAT SINCE HE WAS ALREADY GOING TO GO TO PRISON, ~~HE~~ SHOULD JUST KILL SOMEONE AND THEN WHEN HE GOES TO THE PRISON - THEY CAN KILL HIM.

HE KNEW WHAT HE WAS DOING THAT NIGHT - HE HAD IT PLANNED -

THEN FOR HIM TO TURN AROUND AND TRY TO PLAY THE SYSTEM FOR 8 YEARS SAY HE WAS RETARDED. I KNOW WHEN HE LOOKED AROUND THE COURTROOM AND SAW ME LAST JANUARY AT THE HEARING IN WARREN, HE KNEW THAT HIS FAMILY WE STILL CARED WHAT WAS GOING ON. HIS FACIAL EXPRESSION CHANGED & HE CALLED OUT FOR HIS ATTORNEYS AND TOLD THEM THAT HE WAS NOT RETARDED & KNEW HE WAS GOING TO ME. HE WANTED IT TO BE OVER

3

AND HE WAS NOT RETARDED, HE WAS ONLY PLAY THE SYSTEM TO LIVE LONGER

I THINK ~~THE~~ HIS WISH IS LONG OVER DUE - HE KNEW WHAT HE WAS DOING THE NIGHT HE STABBED AUNT DORIS & UNCLE RAYMOND.

I WANT CLOSURE TO THIS CHAPTER OF MY LIFE - IT IS TIME FOR HIS EXECUTION TO BE DONE - HIS WISH TO BE GRANTED.

MY AUNT & UNCLE SUFFERED - HE WILL JUST GO TO SLEEP.

BUT HE WON'T BE ABLE TO EVER HURT ANYONE AGAIN.