

DATE TYPED: March 14, 2018
DATE PUBLISHED: March 16, 2018

IN RE: WILLIAM MONTGOMERY, CCI #A193-871

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

Date of Meeting: March 8, 2018

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: William Montgomery, CCI #A193-871

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder, Murder

DATE, PLACE OF CRIME: March 8, 1986 in Toledo, Ohio

COUNTY: Lucas

CASE NUMBER: CR86-5450

VICTIMS: Debra Ogle (age 20)—Deceased
Cynthia Tincher (age 19)—Deceased

INDICTMENT: Count 1: Aggravated Murder w/specifications
Count 2: Aggravated Murder w/specifications

TRIAL: Found guilty by jury of Aggravated Murder (count 1)
w/specifications and Murder (count 2)

DATE OF SENTENCE: November 7, 1986

SENTENCE: Count 1: DEATH (victim Debra Ogle)
Count 2: 15-LIFE (victim Cynthia Tincher)

ADMITTED TO INSTITUTION: December 1, 1986

JAIL TIME CREDIT: 264 days

TIME SERVED: 375 months (does not include jail time credit)

AGE AT ADMISSION: 20 years old

CURRENT AGE: 52 years old

DATE OF BIRTH: January 2, 1966

JUDGE: Honorable Charles D. Abood

PROSECUTING ATTORNEYS: James E. Yavorcik and James D. Bates

FOREWORD:

A clemency proceeding in the case of William Montgomery, A193-871, 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.

William Montgomery declined to be interviewed by the Parole Board. A clemency hearing was held on March 8, 2018 with ten (10) members of the Parole Board participating. Arguments in support of and in opposition to clemency were presented.

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 ten (10) members participating, the Board voted six (6) to four (4) to provide a favorable recommendation for clemency to the Honorable John R. Kasich, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE:

The following account of the instant offense was obtained from the opinion of the Court of Appeals of Ohio (Sixth Appellate District), decided on February 5, 1999:

On February 20, 1986, appellant [Montgomery] purchased a Bursa [sic] .380 automatic handgun from Cleland's Gun Shop in Toledo, Ohio. This gun was subsequently identified as the weapon that was used to kill both [Debra] Ogle and [Cynthia] Tincher.

At approximately 5:00 a.m. on March 8, 1986, after an apparent argument with his girlfriend, appellant went by taxi with Glover Heard to an apartment shared by Ogle and Tincher. Appellant was acquainted with the victims but Heard was not. At this time, appellant was wearing a dark blue pinstriped suit jacket that he had borrowed from Randolph Randleman, his uncle. Subsequently, appellant asked Ogle to give him a ride home. After Ogle agreed, she, appellant and Heard left in her car. Before arriving at the destination, however, appellant had Ogle stop the car. He then walked her into a wooded area along Hill Avenue in Toledo, Ohio, while Heard remained in Ogle's car, and then, for no apparent reason, appellant shot Ogle three times with the fatal wound inflicted while the gun was in direct contact with the top of her forehead. Appellant then returned to the car and he and Heard drove back to the girls' apartment. Appellant instructed Heard to take Ogle's car. Heard took the car but then abandoned it approximately one block from his residence. Appellant returned to the girls' apartment and shortly thereafter left with Cynthia Tincher in her car. After leaving the apartment, appellant had Tincher pull to the side of the road and thereupon shot her through the head from a range of twelve inches or less. Several witnesses testified that they saw a man of approximately appellant's height and weight leaving Tincher's car on the morning of March 8, 1986 at approximately 7:15. Those witnesses testified, however, that the person they saw was wearing a dark jacket with a hood pulled up around his face. Tincher's body was discovered in her car at the corner of Wenz and Angola Roads in

Toledo, Ohio at approximately 7:30 a.m. on March 8, 1986. Appellant lives approximately one-half mile from that location. Thereafter, at approximately 12:00 noon on March 8, 1986, appellant, Heard and two friends, Sidney Armstead and Eric Wilson, got together to go to a mall. Appellant, however, was carrying a plastic bag and directed Armstead to first drive him to a dry cleaner. Armstead drove appellant to One Hour Martinizing where appellant got out of the car with the bag. Although they were unable to identify appellant, employees of the laundry testified that on March 8, 1986, a black male showed them a soaking wet dark blue pinstriped suit jacket that he wanted cleaned in one hour. The employees explained that the jacket would have to dry out before it could be cleaned. They then hung the jacket to dry. One employee testified that as it dried, the jacket made a "brownish dripping mess on the floor." She further testified that the jacket was badly stained and that she had to clean the jacket three times using a chemical cleaner. She could not identify, however, what the stains were. Subsequently, the jacket was picked up. Several days later, police officers obtained the jacket from Randolph Randleman who identified the jacket in court as the one which he had loaned to appellant.

As stated above, on March 8, 1986 at approximately 7:30 a.m., Tincher's body was discovered in her car at the corner of Wenz and Angola. Soon thereafter, Ogle was listed as missing. The following day, however, Ogle's car was discovered behind an abandoned house at 1031 Norwood. Thereafter, on March 10, 1986, Crime Stoppers received a telephone call from a Michael Clark who was at that time incarcerated in the Lucas County Jail. Upon interviewing Clark, officers obtained the name of Glover Heard. Officers located Heard and from Heard they obtained the name of appellant. Officers then gained permission from appellant's mother to search her home, where appellant also lived. That search revealed a black leather jacket with a hood and the manual to the Bursa [sic] semi-automatic handgun. Subsequently, on March 12, 1986, officers went to Randolph Randleman's home in an attempt to locate appellant. At approximately 12:00 noon, appellant arrived at the home and told officers that he knew the officers were looking for him and he wanted to talk about the homicide. He was then arrested and taken to the police station for questioning. During the interrogation, appellant initially stated that Heard had killed both girls with his, appellant's, gun. He then changed his story but ultimately admitted that he had gone to the girls' apartment for a ride home. He continued to insist, however, that Heard had killed the girls and that he did not know where Ogle's body was. Finally, however, appellant admitted that he might be able to show officers where Ogle's body was and stated that it was on Hill Avenue near a market. Officers then took appellant to Hill Avenue and ultimately to a wooded area that appellant identified as the location. Several officers began searching the area while Sergeant Larry Przeslawski stayed in a patrol vehicle with appellant. After the officers searched one wooded area for a few minutes, appellant told Sergeant Przeslawski to direct the officers to search a different wooded area. Within five minutes, the officers located the body of Debra Ogle.

At the conclusion of the trial, the jury found appellant guilty of the aggravated murder of Debra Ogle with the specifications that said action involved the

purposeful killing of two or more persons and that appellant was the principal offender while attempting to commit aggravated robbery. The jury further found appellant guilty of the lesser included offense of murder of Cynthia Tincer. At the conclusion of the mitigation phase, the jury recommended that appellant be sentenced to death. The trial court agreed with the jury's recommendation and ordered that appellant be executed.

PRIOR RECORD:

The following information was obtained from the Pre-Sentence Report completed on October 10, 1986:

Juvenile Offenses: William Montgomery has the following known juvenile record:

<u>Arrest Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
03/07/79	Stop Sign	Unknown	\$10.00 fine and court costs
01/27/81	Attempted Petty Theft Criminal Damaging	Unknown	Found delinquent, \$20.00 fine, court costs Found delinquent, \$20.00 fine (\$10.00 suspended), court costs
05/02/81	Speeding	Unknown	\$15.00 fine, courts costs
7/28/81	Speeding	Unknown	\$25.00 fine, court costs
12/29/81	Involuntary Manslaughter	Unknown	DYS Commitment 09/16/82: Early Release Granted 08/30/83: Discharged from Parole

Adult Offenses: William Montgomery has the following known adult arrest record:

<u>Arrest Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
03/13/84	Operator's License Required Traffic Control Signals	Toledo, OH	\$35.00 fine
12/17/84	Traffic Control Signals	Toledo, OH	\$15.00 fine, court costs
03/12/86 (Age 20)	Aggravated Murder Murder	Toledo, OH	INSTANT OFFENSE (CR86-5450)

Institutional Adjustment:

Montgomery was admitted to the Ohio Department of Rehabilitation and Correction on December 1, 1986. His work assignments while incarcerated at the Southern Ohio Correctional

Facility were recreation worker and porter. While at the Mansfield Correctional Institution, Montgomery's work assignments included porter, barber, tutor, career technical aide, laundry attendant, and material handler. He was a food cart attendant and student while at the Ohio State Penitentiary (OSP).

Presently, Montgomery is a porter at the Chillicothe Correctional Institution. He obtained his GED in 2008. Montgomery participated in a stamp club at Mansfield Correctional Institution (1996) and has completed community service, which included participation in a school box top project (2006), combined charity walk (2006), and the MADD Red Ribbon Campaign (2006). Montgomery also completed an OSP poetry workshop.

Since his admission in 1986, Montgomery has accumulated the following disciplinary record resulting in his being placed in disciplinary control, local control, or restrictive housing, as indicated below:

- 02/19/04: Fighting with or without weapons, including instigation of, or perpetuating fighting. Montgomery was in a fight with another inmate while at recreation. Montgomery was observed having another inmate in a headlock and telling the inmate to "chill out." Montgomery was given an order to "break it up" to which he complied. He received seven days of disciplinary control for this rule infraction.
- 12/01/98: Attempting to commit, aiding another in the commission of, or soliciting another to commit a specified rule infraction. Montgomery received a package from an individual who was not permitted to send him packages. Montgomery received 15 days of disciplinary control for this rule infraction.
- 07/19/95: Fighting, with or without weapons, including instigation of, or perpetuating fighting. Montgomery was in a fight with another inmate. Montgomery stated that he did not start the fight and that he was only defending himself. He received 15 days of disciplinary control and was recommended for a security level increase.

Montgomery has received the following conduct reports that did not result in placement in disciplinary control, local control, or restrictive housing:

- Disrespect to an officer, staff member, visitor, or other inmate in 2014. Montgomery stated to a staff member that he "was the worst human being he's ever known" and he "never wanted to interact with him" again. Montgomery then threatened the staff member by stating "if he visited with his family again, he would do something to him." Montgomery received 15 days of cell isolation and was given a verbal warning for this rule infraction.
- Possession of contraband and unauthorized use of telephone or violation of mail and visiting rules in 2000. Montgomery tried to mail out his state clothes and other items. He received seven days of cell isolation for this rule infraction.

APPLICANT'S STATEMENT:

Montgomery declined to be interviewed by the Parole Board.

ARGUMENTS IN SUPPORT OF CLEMENCY:

At the hearing held on March 8, 2018, arguments in support of clemency supplementing the written application previously received were presented to the Board by the inmate's attorney, Jon W. Oebker.

Oebker argued that there is too much doubt and uncertainty surrounding Montgomery's guilt to impose a penalty as severe and as irreversible as death. Oebker stated that in the thirty years of litigation that surrounded Montgomery's case, no decision-maker has been given a full accounting of all of the facts, including what is known and what is not known in relation to the case.

According to Oebker, Montgomery's jury had an incomplete picture of the case facts. One important piece of evidence that was not considered by the jury was a police report that describes several of Ogle's high school classmates having reported seeing Ogle after 1:00 a.m. on March 12, 1986, four days after Montgomery is alleged to have killed Ogle. That report, which the prosecution failed to disclose to Montgomery's trial counsel, was obtained by Montgomery's attorneys pursuant to a public records request in 1992. In 2007, Oebker continued, a United States district court judge ordered that Montgomery be given a new trial on the ground that the failure to disclose the report constituted a violation of the evidentiary doctrine pronounced by the United States Supreme Court in *Brady v. Maryland*.¹ The district court adhered to that order even after the witnesses who made the report executed affidavits averring that they were mistaken in their belief that they saw Ogle in the early hours of March 12, 1986.

A three-judge panel of the United States Court of Appeals for the Sixth Circuit subsequently affirmed the district court's order; however, thereafter, the Sixth Circuit reviewed the matter *en banc*² and held in favor of the state thus affording Montgomery no relief despite the fact that the evidence to which he was entitled was improperly withheld from his trial attorneys. Still, Oebker continued, in restoring Montgomery's death sentence, the Sixth Circuit split by the relatively narrow vote of ten to five. The fact that five federal court of appeals judges have concluded that withholding the police report constitutes gross prosecutorial misconduct warranting a new trial should give the Board and the Governor pause, Oebker urged.

Oebker argued that withholding the police report calls the conviction into question because Ogle's sighting on March 12, 1986 would have rebutted the state's theory that Montgomery first killed Ogle and then Tinchler, who was found dead on March 8, 1986. The police report detailing the witness sighting was thus exculpatory, Oebker argued, and would have dealt a severe blow to the state's case. In effect, suppressing the police report had the effect of suppressing any defense tactic that questioned the state's timeline. Moreover, if given the

¹ In *Brady v. Maryland*, 373 U.S. 83 (1963), the United States Supreme Court held that a criminal defendant's due process rights are violated if the prosecution suppresses exculpatory evidence that is material to the defendant's guilt or punishment.

² The Sixth Circuit and other federal appellate courts utilize three-judge panels to hear and resolve most cases. Upon receiving an unfavorable decision from a three-judge panel, a party may request that the appellate court rehear the case *en banc*, meaning that all of the judges who comprise the appellate court's membership hear and decide the case.

report, the defense might have requested an independent forensic expert, which in turn could have potentially had a dramatic effect on the trial and its outcome, Oebker suggested. It is not Montgomery's responsibility to explain today how the withheld police report would have fit the evidence actually presented at trial because defense counsel only had to inject doubt at the trial, and the police report would have allowed Montgomery's attorneys to do precisely that, Oebker urged.

Oebker stressed that there were credibility problems surrounding the testimony of Glover Heard, the state's chief witness. When Heard testified against Montgomery, Oebker observed, he was facing his own murder charge, in response to which he cut a deal. Heard, Oebker continued, gave varying accounts of the crimes and it was the *fifth* version recounted by Heard upon which the state ultimately relied.

Heard himself remains imprisoned to this day and by the time he again comes up for parole in 2021, Heard will have served over 35 years for his role in the offense, Oebker observed. Heard's long incarceration suggests that the Board may believe he was more culpable in the crime than the state suggests, Oebker speculated. While conceding that he could only speculate as to the Board's rationale in continuing Heard's incarceration for 35 years, Oebker urged that if the Board has doubts about the degree of Heard's involvement in the killings, it should have doubts about Montgomery's impending execution.

Oebker argued, further, that Montgomery's case is eerily similar to the case of Arthur Tyler, who received a unanimous favorable recommendation for clemency from the Board in 2014 and whose sentence was ultimately commuted to life without the possibility of parole by Governor John Kasich. Tyler, like Montgomery, Oebker observed, was facing the death penalty in a case involving both a co-defendant and ambiguity surrounding the offenders' respective roles in the offense.³

Oebker noted that one of Montgomery's trial jurors, Sidney Thomas, executed two affidavits, one in 1992 and another in 2018, which, taken together, indicate that Thomas had doubts about Montgomery's guilt at the time of trial in 1986; that he does not know why he voted to sentence Montgomery to death; and that with the information he has today, were he to have it to do over again, he would not find Montgomery guilty. Oebker pointed to another affidavit from a juror named Roberta St. Clair, who averred in 1992 that, at the time of Montgomery's trial, she was confused about the crime of aggravated murder and what was required to be proven to recommend that Montgomery be sentenced to death. Taken together, the affidavits demonstrate that the case against Montgomery was not airtight, Oebker argued.

Oebker took issue with a statement in the state's Narrative Response to Montgomery's Clemency Application to the effect that in the fourth and final version of the crime given by Montgomery to police Montgomery indicated that "he saw Glover Heard kill Debra Ogle in the early [a.m.] hours of Saturday March 8, 1986." In fact, Oebker stated, there is no police report or other record in which Montgomery specifically states that he saw Heard kill Ogle.

³ Oebker conceded that unlike Heard, Tyler's co-defendant, Leroy Head, had confessed to being the principal offender, and that confession buttressed Tyler's clemency request. However, Oebker added, Montgomery is arguably more favorably situated than Tyler in that Tyler admitted having a role in the murder involved in that case while Montgomery makes no similar admission.

Oebker argued that attributing that statement is a misrepresentation and is typical of the misrepresentations that plagued Montgomery's case, and it should not form the basis for executing Montgomery.

Oebker briefly addressed the issue of the juror who was allowed by the trial court to remain on the jury after she sent a note to the court disclosing that she has undergone psychiatric treatment and that years ago after receiving shock treatments she had a dream in which Dr. Gerald Briskin, a psychiatrist who testified for the defense in the mitigation phase of Montgomery's trial, had appeared as Satan. Oebker indicated that while the issue of this juror being allowed to remain on the jury is not, in his view, the preeminent basis for clemency in this case, it is one more troubling facet to Montgomery's case that should give everyone pause in moving forward with his execution.

Oebker explained that Montgomery has a close relationship with his mother and is protective of her, and she did not attend the clemency hearing because Montgomery wanted to spare her any more pain than she has already endured. Oebker added that Montgomery has the support of relatives other than his mother and that Montgomery has a job awaiting him should he be released.

Oebker addressed Montgomery's refusal to be interviewed by the Board prior to the clemency hearing, noting that he had advised Montgomery to decline the interview. Though he knew that the Board would not look upon the refusal favorably, Oebker believed that declining the interview was the prudent course given that Montgomery is still seeking relief in the courts. The decision to decline the interview was not made lightly, Oebker stressed. However, given the many problems associated with Montgomery's case, even without having heard directly from Montgomery, there are sufficient grounds upon which the Board can base a favorable recommendation for clemency, Oebker argued.

Oebker offered presentations from a forensic medical examiner, Selma Eikelenboom, and a forensic scientist, Richard Eikelenboom, as support for the propositions that Montgomery's jury did not have a complete picture of the facts of the case and that there remains considerable doubt surrounding Montgomery's case. Together, the Eikelenbooms suggested that Ogle's date of death may have been after March 8, 1986; that Ogle's fatal gunshot wound may have been fired from a gun other than the Bersa .380 owned by Montgomery; and that because important physical evidence has not been preserved, the opportunity to apply modern forensic techniques to that evidence has been irretrievably lost.

Potential uncertainty over the actual date of Ogle's death

Selma Eikelenboom identified herself as a medical doctor and forensic medical examiner. She described how she became involved in Montgomery's case when his mother contacted her in 2012. At that time, Eikelenboom recounted, she cautioned Montgomery's mother that regardless of who retains her, Eikelenboom views her role as that of "truth finding." Therefore, in terms of her ultimate opinion, she will go wherever the evidence leads, which can sometimes cause problems for the individuals who retain her.

Eikelenboom noted that during the autopsy of Ogle's body, the body was described as "very cold and firm upon first examination" and it was noted that rigor mortis was absent after the

body had warmed at room temperature for several hours. The autopsy findings also noted moderate posterior fixed lividity and slight fixed lividity of the left anterior service of the body. According to Eikelenboom, there is a worrying discrepancy in the autopsy report insofar as the report identifies the date of death as March 12, 1986 but the time of injury occurring in the early morning hours of March 8, 1986.

Eikelenboom described several methods used by pathologists to estimate time of death, stressing that time of death can only be estimated and never determined with absolute certainty. One method is by measuring body temperature; however, Ogle's body temperature was not noted. Another method, Eikelenboom continued, is by assessing rigor mortis, which is the stiffening of the body's muscles that occurs as a result of oxygen deprivation to the muscles after death. It takes a certain amount of time before the body decomposes to the point that stiffened muscles eventually relax, releasing that stiffness, or "rigor." Signs of rigor mortis are usually apparent within a couple hours after death and are typically gone anywhere between 50 to 100 hours after death, Eikelenboom explained. The fact that rigor was absent from Ogle's body after it was warmed could suggest that rigor was gone by the time the body was examined, which would be consistent with a time of death closer to March 8. Alternatively, Eikelenboom continued, the absence of rigor could mean that rigor had yet to set in, suggesting a time of death much later than March 8. That being the case, rigor is not a particularly strong indicator of Ogle's time of death, Eikelenboom concluded.

A third indicator of time of death is lividity, which occurs when the blood in human remains sinks to the body's lowest level. It is only during the first six hours after death that lividity can be altered by moving the body, Eikelenboom explained. After six hours, lividity begins to fixate to the point that, after 12 hours, it is completely fixed. The fact that lividity was not completely fixed at the time of the autopsy suggests that Ogle had not been dead for four days, otherwise lividity would have been completely fixed, Eikelenboom opined. The partial lividity instead suggests a time of death closer to twelve hours before discovery, she added.

A fourth indicator of time of death is scavenger activity, Eikelenboom continued. The pathologist does not describe any animal activity and photographs likewise show no such activity, not even fly activity, she noted. Eikelenboom stated that given that outside temperatures on March 8 and in the days immediately thereafter were in the 60s, one would expect to see fly or ant activity if the time of death was in fact near that date, particularly in the type of wooded area where Ogle's body was found.

In Lucas County, Eikelenboom continued, there are many types of wildlife, including coyotes, foxes, and vultures. There are many reasons why animals might prefer to scavenge on one corpse over another; however, if a body is the only body in the woods, as Ogle's would have been, animals would have certainly scavenged it were it lying in the woods for four days. She concluded that the absence of that animal activity is not consistent with a date of death on March 8.

Physical evidence and the possibility of a second murder weapon

Richard Eikelenboom, a forensic scientist, described the ways in which forensic science has advanced since Montgomery's trial in 1986, noting that significant advances have since been made in the areas of DNA, bloodstain pattern analysis, gunshot wound analysis, and crime

scene reconstruction. Eikelenboom noted, further, that a report from the National Academy of Sciences issued after 1986, which examined many fields of forensic expertise, was, with the exception of DNA, quite critical of many of the fields in terms of the reliability of results, particularly toolmark and firearms analysis, which involves the matching of bullets to guns.

Eikelenboom discussed the Tincher crime scene in detail, noting that she was shot at close range and that the shooting resulted in significant blood loss and spatter. Eikelenboom opined that, given the volume of blood loss, he has no doubt that some of Tincher's blood would have landed on the shooter himself, including on the pinstripe suit jacket and hooded jacket to which the state has linked Montgomery. In addition, inevitably some of that spatter would have landed on the murder weapon. There were testing techniques available in 1986 that could have detected the presence of that blood on the murder weapon even if the weapon had been wiped clean, Eikelenboom stated.

Describing Ogle's injuries, Eikelenboom noted that Ogle was shot three times with the fatal shot being the third gunshot wound to the head, the bullet from which was never recovered. According to Eikelenboom, the considerable damage caused by that third gunshot wound suggests that the shot was in fact fired from a gun with a much larger caliber than the Bersa .380 that the state has identified as the murder weapon. Among the caliber weapons that could have created a wound of that size is a .38 revolver like the one owned by Heard's mother, Eikelenboom suggested.

At the crime scene, Eikelenboom continued, two live rounds of ammunition were found along with two casings. He theorized that the live rounds found at the crime scene could have been the result of the shooter attempting to clear a jam in the Bersa .380, which had a history of jamming, including during police testing. Perhaps, he continued, the Bersa .380 jammed at the scene, necessitating that the shooter utilize a different gun to inflict the third, ultimately fatal wound to Ogle, and perhaps that gun was of much larger caliber than the Bersa .380, which would explain the size of that fatal wound.

That scenario, Eikelenboom added, would also explain why some of the bullet casings were never recovered at the crime scene. The Bersa .380, which ejects a casing every time it is fired, should have left three casings at the scene; however, two were missing. The use of a second gun—a .38 revolver, for example, which does not eject casings but rather retains those casings in its cylinder—would explain the absence of one of those .380 casings, he suggested.

Eikelenboom added that, unlike Tincher, who appears to have sustained one gunshot wound while in a relatively stationary position, the trajectories of the bullets that struck Ogle indicate a struggle between Ogle and her killer. That struggle, together with a bruise on her left arm, suggest that there is a chance that, if tested today, touch DNA could be recovered from Ogle's coat. Eikelenboom lamented that this article of clothing, along with the suit jacket and other items, appear not to have been preserved, making DNA testing, which could have potentially been enlightening, impossible.

At the conclusion of their presentations, Oebker stressed that the Eikelenbooms are not "hired guns" and that when they take on a case, they do so with the intention of going wherever the evidence leads them with no predisposition to arrive at one conclusion over another. They are credible individuals who have, in the past, testified at the behest of both the defense bar and

prosecuting attorneys, Oebker stated. Oebker indicated that the Eikelenbooms have been paid a total of \$100 for their involvement in Montgomery's case, and they traveled to Ohio from Colorado at their own expense because they feel so strongly that a potential injustice will occur if Montgomery is executed.

Oebker urged the Board to consider the Eikelenbooms' testimony as evidence of how much information—particularly of a scientific, forensic nature—was not available to the jury and how much about Montgomery's case remains unknown. Unfortunately, at trial, Montgomery's attorneys offered no counter expertise. Without that evidence, Oebker continued, the jury simply accepted the state's theory of the case and its timeline, which itself was gleaned from Heard, an individual who offered multiple versions of the crime and who had an incentive to fabricate.

Oebker declined to provide his own specific theory of the case, arguing that it is not up to Montgomery to provide an alternative theory and adding that there is much about the case that we may never know. He instead urged the Board to look at Montgomery's case through the lens of how we arrived at where we are today as opposed to what happened in relation to the crime itself. Given the significant amount of doubt and uncertainty that has surrounded the case from its inception, he urged that executing Montgomery would be an injustice. Oebker continued that as a former prosecutor and as a citizen, he is very uncomfortable with the case.

Oebker acknowledged that Montgomery has not, to date, been able to obtain the relief he seeks from the courts, but that should not dissuade the Board and the Governor from acting favorably on his clemency application. There are cases where the available evidence falls short of what is needed to obtain judicial relief, yet there are enough due process concerns, evidentiary problems, and overall doubt about guilt to warrant intervention by the Board and the Governor through the clemency process. This is one of those cases, Oebker argued.

Oebker concluded his presentation with a request to the Board that it recommend to the Governor that he grant clemency to Montgomery, sparing his life.⁴

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Lucas County Prosecuting Attorney Julia Bates, Assistant Lucas County Prosecuting Attorney Evy Jarrett, and Assistant Ohio Attorney General Stephen Maher presented arguments in opposition to clemency.

Bates noted that she was working in the office of the Lucas County Prosecuting Attorney when the crime occurred and that she recalls the crime and ensuing events vividly. There was considerable panic and angst in the community when the first victim was found dead, which continued as the search for the second victim ensued. Bates observed that Ogle's death occurred 32 years ago to the day of the clemency hearing, March 8, 1986.

⁴ Oebker did not specify the precise form of clemency he is seeking on Montgomery's behalf, but instead suggested that although Montgomery does want to be released from prison, Oebker's immediate priority is sparing him from execution so that he can pursue a new trial.

While she commends Montgomery's attorneys for their tenacious efforts on behalf of their client, Bates cautioned the Board not to lose sight of the victims and to consider whether the victims are not owed that same tenacity in the pursuit of justice. Despite years of analysis in state and federal courts, Montgomery's attorneys continue to speculate and hypothesize about the case, Bates observed. She urged the Board to consider that everyone who has touched Montgomery's case—the prosecutors, the jury, the trial judge, and the reviewing courts—did their jobs.

Maher observed that despite each of them offering multiple versions of the crime, one point on which both Montgomery and Heard have been consistent is in relation to there being one gun and one gun only, the Bersa .380. Though Montgomery's initial versions of the crime involved Heard having used Montgomery's gun in the killings, there has never been any suggestion that any gun other than the Bersa was used, Maher noted. There was never any issue as to the number of guns used in the crime or, for that matter, the sequence of the two killings until recently, Maher noted, as Montgomery's attorneys have attempted to portray those issues as areas of lingering doubt.

Maher described how police were first led to Heard by Michael Clark, a jail inmate to whom Heard had confessed having information about the murders. In an attempt to secure favorable consideration in relation to his own, unrelated criminal charges, Clark shared that information with police, which then went searching for Heard at his mother's house.

After police officers arrived at her home on the afternoon of Tuesday March 11, 1986, Heard's mother told them that she expected Heard to arrive home shortly. While waiting for Heard, police asked Heard's mother if there were any guns in the home and she responded that there was a .38 revolver, which, after examination, turned out to be an antique over which either Heard's mother or grandmother claimed ownership, Maher explained. Police arrested Heard at 2:30 that same afternoon and he has remained in the state's custody ever since. Later, investigating detectives recovered the Bersa .380 directly from Montgomery's mother, Maher recounted.

Maher described the last of Heard's various versions of the crime, which was the version to which Heard ultimately testified at Montgomery's trial. In recounting Heard's version of events, Maher asked the Board to keep in mind that Heard's version is somewhat lacking in detail and argued that the absence of that detail in fact buttresses his credibility. Heard, for example, recounted that after returning to Tincher's apartment in Ogle's car after Montgomery shot Ogle, Montgomery told him to leave with Ogle's car, which he did. Heard never gave any indication as to what happened to Tincher. By the time Heard is arrested, however, he surely knows that there are two dead victims, and if he were simply attempting to redirect blame for those killings from himself to Montgomery, he would have created an elaborate, detailed story that specifically and directly blamed Montgomery for them, Maher argued.

Maher suggested that the police report describing several friends of Ogle having seen Ogle in the early morning hours of Wednesday March 12, 1986 is nothing more than a red herring. That report, Maher observed, was not the result of detectives scouring for clues, but rather a routine report taken by a uniformed officer. No one could have predicted on March 12, 1986 that this routine report would have made any difference to anyone, Maher suggested. After the federal district court ordered a new trial on the basis of that police report, those same witnesses

provided sworn statements that the person they had actually seen on March 12, 1986 was Ogle's sister, Diana Ogle, and not the victim herself. There was never any doubt that the sighting was a misidentification, Maher stressed.

Furthermore, Maher continued, as the Sixth Circuit Court of Appeals concluded, that police report would have been of no benefit to Montgomery because his defense has always been that Heard is the shooter. If Ogle was in fact alive on March 12, 1986, that would exonerate Heard as the shooter because he has been incarcerated since March 11, 1986 without interruption, Maher pointed out. There are, and always have been, two suspects in the case, Montgomery and Heard. If we are to pretend that Ogle was alive on March 12, 1986, then that by implication makes Montgomery guilty, Maher argued.

Rather, the facts of the crime clearly demonstrate that both victims were dead by 7:15 a.m. on Saturday March 8, 1986, which is when Tincher's body was found, Maher continued. He reiterated that both Montgomery and Heard have consistently indicated that it was Ogle's killing that necessitated Tincher's murder, and both Montgomery and Heard are consistent in their statements that both victims were dead by 7:15 a.m. on Saturday, March 8.

Maher argued that the evidence in the case clearly points to Montgomery as the shooter. While conceding that each piece of evidence taken in isolation might not suffice to prove Montgomery's guilt, Maher urged that, viewed cumulatively, the evidence clearly establishes Montgomery as the person who shot and killed the victims.

In describing the evidence that points to Montgomery as the shooter, Maher directed the Board's attention to the location where Tincher's car was found. Maher explained that the car, which contained Tincher's lifeless body, was parked next to an open field, across from which sits the apartment complex where Montgomery lived with his mother. Ogle's car, in contrast, was parked several houses down from where Heard lived, supporting Heard's version that Montgomery sent Heard home with Ogle's car after Ogle was killed. Maher urged the Board to bear in mind that neither Heard nor Montgomery had vehicles of their own, which allows one to use the locations of the victims' vehicles to draw inferences about the respective roles Heard and Montgomery played in the crime. Importantly, Maher added, witnesses saw one and one suspect only outside Tincher's vehicle on the morning of March 8, 1986. That person was wearing a hood pulled tightly around his face, a distinctive manner of wearing a hood linked to Montgomery, Maher added.

As further evidence of Montgomery's guilt, Maher pointed to the striped suit jacket that Montgomery had borrowed from his uncle and that Montgomery had dry cleaned on the afternoon of Saturday March 8. Montgomery had asked his friend, Sidney Armstead, to drive him to the dry cleaner, and Armstead observed Montgomery entering the cleaner with a bag. An employee of the dry cleaner testified that the coat was badly stained. Maher suggested that the staining was likely the result of the copious blood spatter described earlier in the clemency hearing by Montgomery's forensic expert, Richard Eikelenboom.

Maher argued, further, that Heard's version of events to which he testified at trial is corroborated in several ways, including Montgomery's own statement to police that after Ogle was killed, they both returned to Tincher's apartment. Also, Heard was able to provide details about Ogle's murder, while Montgomery's account was sparse and general. In addition,

Heard's version of events, unlike Montgomery's, does not require that we accept the implausible suggestion that Montgomery and Heard exchanged possession of the murder weapon. Lastly, Tinchler was killed miles away from Heard's home at the same time Ogle's car was spotted near Heard's home, Maher observed.

In arguing that the evidence clearly establishes that Montgomery killed the victims, Maher pointed to the fact that Montgomery was the individual who purchased the murder weapon. The police later recovered that same weapon from Montgomery's mother during its investigation, loaded at that time with the same type of copper-jacketed, aluminum cartridge bullets recovered at the Ogle crime scene. A ballistics examiner was able to match that gun to the bullets used to kill both victims. All of this evidence, taken together, led Montgomery's jury to find him guilty beyond a reasonable doubt, Maher summarized.

Maher noted that as far as the availability of clothing or other physical evidence is concerned, he is not aware as to whether or not clothing and other evidence is available today because no one has ever asked for the evidence to conduct DNA testing or for any other purpose. A search for that evidence would occur only if someone asked for the evidence, Maher observed.

With respect to the affidavits executed by some of Montgomery's trial jurors, Maher cautioned that the jury deliberation process is intended to be a *group* decision-making process and that when you isolate jurors after the fact and ask them to reconsider evidence in an artificial deliberative environment, it can produce unreliable results. Bates added that, with respect to the juror who recounted her dream to the trial court, the trial judge determined that she could remain impartial after thoroughly questioning her.

Addressing the question raised by Selma Eikelenboom regarding Ogle's time of death and specifically her suggestion that the absence of fly activity on the body suggested a relatively recent time of death, Jarrett suggested that, in her own experience, she has encountered very little fly activity in this area of the country in March. For that reason, Jarrett suggested that little could be inferred about Ogle's time of death from the absence of fly activity.

In relation to Richard Eikelenboom's suggestion that the case could benefit from additional forensic testing and reports, Jarrett observed that virtually every case could. Be that as it may, she continued, it would be imprudent to supplant a jury's verdict with speculation as to what additional evidence might have revealed.

The state concluded its presentation by requesting that the Board recommend to the Governor that he deny Montgomery's request for clemency.

VICTIMS' REPRESENTATIVES:

Barb Tipping, a friend of Ogle's mother, Jane Ogle, read a letter that was sent to Jane Ogle by a concerned citizen. The letter, which the author titled "real injustice," urged that more thought and concern should be afforded the victims of violent crime than the criminals who perpetuate it. The letter lamented that society has allowed its criminal population to take over, is coddling criminals, and is elevating criminals' rights over those of law-abiding taxpayers. The author of the letter opined that those who do not support the severest punishments for violent criminals

will soon change their minds when they themselves become victims. The letter concluded by expressing disgust with society's general lack of indignation at violent crime.

Jane Ogle observed that her daughter and Tincher were murdered 32 years ago to the very day of the clemency hearing. Jane Ogle described the intensive search for her daughter after she went missing and how her body was ultimately found covered in ice and snow. She described her daughter's love of sports and her athletic abilities, recounting that her daughter was a good student and was named prom queen. Her daughter had a "heart of gold" and would help anyone who needed it, Jane Ogle related. At the time she was killed, her daughter was working hard and applying for student loans. Jane Ogle noted that her daughter was not the first person Montgomery killed, and that Montgomery had previously killed his uncle. She suggested that the lenient punishment he received for that killing only emboldened him. She concluded by stating that she believes in lethal injection and the idea of an "eye for an eye."

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. A majority of the Board comprised of six (6) members has concluded that Executive clemency in the form of commutation of Montgomery's sentence to life without the possibility of parole is warranted for the following reasons:

- In 1992, just six years after Montgomery's trial, two individuals who had served on Montgomery's jury executed affidavits indicating that, during the trial, they were having difficulty understanding the law and how they were to apply it for purposes of determining guilt and recommending a sentence.
- One of Montgomery's jurors was permitted to remain on the jury despite exhibiting troubling behavior and verbalizations that raised a substantial question over her fitness to serve.
- As a general matter, capital proceedings should reflect a level of procedural integrity commensurate to the gravity of the punishment at hand. Though it was held by the United States Court of Appeals for the Sixth Circuit to fall below the level of constitutional error, the state's failure to disclose the police report documenting that Ogle was observed by witnesses on March 12, 1986, four days after Montgomery is alleged to have killed her, gives a majority of the Board pause nonetheless. The failure to disclose that report coupled with the issues described above relative to Montgomery's jurors raise a substantial question as to whether Montgomery's death sentence was imposed through the kind of just and credible process that a punishment of this magnitude requires.

Four (4) members of the Ohio Parole Board have concluded that Executive clemency is not warranted in this case for the following reasons:

- Nothing presented at the clemency hearing warrants reaching any conclusion other than that reached by the jury at his trial, which is that Montgomery caused the deaths of two

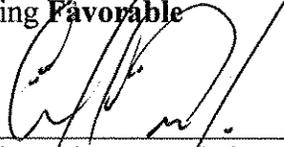
individuals. Nor can the senselessness of those killings and the heinous manner in which they were perpetrated be overlooked.

- Montgomery previously committed manslaughter as a juvenile.
- The undisclosed evidence and juror-related issues surrounding Montgomery's case do not rise to the level of manifest injustice warranting the exercise of Executive clemency.
- The issue of the police report documenting that Ogle was observed by witnesses on March 12, 1986 was addressed by the United States Court of Appeals for the Sixth Circuit, which found that the withheld evidence did not create a reasonable probability of a different result at trial or sentencing.

RECOMMENDATION:

The Ohio Parole Board with ten (10) members participating, by a vote of six (6) to four (4) recommends to the Honorable John R. Kasich, Governor of the State of Ohio, that Executive clemency be granted in the case of William Montgomery.

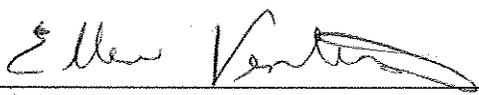
Adult Parole Authority
Ohio Parole Board Members
Voting **Favorable**



Andre Imbrogno, Chair



Kathleen Kovach



Ellen Venters



Richard Cholar Jr.

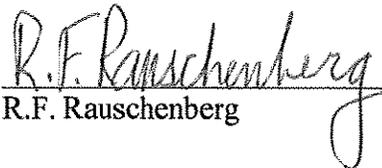


Marc Houk

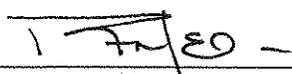


Shirley A. Smith

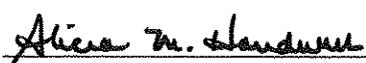
Ohio Parole Board Members
Voting **Unfavorable**



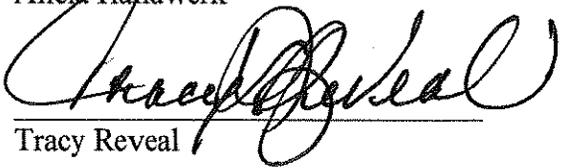
R.F. Rauschenberg



Ronald E. Nelson Jr.



Alicia Handwerk



Tracy Reveal

THE REAL INJUSTICE

WITH THE 'CONCERNED POLITICIANS' AND 'NEWS MEDIA' SO CONCERNED WITH CONSTRUCTING THE NEW LAVISHED "HOUSE OF CORRECTIONS" FOR THE MULTITUDES WHO CHOOSE TO VIOLATE THE RIGHTS OF LAW ABIDING CITIZENS, I SUBMIT INSTEAD OF CODDLING THEM, AND WORRYING SO MUCH ABOUT THEIR CIVIL RIGHTS, WE PUT BARBED WIRE AND GUARDS WITH LOADED GUNS AROUND SOME OF THE MILITARY BASES WE TAXPAYERS BUILD AND ARE NOW BEING CLOSED. AFTER ALL, THOSE BASES WERE GOOD ENOUGH FOR LAW ABIDING PATRIOTS, MANY WHO HAVE GIVEN THEIR LIVES SO THAT WE CAN LIVE IN PEACE AND FREEDOM IN THIS COUNTRY. IF THEY'RE GOOD ENOUGH FOR GOOD AND DECENT AMERICANS, THEY'RE MORE THAN GOOD ENOUGH FOR SCUM THAT WOULD COMMIT ACTS OF VIOLENCE AGAINST ANOTHER HUMAN BEING. NEITHER THE BIBLE, THE CONSTITUTION, NOR COMMON SENSE PROMISES CRIMINALS A SPACIOUS, COMFORTABLE ROOM, CARPETED LIBRARIES, LOUNGE CHAIR RECREATION ROOMS, OR WEIGHTLIFTING EQUIPMENT. I'M NOT THE SLIGHTEST BIT CONCERNED ABOUT LAW BREAKERS BEING A LITTLE CROWDED, OR UNCOMFORTABLE DURING THEIR INCARCERATION FOR ACTS OF VIOLENCE. NOT IN THE SLIGHTEST BIT, AM I CONCERNED IF THE TOILET FACILITIES, FOOD, OR FURNITURE MIGHT BE A LITTLE SUB STANDARD FOR AN ELEMENT OF OUR SOCIETY THAT COULD CARE LESS ABOUT OTHER HUMAN BEINGS. BUT I PERSONALLY AM SICKENED BY THE DEVASTATION THESE BEASTS ARE ALLOWED TO INFLECT ON OUR SOCIETY. EVERYONE SHOULD BE APPALLED AT THE EXTENT REPEAT OFFENDERS, WHICH MAKE UP A LARGE PORTION OF ALL CRIMES COMMITTED, ARE LET OUT EARLY, GIVEN LIGHTER SENTENCES THRU PLEA BARGAINING, OR

WE SHOULD BE HOLDING OUR POLITICIANS, AND THE JUSTICE SYSTEM ACCOUNTABLE FOR THE SENSELESS, AND SHAMEFUL EXTENT THEY HAVE ALLOWED THE CRIMINAL ELEMENT IN OUR SOCIETY TO ALL BUT TAKE OVER. I THINK WHEN A JUDGE OR GOVERNOR DECIDES TO LEAVE ONE OF THE SCUM OUT ON ONE OF THOSE EARLY RELEASE PROGRAMS, HE OUGHT TO BE ON PROBATION IN THE HOME OF THAT JUDGE OR GOVERNOR FOR NINETY DAYS OR SO. IF HE DOESN'T COMMIT ANY ACTS OF VIOLENCE AGAINST THE JUDGE OR GOVERNOR'S FAMILY, THEN I MIGHT EVEN SUPPORT A FIRST TIME OFFENDER BEING GIVEN A SECOND CHANCE. BUT NO MORE THIRD, FOURTH AND FIFTH CHANCES. THAT'S LUDICROUS! SINCE THE RIGHTS OF LAW ABID TAXPAYING PEOPLE SEEMS TO HAVE TAKEN A BACK SEAT TO THE RIGH AND WISHES OF THOSE WHO ELECT TO COMMIT THEIR ATROCITIE AGAINST OTHERS, WE NEED A CONCERTED EFFORT BY ALL WHO SHOULD BE OUTRAGED AT WHAT IS GOING ON IN OUR STREETS AN NEIGHBORHOODS. I'VE NOTICED THAT THOSE WHO OPPOSE SEVER PUNISHMENT FOR ACTS OF VIOLENCE AGAINST US, CHANGE THEI MINDS WHEN IT HAPPENS TO THEM. FORTUNATELY, NO ONE IN MY FAMILY HAS BEEN HAS BEEN SEVERELY TOUCHED BY ON OF THESE HEINOUS ACTS, BUT THANKS TO WHAT IS ALLOWED TO GO ON IN OUR SOCIETY, EACH AND EVERY ONE OF US IS GOING EXPERIENCE IT ONE OF THESE DAYS. ONLY BECAUSE OF T SICKENING CODDLING BY OUR SYSTEM OF THOSE WHO PERPRETRAI THESE DEPLORABLE ACTS IS IT ALLOWED TO GO ON AND ON. PEOPLE ~~TALK ABOUT CONCERN FOR CRIME, BUT HOW MANY TIMES HAVE YOU~~ ~~STOOD WITH YOUR PRINCIPALS, IN A CONVERSATION, IN AN EDITORIAL,~~ ~~IN A LETTER TO A POLITICIAN, OR IN THE VOTING BOOTH TO EXPR~~

I FOR ONE AM TOTALLY DISGUSTED AT THE LACK OF INDIGNATION BY OUR SOCIETY AS A WHOLE AT WHAT IS HAPPENING, AND TO THE SYSTEM THAT IS SWORN TO UPHOLD OUR FREEDOM AND LIBERTIES AGAINST ANY AND ALL ENEMIES THAT WOULD THREATEN THOSE LIBERTIES. IF WE AS A SAME SOCIETY COULD TAKE A MOMENT AWAY FROM WORRYING ABOUT HOW TO MAKE A CRIMINALS LIFE BETTER, AND PUT THAT CONCERN AND ENERGY TOWARDS KEEPING HABITUAL LAW BREAKERS AWAY FROM SOCIETY, WE CAN STOP THAT ACT OF VIOLENCE THAT IS GOING TO HAPPEN TO SOMEONE YOU LOVE. MAKE NO MISTAKE ABOUT IT, AT THE RATE WERE GOING, IT IS GOING TO HAPPEN TO YOU! I AM A LOT MORE CONCERNED ABOUT THE VICTIMS AND THEIR FAMILIES, AND IN STOPPING OTHERS FROM BEING VICTIMS THAN I AM OF CRIMINALS. WHERE DO YOU STAND? MY THOUGHTS AND SYMPATHIES ALSO GO OUT TO THE THOUSANDS UPON THOUSANDS OF FINE YOUNG MEN WHO HAVE GONE INTO BATTLE THROUGHOUT THE DECADES, AND GAVE THEIR LIVES TO PRESERVE LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS FOR ALL MANKIND. AND MAY I ADD: SHOULD SOCIETY EVER NEED SOMEONE TO FLIP THE SWITCH, DROP THE PELLET, OR INSERT A NEEDLE INTO THE ARM OF SOMEONE WHO RAPES A LITTLE GIRL, BEATS AN ELDERLY LADY TO DEATH, OR SHOOTS A CONVENIENCE STORE EMPLOYEE TO DEATH; JUST CALL, I'LL BE RIGHT THERE! IT'S PAST TIME THAT WE DEMAND THAT OUR LAWMAKERS GET THEIR HEADS OUT OF THE SAND AND PUT AN END TO ALL THIS MADNESS, OR ELSE THEY SHOULD BE MADE TO GO OUT IN THE REAL WORLD AND GET A REAL JOB. I KNOW WHERE MY ALLEGIANCE IS AT!

APPALLED,