

DATE TYPED: March 5, 2009
DATE PUBLISHED: March 6, 2009

IN RE: BRETT XAVIER HARTMAN, OSP #A357-869

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

Date of Meeting: February 26, 2009

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: BRETT XAVIER HARTMAN, OSP # A357-869

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with death penalty specification, Tampering with Evidence, Kidnapping

DATE, PLACE OF CRIME: September 9, 1997 in Akron, Ohio

COUNTY: Summit

CASE NUMBER: CR 97-09-1987

VICTIM: Winda Snipes, (age 46)

INDICTMENT: 9/17/1997: Count 1: Aggravated Murder; Count 2: Tampering with Evidence.

INDICTMENT SUPPLEMENT: 10/16/1997: Count 3: Aggravated Murder with specification; Count 4: Kidnapping.

TRIAL: Jury

VERDICT: 4/30/1998: Found guilty as indicted.

SENTENCE: 5/22/1998: Count 3: Sentenced to DEATH (*Note - Count 1 was merged with Count 3 by the Judge for sentencing purposes); Count 2: 5 years; Count 4: 10 years.

ADMITTED TO INSTITUTION: June 2, 1998

JAIL TIME CREDIT: 11 days

TIME SERVED: 128 months

AGE AT ADMISSION: 23 years old

CURRENT AGE: 34 years old

DATE OF BIRTH: June 29, 1974

PRESIDING JUDGE: Honorable Michael T. Callahan

PROSECUTING ATTORNEY: Sherri Bevan-Walsh

FOREWORD:

Clemency in the case of Brett Xavier Hartman, A357-869 was initiated by the Ohio Parole Board, pursuant to Section 2967.03 and 2967.07 of the Ohio Revised Code and Parole Board Policy #105-PBD-01.

On February 12, 2009, the Parole Board interviewed Brett Hartman via video-conference at the Ohio State Penitentiary. His attorney, Michael Benza was present at the interview. Board Members participating in the interview included Chairperson Mausser and Parole Board Members Mr. Bedra, Mr. Bogan, Dr. Mack, Mr. Maszczyński, and Ms. Venters.

A Clemency Hearing was then held on February 26, 2009 with all eight (8) members of the Ohio Parole Board participating. Brett Hartman was represented by David Stebbins of the Federal Public Defender's Office at this hearing. Testimony in support of clemency was also provided by Pastor Deborah Wissner, Sister Alice Gerdeman (on DVD), Carol Parcell – Brett Hartman's mother, Arletta Hartman - Brett Hartman's Aunt, and Josh Wolpert - Brett Hartman's nephew (on DVD). Arguments in opposition to clemency were presented by Summit County Prosecutor Sherri Bevan-Walsh and Assistant Attorney General Tom Madden. Jacqueline Brown, friend of victim Wanda Snipes, also testified in opposition of clemency.

The Parole Board considered all of the testimony, the information disseminated by presenters at the hearing, prior investigative findings as well as judicial decisions. With these, the Board deliberated upon the propriety of clemency in this case. With eight (8) members participating, the Board came to a unanimous agreement, and voted to provide an unfavorable recommendation for clemency to the Honorable Ted Strickland, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (CR97091987): The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided October 3, 2001:

“Brett Hartman met Winda Snipes at a bar in Akron, Ohio, sometime during 1997. Subsequently, they engaged in sexual intercourse on several occasions. During the late afternoon of September 9, 1997, Hartman went to Snipes's apartment and brutally murdered her by tying her to the bed, stabbing her one hundred thirty-eight times, slitting her throat, and cutting off her hands.

Hartman was convicted of aggravated murder, kidnapping, and tampering with evidence, and sentenced to death. In order to establish Hartman's guilt, the state introduced statements Hartman had made to the police and to a fellow inmate in jail, and the testimony of a co-worker that Hartman mentioned cutting off a victim's hands as a way to eliminate evidence in the O.J. Simpson case. The state also introduced as evidence Hartman's bloody tee-shirt and Snipes's watch recovered from Hartman's apartment, and forensic testimony linking Hartman to the murder.

Around 2:20 a.m. on September 9, 1997, Brett Hartman met Winda Snipes at the Bucket Shop, an Akron bar. Hartman kissed Snipes on the cheek and they talked. Thereafter, Hartman and Snipes left the bar and they went to her apartment across the street.

Around 3:00 a.m., David Morris, an acquaintance of Hartman and Snipes, left the Inn Between, another Akron bar. While walking past Snipes's apartment on his way home, Morris observed Snipes and Hartman through the upstairs window of her apartment. Morris testified that Snipes was yelling at Hartman about touching stuff that was not his. Hartman closed the window blinds and "obviously she wasn't very happy about it" because she "scolded" him and reopened the blinds.

That afternoon, at around 4:30 p.m., Snipes was observed crossing a street in a nearby business district. She was never seen alive again.

Hartman had the day off from work on September 9. According to Richard Russell, a bartender at the Inn Between, Hartman entered the bar at around 8:00 p.m. and appeared nervous and hyper, and talked excessively. Thereafter, Hartman was in and out of the bar five to six times between 9:00 and 10:30 p.m.

Hartman first contacted the police on September 9 with a series of anonymous 911 calls, which he later admitted to. His first 911 call at 9:59 p.m. reported the location of a mutilated body. The police officers dispatched to Snipes's address entered Snipes's apartment building and checked around, but left after finding nothing unusual. Meanwhile, Hartman viewed the police unit's arrival and departure while hiding behind a tree across the street. Hartman then made another 911 call telling the police to return to the apartment building and provided further instructions on the body's location.

Akron police officers responding to this call entered Snipes's unlocked apartment and found her naked, mutilated body lying on the bedroom floor. Snipes's leg was draped across the bed, a pair of pantyhose tied her ankle to the bed leg, and a white plastic chair was on top of her body. Snipes's hands were cut off and have never been found.

Around 10:45 p.m., Hartman was at the Inn Between with Morris, while police units were across the street investigating Snipes's murder. Morris, having learned that Snipes had been murdered, suggested to Hartman that he should talk to the police, since Morris had observed Hartman at Snipes's apartment the previous evening.

Shortly before midnight, Hartman approached Detective Gregory Harrison while he was at a mobile crime lab parked outside Snipes's apartment. Hartman walked up to Harrison and said, "I hear it's pretty bad in there," and asked if Harrison had "ever seen anything so gruesome." Later that evening, Hartman approached Harrison a second time and spontaneously mentioned that Snipes was a whore, "that she slept around a lot," and that "he had slept with her and he had even slept with her the night before at 3:00." In their final contact at around 3:00 a.m., Hartman was "kind of mumbling to himself" and Harrison heard Hartman say that "she was a whore, she was a big whore, she got what she deserved."

Between 11:30 p.m. and 12:15 a.m., Hartman also approached Akron Police Lt. John A. Lawson near the murder scene and, “rather abruptly said, ‘You’re going to find my semen in her and my prints over there.’ ” When Lawson asked why, Hartman said he “had been with her earlier that morning, the morning of the 9th,” and that he had had sex with her.

At 12:15 a.m. on September 10, Hartman spoke to Detective Joseph Urbank in front of the apartment building. Hartman began their conversation by announcing that “he had sex with the victim the night before.” Moreover, Hartman said he did not know her name but “only knew her as psycho bitch and that everybody knew that if you got drunk and were horny you went to go see her, you went to go see psycho bitch.”

Hartman also told Urbank that he went to Snipes's apartment at 2:30 a.m. on September 9, and “she started dancing a little bit.” He “lifted her onto the bed, undressed her,” and “they started having vaginal intercourse.” Hartman said that he was disappointed because Snipes refused to have anal intercourse, and he left her apartment around 3:30 a.m. However, Hartman claimed that he did not know anything about the murder until the bartender at the Inn Between told him about it on the evening of September 9.

Around 6:00 a.m. on September 10, police took Hartman to the Akron police station, where he was interviewed by Lawson and Urbank. During his interview, Hartman denied making the 911 calls, and denied hiding behind a tree across from Snipes's apartment. Then, Hartman changed a part of his story and admitted hiding behind a tree near the murder scene.

Following the September 10 police interview, the police searched Hartman's apartment with his consent. The police seized Hartman's bloody tee-shirt from underneath the headboard of his bed, a pair of his jeans, and his boots. Police found a knife on his dresser and Snipes's wristwatch on Hartman's bed stand.

Police took Hartman to the police station after the search of his apartment. While awaiting transfer to the Summit County Jail, Hartman approached Detective John R. Gilbride and blurted out, “I was the one that called the police” and “I’m the one that found the body.”

Hartman told Gilbride he had been sexually involved with Snipes since February 1997, and had sexual intercourse with Snipes during the early morning hours of September 9. Hartman stated that “after having sex the psycho bitch threw him out of the apartment stating that her boyfriend was coming over.” He left around 3:30 a.m. and returned to his own apartment.

According to Gilbride, Hartman said that he slept until 6:00 p.m. on September 9, and then took the bus to the Inn Between bar around 7:30 p.m. Gilbride testified that while going into the Inn Between bar, Hartman noticed a light on in Snipes's apartment and decided to visit her. According to Gilbride, Hartman gained entry to the apartment through an unlocked door and claimed that he found her dead body in her bedroom.

Hartman said that he unsuccessfully tried to pick her body off the floor, noticed that her hands had been cut off, and “freaked out.” Thinking “I’m going to get busted for this,” Hartman washed her blood off his hands and clothes, tried wiping down everything he touched, removed evidence linking him to her apartment, and went home.

Snipes was stabbed one hundred thirty-eight times. Bruising on her ankles indicated that she was alive when she was tied to the bed. Additionally, sperm was found in her vagina and anus. The medical examiner concluded that Snipes had died from strangulation and a slit throat either in the late afternoon or early evening of September 9.

Police found Hartman's bloody fingerprint on the leg of the white chair draped over Snipes's body, and police found another of Hartman's fingerprints on Snipes's bedspread. An expert witness testified that the long linear blood patterns found on Hartman's tee-shirt and Snipes's bedspread were applied by a long-bladed knife. Further, the blood patterns found on Hartman's tee-shirt were applied while the tee-shirt was lying flat, and not while Hartman was wearing it.

At trial, the prosecution introduced a set of Hartman's knives, including a meat cleaver, a knife, and a knife sharpener that Hartman kept at the Quaker Square Hilton, where he worked as a chef.

Christopher Hoffman, a Hilton co-worker, testified that he talked to Hartman in August 1997 about the O.J. Simpson trial. According to Hoffman, Hartman said that Simpson could have disposed of evidence against him by cutting off the victim's hands and eliminating “fibers and hair and skin that might be found on the fingernails.”

Bryan Tyson, a fellow inmate at the Summit County Jail, testified that during a jailhouse conversation, Hartman admitted that he had killed Snipes. According to Tyson, Hartman said that “he pushed himself on her, something in his mind snapped, she was hitting him, he lost his temper, did things he regretted, killed her.” Then, Hartman said that he had “tried to make it look like a burglary,” admitted cutting off Snipes's hands, and mentioned a hacksaw, and jokingly said “ ‘Don't leave home without it,’ like the credit card commercial.”

Jessica O'Neill, an acquaintance of Hartman, talked on the phone with Hartman on September 9. Phone records showed that O'Neill called Hartman's apartment and spoke with him at 3:12 p.m. and 4:50 p.m. She also claimed that she talked with Hartman on the phone around 6:30 or 7:00 p.m.

The defense also introduced evidence suggesting an alternative suspect, Jeff Nichols. Nichols lived across the hallway from Snipes's apartment until he moved out of his apartment around September 1, 1997. Nichols worked as a handyman for the apartment building and had access to the landlord's keys to other apartments.

In January 1997, Jeffrey Barnes, a friend of Snipes, was visiting Snipes's apartment when Nichols came to her door. According to Barnes, Nichols “got up right to her door and

then he said, 'Slit the bitch's throat, cut her up,' and called her a slut and all other kind of vulgar names.'" Barnes reported this incident to the police upon hearing about Snipes's murder.

On an evening prior to September 1, 1997, Linda Zarski, a neighbor in Snipes's apartment building, heard Snipes pounding on Nichols's door and screaming that she wanted her shirt.

On another occasion prior to the murder, Linda Kinebrew, a neighbor living at the apartment, "heard [Nichols] arguing, telling [Snipes] to let him in and she wouldn't."

Carol Parcell, Hartman's mother, provided an alibi. Hartman lived at his mother's apartment, and Parcell claimed that when she came home on September 9 at 6:15 p.m., her son was sleeping in his bedroom. According to Parcell, Hartman woke up at 7:00 p.m., got ready, left the apartment at 7:30 p.m., and returned to the apartment around 8:15 p.m.

Hartman testified on his own behalf. He admitted having sex with Snipes several times over the past year and during the early morning hours of September 9 when he was at Snipes's apartment. After having sex, Hartman returned to his apartment at about 3:30 a.m., slept until 6:15 p.m., left his apartment at 7:35 p.m., and returned to the Inn Between bar.

Before reaching the Inn Between, Hartman noticed that Snipes's bathroom light was on at her apartment, and he decided to visit her to see if he could "get laid." Hartman entered Snipes's apartment through an unlocked door and found her mutilated body in the bedroom. Hartman tried to "get her up and put her on the bed to see if there was anything else I could help with."

Hartman "freaked out" after noticing Snipes had no hands and realized he "could get in a lot of trouble" if he was placed at the scene. Thus, he washed her blood off his hands, wiped down the cupboards, chair handles, and anything else he might have touched, gathered whatever items he could find that belonged to him, and left Snipes's apartment. Hartman "ran home" and threw the items taken from Snipes's apartment into a nearby dumpster. Upon arriving home, Hartman changed his shoes and hid the bloody tee-shirt so that his mother would not find it.

Thereafter, Hartman hurried back to the Inn Between bar and started drinking. When he was "semi-intoxicated," Hartman made the anonymous 911 calls reporting the location of Snipes's body, admitted standing behind a tree watching the police arrive at Snipes's apartment, and later approached the police to report that he had been at the apartment the previous evening.

Hartman introduced photographs taken of his naked body following his arrest to show the absence of bruises and injuries. Hartman explained that a cut on his elbow had occurred at work while he was moving crates.

Hartman acknowledged talking with Chris Hoffman about the O.J. Simpson case but did not recall discussing anything about cutting off a victim's hands.

Hartman knew Tyson as a fellow inmate but denied making any jailhouse admissions that he murdered Snipes.

The grand jury indicted Hartman on two counts of aggravated murder, including one count of murder with prior calculation and design and one count of felony murder. A capital specification relating to murder during a kidnapping was included in the felony murder count. He was also charged with kidnapping and tampering with evidence.

The jury found Hartman guilty of all offenses and recommended death for Snipes's murder. The trial court sentenced Hartman to ten years for kidnapping, five years for tampering with evidence, and death for the aggravated murder of Snipes."

PRIOR RECORD

Juvenile: Brett Hartman has no known juvenile arrest record in Ohio. As a juvenile, he lived in Arizona, California, New Mexico, Ohio and Wisconsin. At the age of 13, he was charged with Theft and placed in the New Mexico Diagnostic Center for a term of 90 days. Mr. Hartman self-reported that he continued to have contact with juvenile authorities. He incurred drug related charges, joyriding, shoplifting, and several DUI's. He turned himself into juvenile authorities at the age of 17 at which time he was placed in a Group Home. No further information is available.

Adult: Brett Hartman has the following known adult arrest record:

<u>Date</u>	<u>Offense</u>	<u>Location</u>	<u>Disposition</u>
9/7/1997 (Age 23)	Aggravated Murder with specification; Tampering with Evidence; Kidnapping CR97-09-1987	Akron, Ohio	Instant Offense

Traffic: Brett Hartman has received traffic citations that were disposed of via fine, court costs and driving suspension.

Institutional Adjustment:

Brett Hartman was admitted to the Department of Rehabilitation and Correction on June 2, 1998. His work assignments while incarcerated at the Mansfield Correctional Institution included Material Handler, Porter and Tutor. Since his transfer to the Ohio State Penitentiary, Hartman's work assignments included Library Aide and Clerk Administrator.

Hartman has participated in several programs during his incarceration including a Medical Programming Class, Drug Awareness, SAFE People, Commitment to Change and Stress Management. He has also participated in multiple inmate community service projects and has assisted in various institutional art and painting projects at the Ohio State Penitentiary. In October 2006, Hartman achieved a certificate in Legal Assistant / Paralegal studies through a correspondence program. In March 2008, he achieved a certificate of ordination from the Minister's for Christ Assembly of Churches, a result of his self-studies. Hartman has also attended regular Christian worship services at the Ohio State Penitentiary since June 2006.

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

- 1/28/2009 – Disobedience of a Direct Order – Hartman refused to uncover his cell window and also used disrespectful language toward staff. He received 7 days in disciplinary control for this rules infraction.
- 9/22/2002 – Possession of Contraband, including any article knowingly possessed which has been altered or for which permission has not been granted – Hartman was found guilty for possessing 83 extra state envelopes. He received 6 days in disciplinary control for this rule infraction.

Brett Hartman has received approximately six (6) additional conduct reports since he was admitted to the Department of Rehabilitation and Correction in 1998. These conduct reports did not result in Disciplinary Control. On each occasion, Hartman was found to be in possession of minor contraband items.

APPLICANT'S STATEMENT:

Brett Hartman was interviewed by Members of the Parole Board on February 12, 2009. Mr. Hartman began the interview by reading a prepared statement which is attached. After reading the statement, the Board Members asked questions of Mr. Hartman, particularly focusing on the crime of which he was convicted.

Mr. Hartman denied murdering the victim Winda Snipes. He claimed that he found her body, "freaked out" and attempted to remove any signs of his being present at the apartment by wiping down anything that he touched. He admitted calling 911 at two different times. After making the first call, he went to a bar. Approximately one hour later, he went back to the area of the apartment, saw the police leave and decided to call them again. This time he told police exactly where the body was. He also admitted to calling the victim vulgar names including "psycho bitch" and stated he was heavily intoxicated the day of the murder.

When asked how he knew the victim, applicant stated he would see her in several neighborhood bars and had had sex with her in the past. The day of the crime, he admits passing her apartment building, seeing her lights on and hearing music playing, and then making the decision to go by and see her. He says this is when he discovered her body.

Then he said he moved some of his things, washed the blood from his hands and wiped down everything that he had touched in the apartment so that he would not be a suspect. He stated that he was concerned about being a suspect because earlier that morning, he went to the victim's apartment, had sex with her, but was thrown out because her boyfriend was coming by. At this time he apologized for calling the victim, "psycho bitch".

He admitted to making inappropriate statements about the victim to the police officer. He said he feels horrible about what happened to Ms. Snipes. At the time of the crime, he reports that he did not know the victim's name, but called her "psycho bitch" like everyone else. He did not find out the victim's real name until the police told him.

When asked about evidence suggesting that there was probably another suspect by the name of Nichols, applicant replied that he knew that the victim had had a volatile relationship with Mr. Nichols and that he (Nichols) had threatened to cut her up and cut her throat. When asked about any evidence that would link Mr. Nichols to the crime, he acknowledged that he did not know of any. Mr. Hartman said he could not say whether or not it was Mr. Nichols who committed the crime. However, he reported what he knew about Nichols and his statements to the police.

When asked about the watch recovered at his apartment that was identified by the victim's sister as a Christmas present purchased by the victim's mother for the victim, he stated that the watch was not the victim's, but belonged to another female he slept with at his apartment. He kept the watch because he was hoping that she would eventually return to retrieve it. He said further that the watch was very common and his mother does remember seeing the watch at his apartment two weeks before the crime occurred. However, he did not recall if his mother testified to that at his trial.

Mr. Hartman stated that there were numerous hairs on the victim's body that were never tested. He believes that these would link someone else to the crime.

Mr. Hartman stated that he does not remember talking to a co-worker about the O.J. Simpson case, and making the statement about cutting off the victims' hands as a means to escape detection. He also stated he did not admit to a fellow inmate at the county jail that he cut off the victim's hands with a hacksaw. When queried about the hacksaw, Mr. Hartman stated that he did have a hacksaw that he had borrowed from his brother-in-law. He had used it to remove an old radiator from an apartment. Whenever he would use it, he always returned it and hung it up.

When asked why he refused to take a lie detector test if he was innocent, Mr. Hartman responded that he did take the test after his arrest when the detectives told him that if he passed the test, he could go home. However, the machine was not turned on so the detectives told him he would have to take it again the next day. However, after speaking with his mother, she advised against it so he refused to take it again.

When asked about his juvenile behavior, Mr. Hartman stated that he incurred some drug related charges, joyriding, shoplifting, and several DUI's, most of which occurred after he ran away from his mother's home in California and began using drugs and alcohol routinely. He did spend some time in a group home in California for joyriding and having crystal meth on his person. He and his mother eventually moved back to Akron, Ohio in order to be close to his two sisters. He had received his 4th DUI and his mother decided that this move would benefit them. He also stated that he spent 90 days in New Mexico at a juvenile drug center. At that time, his parents were in a custody battle over him. He was ten years old at the time. He did not like the way his stepmother treated his mother and talked negatively about her. He told the Parole Board that his childhood was very troubled and chaotic due to moving around a lot.

Mr. Hartman was asked about his institutional conduct and he stated that he was "appalled" that he would be kicked out of the honor dorm for the disciplinary ticket he received. He does recall getting a ticket for having five music CD's and legal materials in his possession.

Mr. Hartman emphasized to the Parole Board that he has made numerous contributions to the community through his many programming efforts including participating in assisting flood victims in Haiti, volunteering in the Sojourner House Project (Battered Women's Shelter) and Safe People Program (Religious Services), adopting an elementary school, donating paintings to social service agencies, becoming an ordained minister and painting murals on the wall in his pod.

Mr. Hartman stated that he would like his sentence commuted to life so that he can continue to fight for his freedom. He stated that he should receive clemency because he did not commit the crime for which he was convicted, he has made dramatic personal improvements, he has made a good adjustment while in prison, and he will be a tremendous benefit to the general population.

ARGUMENTS IN SUPPORT OF CLEMENCY:

Attorney David Stebbins represented Mr. Hartman at the clemency hearing conducted on February 26, 2009 and first presented the following supporters who each made a statement on behalf of Mr. Hartman and in support of clemency:

Pastor Deborah Wissner of Bethany Lutheran Church in Akron, Ohio stated that Hartman's mother attends her church and asked her to visit Hartman to which she agreed. Pastor Wissner stated that she regularly visits Hartman and corresponds through letters in between their visits. She stated that Hartman is sincere, witty, personable, kind and intelligent and never asks anything for himself. He always thanks the congregation for their kindness and has evolved and grown spiritually since his incarceration. She asked that the Parole Board recommend clemency as Hartman's life is worth saving and he has much to contribute.

The recorded statement of Sister Alice Gerdeman was played. Sister Gerdeman stated that she is a member of the Intercommunity Justice and Peace Center through which she became acquainted with Brett Hartman. She stated that Hartman reaches out beyond his own problems to help others. He is very concerned about his mother, other family members and other inmates who are on death row. He hopes to make life better for others on death row. He is involved in charitable work and is talented and has much to give. She stated that he also may be innocent; therefore, the state may be making a mistake by executing him. Sister Gerdeman stated that for all of these reasons, clemency should be granted and Hartman's life should be spared.

Carol Parcell, Hartman's mother stated that her son did not commit the crime. He is the youngest of her three children and took care of her when she was ill. He was always respectful of her privacy. Ms. Parcell stated that she is very sorry for the victim's death. She stated that the trial was a "nightmare" and very unfair and that her son did not receive proper representation. Ms. Parcell stated that her son had a very chaotic childhood. His father was abusive and his stepfather did not like children. He was sent to live with his aunt on an isolated Indian reservation, then with his father and stepmother. His stepmother beat him so he ran away and became a disciplinary problem. When he came back to live with her, he got into trouble and ended up in a group home. Since his incarceration, he has volunteered and taken up painting. He is now an ordained minister and attends services twice a week. His family loves and supports him and does not want him executed.

Arletta Hartman, Brett Hartman's aunt stated that Hartman lived with her from the age of 8 to 12 on an Indian reservation where she taught Special Education. She described life for him on the reservation, and indicated that it was isolated as he was the only Caucasian child amongst all Navajos. He lacked many skills, was hyper and disruptive in class. He was ostracized by the other children for his differences. He became a behavioral problem as a means to be sent back to his mother. He eventually moved in with his father and stepmother, but did not like the rules they attempted to enforce, so he ran away. He went back to his mother, and eventually engaged in drug and alcohol abuse. After he ran away from the California group home, he decided to return and visited her on his way back to California. He appeared to want to change and did complete the group home. Ms. Hartman stated that she believes he is not guilty and further believes that he deserves clemency.

Josh Wolpert, Brett Hartman's nephew stated that Brett is the reason he is who he is today. Hartman taught him to take responsibility for his actions. Mr. Wolpert stated that he also lived on an Indian reservation and understands what it is like to be the outcast. Mr. Wolpert stated that Brett taught him about metallurgy and art. Mr. Wolpert has not had a chance to visit Hartman and would like his life spared so he can continue their relationship and eventually visit him.

Attorney Stebbins then presented the following arguments in support of clemency:

- Brett Hartman is an exceptional inmate in that he is intelligent and caring and has made significant contributions while incarcerated. He has received only two disciplinary tickets since his incarceration, neither of which involved violence. He has participated in numerous programs and has received many community service awards. He has consistently participated in programs that benefit others, and has utilized his time to improve the conditions on death row. He is a self taught artist and uses those skills to benefit others. He has become a paralegal and ordained minister. His contributions while incarcerated on death row demonstrate that he will adapt well to general population and will likely continue to be a positive influence to other inmates. When he was young, he was impulsive and drunk much of the time; however, now that he has matured, his life has value and he can continue to contribute while incarcerated.
- Mitigation evidence was not fully developed by trial counsel and presented to the jury. Although Hartman's aunt and sister testified during the mitigation phase, the jury did not hear the detail that they presented to the Parole Board, and significant events in his childhood were left out that could have explained his behavior and convinced at least one juror that death was not the appropriate sentence. These details include:
 - At age 5, Hartman's parents divorced and he moved from Wisconsin to California with his mother. At age 8, his mother sent him to live with his aunt on an Indian reservation in New Mexico. He was very isolated while living with his aunt and always wanted to return to his mother. At age 12, he began to act out as a means to be returned to his mother. He was arrested for stealing and at age 13, he was placed in the New Mexico Juvenile Diagnostic Center. He was evaluated at this facility and diagnosed as being a very disturbed adolescent who was repressing strong feelings of anger, hostility and abandonment. Professional intervention was deemed a necessity, including intense psychotherapy. It was further recommended that he be placed in a stable therapeutic environment. Unfortunately, after his release, he did not receive the recommended treatment, but was returned to his mother's home in California.
 - After returning to his mother's care, the same lack of parental rules and guidance was predominant in the home. Hartman again moved to another Indian reservation in southern California, but soon ran away. At that time, Hartman began living on the streets and abusing drugs and alcohol. He was hospitalized due to his drug use, and was eventually arrested for drug and alcohol related behavior. He was placed in a group home, but ran away from that environment as well. Hartman relocated to Akron, Ohio, but eventually returned to California to finish his obligation at the group home. He entered the emancipation program in which he learned and obtained some skills and successfully completed the program. He then

eventually returned to Akron, Ohio with his mother and resided with her there.

- The jury was not presented with a complete picture of Hartman's childhood which included witnessing violence in his home by his stepfather toward his mother and sister, experiencing complete isolation on an Indian reservation between the ages of 8-12, a history of running away and homelessness, and a diagnosis at the New Mexico Juvenile Diagnostic Center.

ARGUMENTS IN OPPOSITION TO CLEMENCY:

Representing the State of Ohio were Summit County Prosecutor Sherri Bevan-Walsh and Assistant Attorney General Tom Madden. The following arguments were presented in opposition to clemency:

- The victim was a very thoughtful and caring person. She dressed meticulously and took good care of herself. She was extremely close to her family who all miss her very much. She lived in Akron, Ohio for 1.5 years and stayed in contact with her family on a regular basis.
- Evidence at trial established Hartman as the killer. He tied the victim to her bed, had vaginal and anal intercourse with her, beat her, strangled her with a cord, slit her throat, stabbed her 138 times, made various cut marks on her body, and cut off her hands. He is a cold-blooded killer who is very sadistic and had a very arrogant attitude toward the victim's family.
- Hartman was in and out of a local bar 5 or 6 times the night of the murder, acting nervously. He made a series of 911 phone calls reporting a mutilated body at the victim's apartment building, and watched police enter the building. When first interviewed, he totally denied making the calls, but later admitted to it. His behavior around the police detectives was very suspicious in that he was calling the victim a "whore" and stated that he had had sex with her the night before she was killed. He stated that the victim got what she deserved.
- When officers eventually went to the home of Mr. Hartman, he was heard by the police telling his mother that they will probably strap him to the electric chair for this one. Several pieces of evidence were collected linking Hartman to the crime. Hartman changed his story several times, and eventually told the authorities that when he went into the victim's apartment and saw that her hands were missing, he just "freaked out". He tried to pick up the body but could not because the victim's ankle was still tied to the bed post. He admitted washing the blood off of his hands and wiping down her apartment so he would not be linked to the crime. He also said he threw some items into the dumpster which were recovered. His bloody thumb print was found on the victim's bedspread and his palm print on a chair. There was also a bloody rag stuffed into the victim's mouth.

- Mr. Hartman told a co-worker that if he had been O.J. Simpson, he would have cut the victims' hands off because "the tongue can sting but the hands can hurt you".
- Initially the victim's boyfriend Jeffrey Nichols was pursued as the primary suspect, but investigators were unable to recover any evidence linking him to the crime. They did a thorough investigation of Mr. Nichols, questioning him for four hours and thoroughly searching his apartment including removing the wall paneling. He had an alibi, appeared to be credible, and there was no reason for them to detain him any longer than they did. There was absolutely nothing that linked Jeffrey Nichols to the crime. However, the more Brett Hartman was questioned and investigated, the more the evidence led directly to him.
- Mr. Hartman denied having anal intercourse with the victim and stated that the semen in the anal cavity would identify the real murderer. He requested DNA testing which was conducted in 2006. However, the results of the DNA test identified the semen as belonging to Hartman. Therefore the evidence establishing Hartman as the killer is stronger today than at the time of trial.
- Mr. Hartman has no remorse for what he has done and he showed the victim absolutely no mercy when he brutally murdered her. Even now he refuses to take responsibility for what he has done. He claims he is innocent, yet he wants the Board to consider mitigation to explain his behavior. He has presented inconsistent arguments to the Board.
- Despite his accomplishments in prison, no amount of good deeds can mitigate against the horrors and brutality of this crime. There has been nothing presented that is compelling enough to warrant the Board recommending clemency to the Governor.
- Counsel's argument that Hartman had ineffective trial counsel is without merit, and the courts have considered that claim and determined that he did receive effective counsel. Witnesses, including his mother and aunt, testified to the family history, alcohol abuse and drug overdose, and his chaotic childhood. In addition, Hartman's mother was present at the trial, but counsel made a tactical decision not to call her to testify during mitigation. The jury heard all of the same mitigation that was presented to the Board. Hartman's sister and aunt testified during the mitigation phase in detail about applicant's troubled childhood, his parents divorce, trouble with his stepfather, and living with his aunt on the Indian reservation. This was also a tactical decision to have family testify to these facts rather than a psychologist in order to make it more personal for the jury. Brett Hartman received a fair trial at which the jury heard his personal story. However the jury rejected it as mitigating, and recommended a sentence of death.

VICTIM'S REPRESENTATIVE:

Ms. Jacqueline Brown, friend of victim Winda Snipes, spoke on behalf of the victim and the victim's family. She stated that she and the victim had worked together in the past at a telemarketing company. She also reported that there was a person named "Jerry" who lived in the same building as Ms. Snipes who had retained her (Ms. Brown's) telephone number. He was the one who had called Ms. Brown and given her information regarding the crime.

Ms. Brown stated to the Board that she was not made aware of the funeral services of Ms. Snipes and was not able to attend. She was the one who notified the family about the victim's missing hands. She confirmed that Mr. Hartman and Ms. Snipes did have a relationship for about two weeks when she first came to Akron, Ohio. Ms. Snipes stopped seeing the applicant after that time and referred to him as a "creep". Ms. Brown stated further that there is no doubt in her mind that Mr. Hartman tortured the victim and then mutilated her body. She imagines that the victim was in incredible agony. Ms. Brown wanted the Board to know also that Ms. Snipes was of good character and was none of the negative things that Mr. Hartman said about her.

Ms. Brown feels that Mr. Hartman took the victim's watch as a "trophy". Fortunately, the victim's mother was able to have her daughter's watch returned to her.

Ms. Brown said she is convinced of Mr. Hartman's guilt. It bothers her tremendously that a website has been set up for him and now he has become the "victim". She also thinks it is a travesty that he is allowed to sell his paintings for the purpose of raising funds for his defense.

In conclusion, Ms. Brown stated that the family of the victim wants the execution of Brett Hartman to go forward on April 7, 2009.

Ms. Brown was given the opportunity to read letters from the victim's family members.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Parole Board reviewed submissions both in favor of and in opposition to clemency, as well as the statement and responses of Brett Hartman from the interview conducted on February 12, 2009 and a letter received on March 3, 2009, and the information presented at the hearing conducted on February 26, 2009. The Parole Board reached a unanimous decision to make an unfavorable recommendation regarding Mr. Hartman's request for both a commutation and a reprieve based on the following:

- The overwhelming evidence presented in this case removes all doubt of the guilt of Brett Xavier Hartman. The innocence claim is weak, given all of the evidence supporting the conviction. Despite recent DNA testing that further linked Hartman to the crime and identified him as the killer, he continues to deny committing the offense, and displays no remorse. However, he simultaneously

argues that the Board should recommend clemency due to the presence of mitigating circumstances in his childhood that explains behavior to which he refuses to admit.

- Mitigation presented by Mr. Hartman's counsel does not outweigh the extensive aggravating factors of this crime. The jury heard substantially the same mitigating evidence regarding his childhood and chose to recommend a sentence of death. That jury had the option of recommending Life without Parole, but chose death. It is unlikely that the outcome would have been different even if the jury heard any additional information regarding Hartman's childhood that was presented to the Board.
- Hartman's institutional adjustment does not outweigh the aggravating factors and is insufficient to recommend commutation of his death sentence.
- A reprieve to test hair fibers is unfounded in that the issue has already been addressed by the courts and was not permitted. It is extremely unlikely that counsel would be successful in obtaining the opportunity to have a court consider this request again. Given the results of the recent DNA test, the Board does not accept the argument that testing hair fibers will identify the real killer. Hartman already advanced that argument when requesting the DNA test and the results of that test identified Hartman as the killer.

RECOMMENDATION:

The Ohio Parole Board with eight (8) members participating, by a vote of eight (8) to zero (0), recommends to the Honorable Ted Strickland, Governor of the State of Ohio, that clemency in the form of a commutation or a reprieve be DENIED to Brett Xavier Hartman.

Brett Xavier Hartman, A357-869
Death Penalty Clemency Report

Adult Parole Authority
Ohio Parole Board Members
Voting Favorable

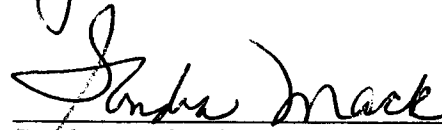
Ohio Parole Board Members
Voting Unfavorable



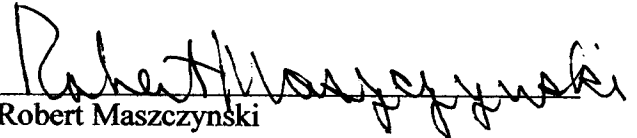
Cynthia Mausser, Chair



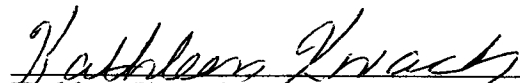
Jim Bedra



Sandra Mack, Ph.D.



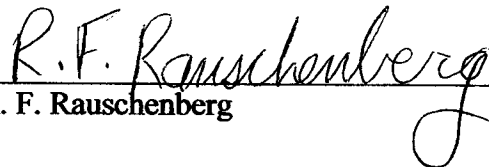
Robert Maszczyński



Kathleen Kovach



Ellen Venters



R. F. Rauschenberg



Bobby J. Bogan, Jr.