

DATE TYPED: February 9, 2011
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IN RE: JOHNNIE R. BASTON, OSP #A308-174

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

Date of Meeting: February 3, 2011

Minutes of the **SPECIAL MEETING** of the
Adult Parole Authority held at 770 West Broad Street,
Columbus, Ohio 43222 on the above date.

IN RE: Johnnie R. Baston, OSP #A308-174

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with death penalty specifications, Aggravated Robbery with firearm specification

DATE, PLACE OF CRIME: March 21, 1994 in Toledo, Ohio

COUNTY: Lucas

CASE NUMBER: CR94-5682

VICTIM: Chong Mah

INDICTMENT: Counts 1-2: Aggravated Murder with death penalty specifications; Count 3: Aggravated Robbery with firearm specification

TRIAL: Trial by 3 Judge Panel

VERDICT: February 15, 1995: Found Guilty as indicted.

DATE OF SENTENCE: February 24, 1995

SENTENCE: Count 2: DEATH
Count 3: 10-25 years with 3 years actual

ADMITTED TO INSTITUTION: March 21, 1995

JAIL TIME CREDIT: 25 days

TIME SERVED: 192 months

AGE AT ADMISSION: 21 years old

CURRENT AGE: 36 years old

DATE OF BIRTH: February 18, 1974

JUDGES: Honorable William J. Skow
Honorable Charles J. Doneghy
Honorable J. Ronald Bowman

PROSECUTING ATTORNEY: Assistant Prosecutor Thomas Tomczak
Assistant Prosecutor Mary Sue Barone

FOREWORD:

Clemency in the case of Johnnie Baston, A308-174 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 January 25, 2011, Johnnie Baston was interviewed via video-conference by the Parole Board from the Ohio State Penitentiary. A Clemency Hearing was then held on February 3, 2011 with nine (9) members of the Ohio Parole Board participating. Arguments in support of and in opposition to clemency were then presented.

The Parole Board considered all of the written submissions, arguments, information disseminated by presenters at the hearing, prior investigative findings as well as judicial decisions and deliberated upon the propriety of clemency in this case. With nine (9) members participating, the Board voted nine (9) to zero (0) to provide an unfavorable recommendation for clemency to the Honorable John Kasich, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE (CR94-5682): The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided May 12, 1999:

Johnny Baston, subject, was charged with aggravated robbery and the capital aggravated murder of Chong Mah. Baston waived his right to be tried by a jury, and the case proceeded before a three-judge panel. The panel found Baston guilty of all charges and, after a penalty hearing, sentenced him to death. The court of appeals affirmed.

Chong Mah and his wife, Jin-Ju Mah, owned two retail stores in Toledo. Chong Mah managed the couple's downtown store, Continental Wigs N' Things. In addition to wigs, the store sold team logo hats and jackets. At approximately 11:30 a.m. on March 21, 1994, Jin-Ju Mah telephoned her husband and spoke to him at the downtown store. When Chong Mah failed to answer a later call, Jin-Ju Mah became concerned. She then went to the downtown store, arriving around 5:10-5:15 p.m. She found the store unlocked and the lights on. The cash register was open and empty. In a rear storage room, Jin-Ju Mah found her husband's body-he had been shot once through the head. Chong Mah was pronounced dead at the scene.

Investigators found a single .45 caliber hollow-point slug behind the wall paneling in the room where Chong Mah was shot. An autopsy revealed that Chong Mah had been shot in the back of the head at a range of two to three inches. Examination of the crime scene caused investigators to believe that, in addition to the money in the cash register, Chong Mah's killer had also taken team logo hats and "Starter" type jackets from the store.

Also on March 21, 1994, David Smith went to downtown Toledo to meet with his parole officer. Johnnie Baston accompanied him, but was not permitted to stay for the appointment. Records indicated that Smith met with his parole officer at approximately 11:30 a.m., and that the meeting lasted ten to fifteen minutes. When Smith left the meeting, he tried to find Baston. He “beeped” Baston on his pager, but there was no response. Smith then walked back and forth between the municipal building and the county jail four times, finally finding Baston in the vicinity of the municipal court. Baston and another friend, Bobby Mitchell, were in a yellow Cadillac owned by Smith's cousin, Michael Ridley.

Mitchell first saw Baston on March 21, 1994 on River Street. Baston was carrying a dark brown plastic garbage bag that appeared to have something in it. Mitchell passed Baston as Mitchell went to his car, before proceeding to Smith's apartment, where he again saw Baston. Mitchell was there to see Ridley, who was also staying at the apartment.

While Mitchell was at Smith's apartment, he noticed some sports hats lined up on an end table, as well as a revolver. A short time later, Mitchell and Baston left the apartment in Ridley's Cadillac to pick up Smith downtown. When the two picked up Smith in front of the municipal court building, Mitchell was driving, Baston was in the passenger's seat, and Smith got in the back seat. Mitchell overheard Smith and Baston “mumbling” to each other, and heard Baston tell Smith “I did it.” The trio then drove back to Smith's apartment.

After news coverage of Chong Mah's murder, an employee of a nearby club/bar reported to police that at approximately 11:45 a.m. on the day of the murder, she saw a man carrying a plastic bag walk across a parking lot near the wig shop. The man caught her attention because he was heavily dressed despite it being unseasonably warm that day, and he was wearing a team logo jacket, and another jacket draped over his shoulders. She later said the man could have been Baston, but was unable to positively identify him. A patron of the bookstore adjacent to or near the wig shop told police that he thought he heard a gunshot shortly before noon on March 21, 1994.

A few days after the murder, Patricia Chininis contacted the Toledo Police. Patricia Chininis's daughter, Deana, was Smith's girlfriend. Both women also knew Baston. Patricia Chininis related that on the day before the shooting, Baston and Smith were at her house. In moving Baston's jacket, Patricia Chininis noticed it was unusually heavy. She felt the jacket, realized there was a gun in it, and told Baston and Smith never to come back to her house with a gun. Deana Chininis stated she previously saw both Smith and Baston with revolver-type guns and hollow-point bullets. Furthermore, the day or so after the murder Baston offered to give Deana's girlfriend a Starter jacket.

After receiving this information, police obtained a search warrant for Smith's apartment (where Baston was staying). Police seized four sport logo hats and several Starter jackets. A wig store employee identified these articles as being similar to those the store carried. The employee, an African-American, also recalled that three weeks prior to the killing

three African-American males were in the store acting suspiciously. The employee overheard one of the three say to another: "No, it's a sister in here," before they left. The employee identified Baston as one of the three.

Smith, Deana Chininis, and two other persons were at the apartment when police executed the search warrant. While all four went to the police station, only Smith was cooperative. After interviewing Smith, the police obtained an arrest warrant for Baston.

Baston was arrested in Columbus, Ohio, at a church function. He was carrying a .25 caliber semi-automatic pistol and had a .45 caliber semi-automatic revolver in his luggage. The .45 caliber slug recovered at the crime scene matched those test-fired from the .45 caliber revolver seized from Baston. In an interview with Columbus police shortly after his arrest, Baston admitted participating in the robbery of the wig shop, but denied shooting Chong Mah. According to Baston, an accomplice named "Ray" took Chong Mah into the back room and shot him. Baston denied any intention to kill anyone, and claimed that Ray acted without Baston's prior knowledge.

Baston was indicted on two counts of aggravated murder and one count of aggravated robbery with a firearm specification. Each aggravated murder count carried a capital specification pursuant to R.C. 2929.04(A)(7). Baston pleaded not guilty and elected to be tried before a three-judge panel.

Baston contested that he was the principal offender in the aggravated murder. William Nappins, a defense witness, testified that while on his way to an Alcoholics Anonymous meeting at approximately 11:45 a.m. on the morning of the murder, he saw a tall, dark-skinned African-American male emerge from either the wig store or the book store next to it. The man was dressed in black and carrying a bag. Nappins's description of the man did not match that of Baston.

The defense argued that David Smith was the Ray that Baston had named as the actual triggerman during his Columbus interrogation. The defense asserted that the presence of another gunman at the wig shop robbery created a reasonable doubt as to the capital specifications. The panel nevertheless found subject guilty on all counts and specifications.

PRIOR RECORD

Juvenile Offenses: The subject has the following. known juvenile arrest record:

<u>DATE</u>	<u>OFFENSE</u>	<u>LOCATION</u>	<u>DISPOSITION</u>
2/14/1987 (Age 12)	Criminal Damage	Lucas County, Ohio	\$25 fine & restitution
5/13/1989 (Age 15)	No Drivers License	Lucas County, Ohio	Court Costs

Johnnie R. Baston (AKA: Johnny R. Baston), OSP #A308-174
 Death Penalty Clemency Report

5/30/1989 (Age 15)	Petty Theft	Lucas County, Ohio	Probation & Costs
4/19/1990 (Age 16)	Petty Theft	Lucas County, Ohio	5/30/1990: Placed on probation

Details: On 4/19/1990, Baston stole \$101.94 worth of merchandise from several retail stores.

8/2/1990 (Age 16)	Runaway	Lucas County, Ohio	Court ordered to return home.
7/26/1990 (Age 16)	Petty Theft (2)	Lucas County, Ohio	8/13/1990:Dismissed w/restitution; Continue probation, restitution.
11/6/1990 (Age 16)	Grand Theft	Lucas County, Ohio	Committed to DYS with a stay, continued on probation.

Details: Originally charged with Aggravated Burglary, charge amended to Grand Theft.

7/24/1991 (Age 17)	Aggravated Menacing, CCW (gun)	Lucas County, Ohio	Committed to DYS from 7/26/1991 to 2/28/1992; Discharged from parole on 11/13/1992.
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Details: On 7/21/1991, Baston had a .45 caliber revolver on his person and did point this loaded revolver at three individuals outside of the North Towne Mall.

Adult Offenses: The subject has the following known adult arrest record:

<u>DATE</u>	<u>OFFENSE</u>	<u>LOCATION</u>	<u>DISPOSITION</u>
4/16/1992 (Age 18)	1.Resisting Arrest Resisting/ Interfering 2. Disorderly Conduct	Lucas County, Ohio	1. 60 days DYS 2. \$75 & costs
12/1/1992 (Age 18)	No Drivers License	Lucas County, Ohio	Convicted

3/21/1994 Aggravated Murder, Lucas County, Ohio INSTANT OFFENSE
(Age 20) Aggravated Robbery
 (94-5682)

Institutional Adjustment:

Johnnie Baston was admitted to the Department of Rehabilitation and Correction on March 21, 1995. His work assignments while incarcerated at the Mansfield Correctional Institution included Laundry Worker, Porter and Student. Since his transfer to the Ohio State Penitentiary, his work assignment has been as a Student and most recently, Porter. Baston is currently assigned to the extended privilege unit at the Ohio State Penitentiary. He has participated in community service projects while at the Mansfield Correctional Institution and while at the Ohio State Penitentiary.

Since his admission, Baston has never been placed in disciplinary control. He has received approximately four (4) conduct reports since he was admitted to the Department of Rehabilitation and Correction in 1995. Baston's last conduct report was in 2007. These conduct reports include Refusal to Carry Out an Institutional Assignment and Disobedience of a Direct Order (1995), Aiding and Abetting the Possession of Minor Contraband (2001), and Possession of Minor Contraband (2002 & 2007).

APPLICANT'S STATEMENT:

Johnnie Baston was interviewed by the Parole Board on January 25, 2011. He stated that he is seeking clemency in the form of a commutation to life with or without parole. He stated that during his trial, it was noted that he seemed emotionless. He wanted to address that criticism, and advised the Board that that is how he carries himself, and is not an indication that he does not feel remorse, because he is very remorseful for his actions.

Baston then made a statement regarding the offense. He stated that at the time, he was residing with David Smith aka "Pencil" due to being kicked out of his parents' home for stealing his step father's .45 caliber revolver for a second time. On Monday, March 21, 1994, he and David Smith went to retrieve Mr. Smith's car from an impound lot. When told by officials to return at 1:00 p.m., they went to see Mr. Smith's parole officer. Upon their arrival, Baston was as he did not have an appointment at the parole office. As he was walking downtown, he met up with an acquaintance named Ray, a member of the Vice Lords street gang, who gave him a ride. As they drove around downtown Toledo, Ray talked to him about joining the Vice Lords. Baston was considering the idea. According to Baston, Ray informed him he would be allowed entrance into the gang if he actively participated in a robbery. Ultimately, Ray chose the Wigs & Things store as the target for the robbery. Before entering the store, Ray had asked him to switch guns, and Baston complied. They entered the store with Ray carrying Baston's .45 caliber gun, and Baston carrying Ray's .22 caliber gun.

According to Baston, during the course of the robbery, Ray approached the storekeeper and victim Mr. Mah, and instructed Baston to remove items which consisted of hats and

Starter jackets. Ray became upset with the amount of money in the register, and asked Mr. Mah for more while also forcing him to the rear of the store. Baston stated that he then heard a shot, at which time he ran from the store with the merchandise. He got on a bus and made his way back to David Smith's home. Once there, he asked another male who was at the home, Bobby Mitchell, to drive him back downtown to meet with David Smith. They eventually found David Smith and went back to his home. While watching the news, Baston learned that the victim was shot and killed. He told David Smith that he had been involved, but he did not tell David Smith that he was the actual shooter.

Baston further stated he later traveled with his church to a youth retreat in Columbus, Ohio in order to figure out what he should do and to receive guidance from church staff. At some point, David Smith told his girlfriend what Baston had told him about his involvement in the offense. She informed her mother who contacted the Toledo Police Department. He was then arrested in Columbus, and questioned by the Columbus Police Department. He told Columbus Police that Ray was involved in the offense as the actual shooter, and gave them as much identifying information as he knew, however, police were never able to locate Ray. Baston stated that the Toledo Police did not believe that anyone else was involved.

Baston then answered questions of the Board Members. When asked why he would bring guns to a church retreat, Baston stated he was afraid and that children resided in the home where he was staying, and he didn't want them to have access to the guns. When asked how he wound up in possession of the gun that was used in the shooting if Ray had been the actual shooter, he stated that Ray must have returned the gun to David Smith's residence and placed it on his book bag when he was not home, because that is where he found the .45 caliber after the offense. Baston claimed that Ray knew the location of David Smith's home due to previously attending a party in the area. When asked how many days had passed from the time of the crime and his attendance at the church retreat, he reported two to three days.

When asked if he was in the habit of carrying a firearm, Baston answered that he routinely carried a firearm because he was previously assaulted and robbed at knifepoint after leaving the Boys Club. When asked if he was ever in Mr. Mah's store prior to the offense, he stated that he had been in the store three years prior, and purchased Chicago Bulls apparel.

Baston initially denied having a prior criminal record, then admitted that he was adjudicated delinquent for stealing his step father's gun in 1991 and committed to DYS. He clarified that he had no prior adult record. He admitted to stealing the weapon once again in 1994, and that weapon was used to shoot Mr. Mah.

Baston's additional responses revealed that he did not conceal his identity, the offense was not planned, he did not possess gloves or a mask, the crime happened at the spur of the moment, the merchandise he removed from the store included caps and Starter jackets, and he may have given a jacket to a young girl.

Baston was asked about his institutional conduct and stated that he has not received any conduct reports which have resulted in disciplinary control. He stated to the Board that he attempted to earn his GED and has signed up for Community Service. He attends church programs, independent bible study and mentors family, friends and youth.

Baston stated he would like his sentence commuted so that he can continue to help and mentor others. He admits to his involvement in the robbery however, he continues to deny that he shot Mr. Mah, and maintains that Ray was the actual shooter. Baston stated that he has made significant personal improvements while incarcerated to include being housed in the honor pod, and he believes he will be a tremendous benefit to other inmates in the general population.

ARGUMENTS ADVANCED IN SUPPORT OF CLEMENCY:

A written application with exhibits outlining the arguments in support of clemency for Johnnie Baston was received by the Parole Board. On February 3, 2011, a hearing was conducted to further consider the merits of the application. Tyson Fleming and Robert Barnhart of the Ohio Public Defender's Office represented Baston and presented oral arguments and witnesses in support of clemency.

Attorney Robert Barnhart made the following initial arguments:

- The Mah family did not want Baston to be sentenced to death at the time of his trial and today still oppose his execution. Governor Kasich has the power and the Parole Board should recommend a commutation to life without parole, at the wishes of the Mah family. Life without parole was not a legal sentencing option at the time of Baston's trial.
- Baston was born in 1974 in Hubbard Texas. He never met his birth mother and was raised by his abusive father until the age of two, at which time he was allowed to reside with his paternal aunt who eventually adopted him at the age of six. Prior to his placement with his paternal aunt, his life consisted of abuse and neglect which later led to foolish and criminal acts.
- Since his incarceration, Baston has become a model inmate, residing in the honor pod for approximately five years. He has received only four minor conduct reports, none of which resulted in segregation. He has held various job assignments while in prison, attempted to attain his GED and participated in several community service projects. Baston poses no further risk to staff or inmates, and should be permitted to live the rest of his life in prison.
- Baston's case is disproportionate to another Lucas County homicide, and thus is not the worst of the worst. Nathaniel Beauregard, another Lucas County defendant convicted of Aggravated Murder received a 30-life sentence. It is difficult to rectify these two different outcomes, as the facts of Baston's case do not appear significantly different when compared to the facts of Beauregard's case.

- Baston has always admitted to being a part of the crime and although it is understandable why the Parole Board would be skeptical of Baston's version of the offense, that is only one factor that the Board should consider when deciding whether Baston is worthy of mercy.

Attorney Tyson Fleming provided the following argument and witness regarding the wishes of the victim's family in this offense:

- The victim's family has always shown mercy to Baston and has been opposed to the death penalty as the sentence in this case since trial.
- Richard Baston, who is referred to as Baston's brother and is his biological cousin stated that after Baston was arrested and charged with the offense, the victim's family met with their family. The victim's family was able to see Baston as a whole person and concluded that they did not support the death penalty as appropriate punishment in this case. Unfortunately, life without parole was not a sentencing option, and Baston was sentenced to death. Richard Baston further stated that their family still grieves for the victim's family.

Attorney Fleming then provided the following information and witnesses regarding Baston's childhood and family life:

- Baston was abandoned by his birth mother, and had no communication with her until he was incarcerated on death row. He was given to his father, who was abusive, and eventually taken and adopted by his paternal aunt. Although his aunt and her family, consisting of her husband and children, gave Baston much love and provided for him, Baston never felt a part of this family, and continually tried to reconnect to his biological father. His biological father rejected him, and chose his wife's children over him. The rejection and lack of belonging eventually led Baston to the street life and involvement with gangs.
- Mrs. Tommie Davis, Baston's paternal aunt and adoptive mother stated that she witnessed Baston being mistreated by her brother at the age of two and one-half during a visit to his home in Texas. She was residing in New Mexico at the time, and convinced her husband to travel back to Texas so she could take custody of Baston. She was able to take custody of Baston from his maternal grandmother's home. Baston was dressed in a dirty t-shirt and wet diaper. Despite frequent bathing, he emitted a chronic odor. Baston was initially unable to cry tears, but instead made a sound until he learned how to cry. He was introverted and a loner, but also sweet and good and a child whom everyone loved. Baston was negatively impacted by his birth mother's numerous promises to come see him which were never fulfilled. When he spoke to her on the phone and would hear her make these promises, he would look out the window for hours awaiting her arrival, but she would not arrive.

- According to Mrs. Davis, Baston began to display behavioral issues in middle school. He would do whatever he wanted, and she could not control him. She would purchase Baston gifts when he acted out to show him that she loved him, but it did not improve his behavior. She eventually contacted her brother, Baston's father, hoping that if Baston spent some time with his father, his behavior would improve. Baston's father agreed to allow Baston to spend time with him in Texas. However, when they arrived in Texas, Baston's father changed his mind stating in front of Baston that he would contaminate his step children. After this ultimate rejection Baston's behavior went out of control. Mrs. Davis stated that she feels responsible for Baston's behavior because she kicked him out of her home after he stole her husband's revolver. This served as the third time Baston felt abandoned, and he could not deal with it.
- Mrs. Davis relayed that Baston spent his free time at the local boys club mentoring other troubled youth. He was a good boy who made bad decisions. He was a good artist and well liked by others.
- Richard Baston again spoke and stated that he was 15 at the time Baston came to reside with their family, and he was responsible for protecting his younger brother. Richard Baston stated that he regrets persuading Baston to choose a three judge panel over a jury, as a jury may have been more sympathetic. He stated that he further regrets not giving Baston what he needed when he was young, as he was pursuing a degree in engineering at the time and his other brothers were pursuing their own careers. Baston wanted to be like his brothers who were star athletes, but his brothers were not always around to guide him. Their parents taught them to take responsibility for their actions, and he believes Baston has done that. Baston has no prior history of violence, has been a model prisoner, and does display regret and remorse for his actions. Baston wants to influence young men not to make the same mistakes he did. Richard Baston stated that the family believes that Baston is deserving of clemency.
- Ron Baston, another brother/cousin also spoke on Baston's behalf. He stated that Baston was a great kid with talent and potential. It is tragic that Baston chose the route that he did because he has a loving and considerate family. His mother is the hero in this situation because she adopted Baston and removed him from an abusive home. Ron Baston stated that Baston's behavior took a turn for the worse when his father rejected him after his trip to Texas. Ron was in the military and would write to Baston and tell him to make good decisions, but Baston did not make good decisions. He urged the Board to consider what Baston has achieved while incarcerated and argued that those accomplishments demonstrate a level of maturity which Baston did not possess at the time of the offense. Ron Baston beseeched the Board to recommend clemency because if Baston is executed, his son and daughter would lose their father, which would perpetuate the cycle of fatherlessness.

Attorney Fleming's presentation then turned to Baston's involvement with the Boys & Girls Club and the Glass City Church and included the following arguments and videotaped statements:

- Baston volunteered at the local club and later became a counselor, spending time mentoring youth with same or similar problems. In 2010, Johnnie received a letter from Carlyann Lampkin, a former member of the boys club who expressed her thanks for his guidance during a most difficult time in her life. According to Ms. Lampkin, Baston's advice redirected her behavior. She is currently a registered nurse. Similar letters of other youth positively effected by Baston's involvement in the club were received. Baston also was an active member of the Glass City Church and faithfully attended with his family, including involvement in its youth program.
- Wayne Henderson, a member of the Glass City Church stated that he has worked for the past 20 years with the youth department, and that he met Baston and his family during that period of time. Mr. Henderson remembers Baston as a talented artist, and very nurturing to foster kids who lived in his home. Baston was never a problem, and assisted Mr. Henderson with the supervision of other kids during church outings. Baston did not lie, and always did what was asked of him. Baston regularly attended church and was quiet. Mr. Henderson stated that he was in attendance at the youth retreat in Columbus when Baston was arrested. Baston did not discuss the offense with him prior to his arrest or provide any information to him regarding the arrest. Mr. Henderson relayed that he was shocked that Baston would be involved in an offense of this nature. He stated that his church family has never given up on him, and he hopes the Board will recommend that his life be spared so that he may prevent other young men from making bad choices.
- Leslie Colbert, church member stated that she met Baston and his family when they moved to Toledo. Baston was a quiet child who was not a problem until his teenage years. He began staying out and hanging around the wrong people. She tried to talk to him about it, but he would not listen. She believes that Baston felt that he was not loved, and the gang members made him feel accepted. Despite the fact that he associated with "bad elements", he still participated in church activities, and the church members tried to influence him to do the right thing.
- James Randolph, a Deacon and former Youth Director at the Glass City Church stated that he was at the retreat in Columbus, Ohio when Baston was arrested. He noted Baston was a busy young man who liked to draw and was athletically inclined. Mr. Randolph stated that Baston had potential, and as a teenager he was looking for his niche in life. The church provided Baston solace from his life on the east side of Toledo. Mr. Randolph stated that Baston got along with everyone, and had the potential to be a leader.

- Charles Jones, a church member and family friend stated that he has known Baston since he was a young boy, as Baston was friends with his son. He reports Baston was a nice, quiet kid and one who didn't seem to be violent. Baston began to get into trouble because he was hanging around with the wrong crowd. Baston's arrest for the crime of Aggravated Murder was a shock because it was unimaginable that he could commit such a crime. He stated he would like to see leniency considered for Baston, as he believes he would make a good mentor from prison to troubled youth.
- Attorney Fleming argued that the foregoing statements demonstrate that Baston was living two lives and trying to find a way to fit in.

Attorney Fleming's presentation then focused on Baston's positive prison adjustment and included the following arguments and videotaped statement:

- Baston has adjusted well to prison, receiving only 4 minor conduct reports, none resulting in disciplinary control. In addition, he has resided on the honor pod for the past 5 years. Baston has several pen pals from as far away as Sweden and Belgium. One pen pal wrote to Baston describing problems she was experiencing with her grandson joining a gang. Baston wrote a letter to the grandson, which deterred his involvement in the gang.
- Dr. Karl Hyde, an 83 year old physician and pen pal stated that he is a retired physician and resides in Yellow Springs, Ohio. He is involved in the Yellow Springs Quaker association through which he became involved in the anti-death penalty movement. He believes that the death penalty does no service to our country. He began corresponding with death row inmates, including Baston. He stated that he does not understand why Baston received the death penalty, and he believes the sentence was disproportionate to other similar crimes for which the offender did not receive the death penalty. He believes that there are significant mitigating factors present in Baston's case to warrant a commutation, particularly as they relate to Baston's dysfunctional family and lack of support. Dr. Hyde stated that they write to each other every 2 weeks. Baston describes life on death row, and although he is not educated, he is very literate in his letters. Dr. Hyde supports Baston's efforts to seek commutation, and hopes for a favorable outcome.

Attorney Barnhart then presented the following arguments and witness regarding the victim's opinion on whether Baston should receive clemency:

- There is no question that Baston was rescued by his aunt and had it all, then threw it all away and cannot take back what he did. However, life without parole is the sentence the Mah family wanted at the time of trial, but was unable to have because it was not a legal option, and continues to be the sentence they support now. The Board and Governor Kasich can now fulfill the Mah family's request.

- Mary Sue Barrone, current Assistant Wood County Public Defender and former Assistant Lucas County Prosecutor presented to the Board. She stated that she was one of the prosecutors assigned to Baston's case. She worked closely with the victim's family and became friends with the family. The victim's son Peter asked her to attend the clemency hearing and reiterate to the Parole Board that it is the family's desire that Baston remain in prison for the rest of his life and not be executed. She stated that she wants the Board to understand that life without parole was not a sentencing option at the time of trial. She further stated that the Mah family does not believe in the death penalty, primarily due to their Catholic beliefs and life experiences. They have a tremendous respect for human life.

Counsel closed their arguments in support of clemency by stating that Baston's case does not represent the worst of the worst as compared to other Lucas county defendants convicted of similar or worse offenses who received lesser penalties. Baston's case is unique in that the victim's family supports clemency. The arguments presented establish a compelling case for the exercise of mercy.

ARGUMENTS ADVANCED IN OPPOSITION TO CLEMENCY:

The following arguments in opposition to clemency were presented by Lucas County Prosecutor Julia Bates, Lucas County Assistant Prosecutor David Cooper and Assistant Attorney General Stephen Mayer:

- Prosecutor Bates shared that this is her fourth appearance at a death penalty clemency hearing, but the first time when she is not surrounded by a surviving family opposing clemency. She stated that the opinions and desires of any victim's family are relevant throughout the criminal justice process, but are never and should never be a controlling factor. Despite the family's wishes, the duty of those professionals involved in all steps of a criminal case is to uphold the law and not to be unduly influenced by victims' feelings. The law should always trump the feelings of the victim and/or the victim's survivors. Victims' opinions are important and should be considered, but should never be the ultimate deciding factor.
- Prosecutor Bates stated that at the time of the trial, the victim's brother was the family spokesperson, not the son. Attempts were made by the Office of Victim Services (OVS) to contact family members, but were met with resistance. A letter was received in 1999 from the victim's brother, indicating his support of the verdict and sentence in this case. OVS has left messages with him to determine if his opinion has changed, but he has not responded. Although the family spokesperson may now be the son, there is at least some indication that the former spokesperson supported the sentence. A favorable recommendation for clemency based on current family opinion is not warranted. Furthermore, Prosecutor Bates again pointed out that although forgiveness is wonderful for healing, it is not a controlling factor. Whether someone is morally, religiously or philosophically

opposed to the death penalty should not factor into the clemency decision. The law was upheld at the time of trial and throughout the appellate process, and there should be an extraordinary reason to change the outcome. Baston presented no such reason. His interview was a further insult to the truth and the process. The fact remains that he was surrounded by a very loving and supportive family and community and he chose a different path. There is an insufficient basis for mercy in this case.

- Assistant Prosecutor Cooper stated that for 16 years Baston has continued to point the finger at others, to include David Smith and Ray, and has denied that he killed the victim. Mr. Cooper stated that the facts indicate that David Smith was not involved in the robbery or murder and Ray does not exist. Ray was dreamed up by Baston over the seven day period between the offense and Baston's arrest.
- Mr. Cooper argued that Baston's involvement with the murder weapon dates back to 1991. That was the first time Baston stole his step father's gun which was fully loaded. Baston displayed it while at a mall with two friends after becoming involved in a verbal dispute with several other youth. Baston displayed the revolver and later departed on a city bus, at which time the other youths involved reported to police who later found the firearm concealed on the bus. Baston was committed to the Department of Youth Services and eventually was granted an early release. He was not permitted to return to his aunt's home because he stated that he would burn it down, and he stole from them.
- Mr. Cooper further stated that Baston was planning this offense, and it was not a spur of the moment offense as he relayed to the Board in his interview. Baston's friend Margarita Fonseca told investigators that in February 1994, Baston possessed a .25 caliber semi automatic weapon which he entrusted her with. According to Ms. Fonseca, she possessed the .25 caliber semi automatic firearm at the time of Mr. Mah's murder on March 21, 1994, and that Baston did not retrieve the gun from her possession until after the murder/robbery of Mr. Mah and prior to his departure for the youth retreat in Columbus, Ohio.
- Mr. Cooper also stated that 8 days prior to Mr. Mah's murder, Baston and two associates entered the Wigs and Things store. Deborah Scott, a part-time employee of the Mah family for 17 years, suspected that they were "casing" the store for a robbery and heard Baston tell his associates that they could not do it because "there's a sister in here". Ms. Scott identified Baston in a line up after reporting the incident, and again after the murder of Mr. Mah as the person she saw in the store.
- Mr. Cooper further stated that one week before the murder, Baston stole his step-father's .45 caliber revolver a second time. Baston was kicked out of his parents' home as a result, at which time he moved into 323 River Place with David Smith. That residence was approximately 2 miles from Mr. Mah's store. Sometime within the week prior to the murder, Baston stated to David Smith his intention to rob the

store and to use the .45 revolver in the robbery. On March 20, 1994, one day prior to Mr. Mah's murder, Patricia Chininis, the mother of Deanna Chininis, David Smith's 14 year old girlfriend, noticed a large handgun in Baston's jacket while he slept on her couch. Ms. Chininis made Baston leave her home after observing the weapon in his coat.

- On March 21, 1994, the day of the murder, David Smith and Baston went to the parole office in order to attend an appointment with Smith's Parole Officer. They arrived at 11:30 a.m. The parole office is two blocks away from Wigs & Things. Baston was not allowed to stay at the parole office, so he left. He was in possession of the .45 caliber revolver at the time and proceeded to the Wigs and Things store. A neighboring shopkeeper heard a gunshot at 11:50 a.m., but did not report it to police at that time, as he did not think it was unusual for the area. However, after this information was reported to police, it became clear that David Smith was not involved, as he did not have time after his appointment with his parole officer to make it to the scene before Mr. Mah was killed.
- Mr. Cooper further argued that the evidence suggests that Baston planned to kill the victim. The victim complied with Baston's request and gave him \$30 to \$40. Baston forced Mr. Mah to the back of the store at which time he shot Mr. Mah from 2 to 3 inches away in the back of his head. Baston then stole ball caps and starter jackets and placed them in a large black bag. A witness reported observing a male wearing a starter jacket carrying a large bag and another jacket over his arm walk through the parking lot next to the store. She thought the male's attire was unusual, given that it was an unseasonably warm day.
- Baston then returned to 323 River Place and was observed by Bobby Mitchell carrying a large plastic bag. Mitchell entered the residence and observed a .45 caliber revolver on a table as well as items taken from the store. Baston asked Bobby Mitchell to borrow a car so they could drive downtown to locate David Smith. Mitchell complied, and after locating Smith, Mitchell overheard Baston whisper to Smith "I did it". He did not hear Baston mention a codefendant named Ray.
- David Smith informed detectives that later in the day on March 21, 1994, Baston gave further details regarding the robbery and told David Smith that he "blew up" the victim. Mr. Cooper further noted that David Smith informed detectives that Baston told him that he shot Mr. Mah due to the fact that he did not have a mask on, and Mr. Mah would be able to identify him. In addition, Baston bragged to another friend, Jared Mahoney that he committed the offense while David Smith was seeing his parole officer. Mahoney told Baston not to tell anyone who would "snitch" on him. Baston responded that he was not concerned and planned to go down with a fight.
- Mr. Cooper further stated that it is not clear what Baston did between the late afternoon on March 21, 1994 and March 24, 1994 when he left for the youth

retreat in Columbus. On March 25, 1994, Patricia Chininis reported to police that her daughter, Deanna informed her that Baston was bragging about the crime to David Smith. A search warrant was obtained for 323 River Place where police recovered the hats and jackets stolen from the Wigs and Things store. All parties within the home were taken to police headquarters and it was at this time, David Smith relayed what he knew of Baston's involvement with the robbery/murder of Mr. Mah. David Smith reported to police that Baston possessed three guns, a large revolver, a large semi automatic and a smaller semi automatic. Neither David Smith nor any of the other witnesses police interviewed indicated that Baston told them he committed the offense with a codefendant named Ray. Mr. Cooper argued that we can rely on David Smith's statements as being truthful as he submitted to and passed a polygraph exam.

- Mr. Cooper also shared that once Baston was arrested, he possessed a loaded .25 caliber semiautomatic firearm in his pocket, the .45 caliber utilized in the commission of the offense, and two loaded clips.
- After his arrest by the Columbus Police, Baston submitted to an interview. This interview is the first time "Ray" was identified as a codefendant. Baston gave the Columbus Police Department essentially the same version of events as he gave to the Parole Board during his recent interview, indicating the robbery was Ray's idea and that Ray was the actual shooter. However, he told Columbus Police that after running from the store, he returned downtown and searched for Ray for approximately 90 minutes so that they could switch back weapons. He did not tell police that his .45 caliber appeared on his backpack at David Smith's house later that day, as he told the Board.
- Mr. Cooper further shared that after Baston's arrest and indictment, Toledo Police officials called Jared Mahoney in order to return his jacket which was removed from the 323 River Place residence during the search warrant. At this time, police questioned Mahoney regarding Baston. Mahoney advised officials that Baston enjoyed listening to rap songs that spoke of murder, and that he was obsessed with killing someone. Mr. Mahoney also began to receive calls from Baston while he was in the Lucas County Jail, advising him not to talk to authorities.
- Mr. Cooper commented that he hoped that Baston would have been encouraged to tell the truth during his final statement to the Board in preparation for the death penalty hearing. Instead, Baston maintained that "Ray" committed the murder. His version makes no sense, but what is important about it is that it demonstrates his willingness to lie. Baston created Ray to refute that the robbery was planned and that he killed to prevent his identification and apprehension, and to make himself appear less culpable. Baston has not learned anything during his incarceration and is shifting blame. Baston knew full well that trial counsel would shift blame to David Smith, but now he blames counsel for blaming Smith. Baston refuses to accept responsibility and his request for clemency should be denied.

- Assistant Attorney General Stephen Mayer argued that the Board's opinion in this case will set precedent if the Board makes a favorable recommendation to the Governor based on the victim's families' wishes. The question presented in this case is whether the victim's families' wishes constitute a "trump card" in a case where there exists no other basis for mercy. This case is indistinguishable from other felony murder cases where the Board has submitted a unanimously unfavorable recommendation. As in those cases, there is no acceptance of responsibility, no expression of remorse and insufficient mitigating factors. The Board cannot draft a rational response that adequately explains why the victim's families' wishes would only constitute a "trump card" when those wishes constitute the support of clemency. The opinions and desires of the victim's families are a factor to be considered, and should remain only a factor.

VICTIM'S REPRESENTATIVE:

The Mah family chose not to participate in the clemency hearing and asked Mary Sue Barrone, to appear on their behalf and express their opinion to the Board. That opinion was described earlier in this report.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Ohio Parole Board reviewed submissions in favor of and in opposition to clemency, as well as the statement and responses of Johnnie Baston from the interview conducted on January 25, 2011, and the information presented at the hearing conducted on February 3, 2011. The Parole Board reached a unanimous decision to make an unfavorable recommendation regarding Johnnie Baston's request for a commutation to life with or without parole, based on the following:

- The Board finds that the aforementioned mitigating factors do not outweigh the many aggravating factors present in the aggravated robbery and aggravated murder of Mr. Chong Hoon Mah.
- Mr. Baston continues to maintain an implausible version of the offense despite the presence of overwhelming evidence and testimony to the contrary.
- While many members of Mr. Mah's family favor a commutation to life without parole, Mr. Baston's lack of accepting responsibility, criminal history, and the severity of the execution-style killing of Mr. Chong Mah outweigh their personal opinions regarding the death penalty and their wishes as to the sentence imposed in this case.
- All reviewing courts have determined that Baston received a fair trial and proper representation. His convictions and death sentence have been upheld after many years of judicial affirmation. There was nothing presented at the clemency hearing to suggest any manifest injustice in the verdict and sentence imposed.

Johnnie R. Baston (AKA: Johnny R. Baston), OSP #A308-174
Death Penalty Clemency Report

RECOMMENDATION:

The Ohio Parole Board with nine (9) members participating, by a vote of nine (9) to zero (0) recommends to the Honorable John Kasich, Governor of the State of Ohio, that executive clemency be denied in the case of Johnnie Baston, A308-174.

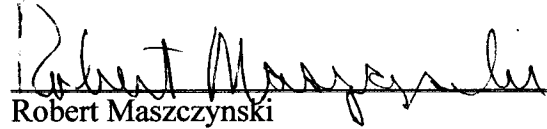
Johnnie R. Baston (AKA: Johnny R. Baston), OSP #A308-174
Death Penalty Clemency Report

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

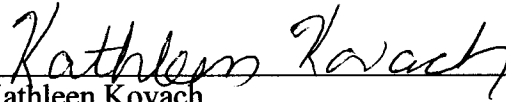
Ohio Parole Board Members
Voting **Unfavorable**



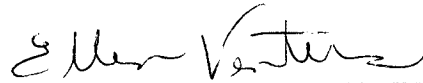
Cynthia Mausser, Chair



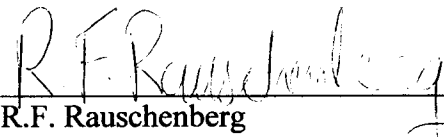
Robert Maszczyński



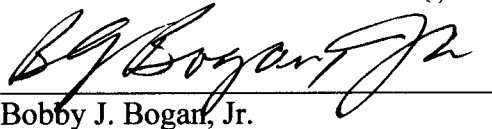
Kathleen Kovach



Ellen Venters



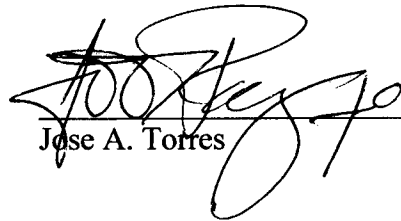
R.F. Rauschenberg



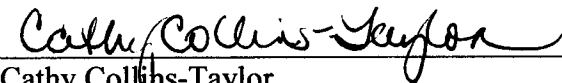
Bobby J. Bogart, Jr.



Trayce Thalheimer



Jose A. Torres



Cathy Collins-Taylor