

DATE TYPED: April 12, 2011
DATE PUBLISHED: April 13, 2011

IN RE: DANIEL LEE BEDFORD, OSP #A181-997

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

Date of Meeting: April 5, 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: Daniel Lee Bedford, OSP #A181-997

SUBJECT: Death Sentence Clemency

CRIME, CONVICTION: Aggravated Murder with death penalty specifications, Murder.

DATE, PLACE OF CRIME: April 24, 1984 in Cincinnati, Ohio

COUNTY: Hamilton

CASE NUMBER: B841565

VICTIM: Gwen Toepfert (Age 25)
John Smith (Age 27)

INDICTMENT: Counts 1: Aggravated Murder with death penalty specifications; Count 2: Aggravated Murder

TRIAL: Jury

VERDICT: Guilty as charged in Count 1 and guilty of the lesser charge of Murder in count 2.

DATE OF SENTENCE: November 9, 1984

SENTENCE: Count 1: DEATH
Count 2: 15 - Life

ADMITTED TO INSTITUTION: November 16, 1984

JAIL TIME CREDIT: 204 days

TIME SERVED: 26 years, 5 months (does not include JTC)

AGE AT ADMISSION: 37 years old

CURRENT AGE: 63 years old

DATE OF BIRTH: September 16, 1947

JUDGES: Honorable Thomas Crush

PROSECUTING ATTORNEY: Arthur M. Ney, Jr.

FOREWORD:

Clemency in the case of Daniel Lee Bedford, A181-997 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 March 25, 2011, Daniel Bedford was interviewed via video-conference by the Parole Board at the Ohio State Penitentiary. A Clemency Hearing was then held on April 5, 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 R. Kasich, Governor of the State of Ohio.

DETAILS OF THE INSTANT OFFENSE : The following account of the instant offense was obtained from the Ohio Supreme Court opinion, decided October 12, 1988:

At approximately 2:30 a.m. on Tuesday, April 24, 1984, Bedford telephoned the apartment shared by his ex-girlfriend, Gwen Toepfert, and Jo Ann Funk. Bedford asked to speak with Toepfert. Funk refused to awaken Toepfert, although she reluctantly told Bedford that both Toepfert and her boyfriend, John Smith, were at the apartment.

It seems Bedford had attempted to speak with Toepfert because he had been hoping for some time to rekindle a prior romance. On the prior Saturday, he came to the apartment to deliver a plant to Toepfert but discovered her new boyfriend there. Bedford became very upset and departed after giving the plant to Toepfert.

Later that Tuesday morning, Jo Ann Funk was awakened by gunshots and screams. Toepfert ran into Funk's bedroom, crying that she had been shot. After Funk attempted to phone for help, Bedford entered the room and shot Toepfert as she lay on the floor. Bedford did not shoot Funk, although she heard the .38 caliber revolver click after Bedford shot her roommate.

Bedford left the bedroom and Funk followed him into the living room. She saw Bedford with a shotgun. He was looking behind the open front door and yelling, "Come out, mother-fucker." Outside the building, Smith's body lay on the landing of the front steps.

Funk ran to the bathroom and slammed the door. During that time, she heard a loud shot fired. Bedford then left the apartment. Upon coming out of the bathroom, Funk noticed that Toepfert had sustained a shotgun blast to the lower abdomen, in the pelvic region.

Bedford fled to Tennessee. While there, he visited an acquaintance from his boyhood

days, Jimmy Joe Pennington. Later that same Tuesday evening, Pennington asked why Bedford looked troubled and Bedford replied that he had killed two people. Pennington told a store clerk to phone the police and, although Bedford guessed that Pennington had turned him in, Bedford waited for the arrival of the authorities.

Upon arriving, a deputy sheriff asked Bedford if the police could help him. He replied that he had killed two people in Cincinnati earlier in the day. Subject was frisked, given his *Miranda* rights, and taken to jail. Bedford again received his *Miranda* rights, signed a waiver, and gave police an inculpatory statement. He later gave Cincinnati authorities a similar inculpatory statement.

At trial, Bedford attempted to establish that he was extremely upset and depressed due to the break-up with his girlfriend and that he was intoxicated when he went to her apartment. His statement indicated that he shot Smith after Smith wrestled away the shotgun and that he would not have killed either victim if Smith had not wrestled the shotgun from him.

A jury convicted Bedford on one count of aggravated murder (Toepfert) with a specification and one count of murder (Smith). This same jury, after hearing the evidence of mitigating factors, recommended that defendant be sentenced to death. The trial court, in its separate findings of fact and opinion, concurred and sentenced Bedford to death. After conducting an independent review, the Court of Appeals for Hamilton County affirmed the conviction and death sentence.

PRIOR RECORD

Juvenile Offenses: Daniel Bedford has the following known juvenile arrest record:

<u>DATE</u>	<u>OFFENSE</u>	<u>LOCATION</u>	<u>DISPOSITION</u>
6-3-1961 (Age 13)	Truancy	Juvenile Court	Adjudicated delinquent
11-30-1963 (Age 16)	Theft	Juvenile Court	Adjudicated delinquent
2-29-1964 (Age 16)	Theft	Juvenile Court	Adjudicated delinquent

Adult Offenses: Daniel Bedford has the following known adult arrest record:

<u>DATE</u>	<u>OFFENSE</u>	<u>LOCATION</u>	<u>DISPOSITION</u>
2-6-1966 (Age 18)	Reckless Driving	Woodlawn, Ohio	\$45 fine & costs

Daniel Lee Bedford, OSP #A181-997
 Clemency Report

7-12-1966 (Age 18)	Disorderly Conduct	Cincinnati, Ohio	Dismissed
6-6-1967 (Age 19)	Petit Larceny	Cincinnati, Ohio	1 year probation; terminated 7/1968.
6-17-1967 (Age 19)	Disorderly Conduct	Cincinnati, Ohio	30 days confinement, \$100 fine & costs
3-11-1969 (Age 21)	Regulatory Violation	Blue Ash, Ohio	\$25 fine
8-16-1973 (Age 25)	City Ordinance Violation	Cincinnati, OH	Dismissed
6-17-1976 (Age 28)	Non-Support Spouse/Child	Cincinnati, OH	180 days confinement suspended, \$50 fine & costs, 2 years probation; terminated 8-22-1978.
9-29-1976 (Age 29)	Probation Violation (Failure to Pay Child Support)	Cincinnati, Ohio	Dismissed
7-20-1977 (Age 29)	1) Speeding Pace 2) No Driver's License	Cincinnati, Ohio	1) \$15 fine & costs 2) \$25 fine & costs
10-15-1977 (Age 30)	1) Other Vehicle Condition Violations 2) No Driver's License	Cheviot, Ohio	1) \$25 fine & costs 2) \$10 fine & costs
12-13-1977 (Age 30)	1) Other Operator Violation 2) No Driver's License	Cincinnati, Ohio	1) \$20 fine & costs 2) \$40 fine & costs
3-23-1978 (Age 30)	Liquor Law Offenses	Cincinnati, Ohio	Dismissed
5-9-1978 (Age 30)	No Driver's License	Cincinnati, Ohio	\$15 fine & costs
8-15-1978 (Age 30)	Failure to Pay Child Support	Municipal Court	Dismissed

Daniel Lee Bedford, OSP #A181-997
Clemency Report

9-24-1978 (Age 31)	Speeding Pace Car Control	Cincinnati, Ohio	Fined
1-20-1979 (Age 31)	1) DUI Alcohol/ Drugs 2) Improper Starting or Backing	Cheviot, Ohio	1) 3 days confinement, \$100 fine & costs 2) \$10 fine & costs
1-22-1982 (Age 34)	Promoting Gambling	Cincinnati, Ohio	Acquitted by Court
7-18-1983 (Age 35)	1) No Driver's License 2) Speeding Pace Car Control	Cincinnati, Ohio	1) Costs remitted 2) Cited
3-31-1984 (Age 36)	Traffic Control Device Violation	Cincinnati, Ohio	Paid out
4-24-1984 (Age 36)	Aggravated Murder, Murder	Cincinnati, Ohio	INSTANT OFFENSE

Institutional Adjustment:

Daniel Lee Bedford was admitted to the Department of Rehabilitation and Correction on November 16, 1984. His work assignments while incarcerated at the Mansfield Correctional Institution and at the Southern Ohio Correctional Facility included Clerk, Food Service Worker, Laundry Worker and Porter. Since his transfer to the Ohio State Penitentiary, his work assignments have been as a Laundry Attendant and as a Unit Porter/Environmental Servicer. He has participated in numerous community service projects while at the Mansfield Correctional Institution and while at the Ohio State Penitentiary. Bedford also completed programming to include Film Group/ Personal Meaning Part I and Part II, Controlling/Managing Anger – CALM I and CALM II, Stress Management Group and Stress and Coping with Change. He attends religious service programs on a regular basis.

Since his admission, Bedford has never been placed in disciplinary control. He has received approximately two (2) conduct reports since he was admitted to the Department of Rehabilitation and Correction in 1984. Bedford's last conduct report was in 2007. Both conduct reports were for Possession of Minor Contraband (2000, 2007).

APPLICANT'S STATEMENT:

On March 25, 2011, Daniel Bedford was interviewed via video-conference by the Parole Board at the Ohio State Penitentiary. During this interview, Bedford shared with the Board that he knew that his case was out of the Supreme Court and was at the stage in the process where "...they are going to kill you." He further shared that he knew that he was in prison for taking two lives and that he "...can't change that." He shared that he did not want to die and that he is not a bad person. Bedford did make a statement that he was "sorry it happened" and that he wished that he could "bring the victims back." He further indicated that "...Killing me won't bring them back, but if it has to be done, it has to be done."

Bedford stated that he does not remember anything about his crimes, and the information he does recall about the offenses are details that have been told to him by his attorneys. He does not recall being arrested, going to court, being in front of a judge, or being sentenced. In fact, his only memory of the proceedings is walking down the hall in prison at Lucasville. He also stated that he does remember that he worked for victim Gwen Toepfert's dad, but he does not recall meeting the victim, Johnny Smith. Additionally, he did not recall being upset with Gwen Toepfert and was not sure if he was involved in a relationship with her.

Bedford stated he has a recurring dream where he sees himself in the corner crying and wakes up in the hospital. At this point in the dream, the Corrections Officer tells him that he is on death row.

Bedford works as a porter and shared that he has attended a movie class. While he cannot recall any of the movies that he has viewed, he did indicate that he likes the class because it "...gets me out of work." He also indicated that he keeps his cell clean and has no problems taking care of himself.

Bedford expressed disappointment that his five sons have never visited him in prison. However, he shared that his daughter has visited multiple times, and that she also writes to him. In fact, he knew that his daughter and granddaughter had been there two weeks ago for a visit. He also told the Board about multiple pen pals that write to him and that he is able to write back to them. He spoke fondly of a pen pal by the name of "Kristi". He indicated that she lives in California and that she sends him an "allowance." Inmate Bedford stated that Kristi and her husband come to visit him every few years and that "Kristi is like family to me."

The Board asked Bedford if he has a difficult time reading or writing letters. He said that he does not have a difficult time writing because of the way he has "things set up". For example, he shared that he has two books in his cell with different sentences in it and utilizes cue cards when he writes letters. He said that he is able to read some letters and words.

Bedford shared that he is not in good physical health, that he takes "...14 pills a day just to walk around" and that he has arthritis. It was evident to the Board during the interview that he had a difficult time recalling the names of his attorneys that were assisting him through the clemency process. However, he was oriented to person, place, and time during the interview and was able to recall that he was married at the young age of 16 years and had six children. However, he shared that he just found out that his father was dead six months ago after reading this information in his transcript. He further shared that his mother died of cancer back in 1969 and that he was able to recall this because he had it written down.

ARGUMENTS ADVANCED IN SUPPORT OF CLEMENCY:

A written application with exhibits outlining the arguments in support of clemency for Daniel Bedford was received by the Parole Board. On April 5, 2011, a hearing was conducted to further consider the merits of the application. Carol Wright and Erin Barnhart of the Federal Public Defender's Office represented Bedford and presented oral arguments and witnesses in support of clemency.

Bedford's attorneys are requesting clemency in the form of a commutation to life without the possibility of parole. Attorney Wright began the presentation by apologizing for the pain that the victims have endured. Attorney Barnhart pointed out to the Board that the jury in Bedford's case did not know of his diagnosis of dementia or mental retardation and that if they had, the jury may have come up with a recommendation for a penalty other than death.

Dr. George Woods, a specialist in Neuropsychiatry, gave a detailed presentation to the Board regarding Bedford's dementia and likely mild mental retardation. He had the opportunity to interview Bedford on December 6, 2010, and also completed an extensive review of the records available in Bedford's case. Such records included the following: prison records, medical records, school declarations, legal records, and clemency materials.

Dr. Woods summarized the 23 neuropsychological tests that were completed on Bedford by Dr. Nicholas Doninger in December of 2009. In an affidavit presented by Dr. Doninger, he indicated that the tests he administered to Bedford did not indicate his performance was as a result of malingering behavior.

Dr. Woods shared that Dr. Doninger's findings are as follows: Bedford is deficient in his ability to read and spell; he has a slower ability to learn and a slower processing speed; he has a moderate impairment in his memory abilities with respect to learning and delayed recall of new verbal information; he is moderately impaired in his language skills; and he demonstrated deficits in his day-to-day functioning skills.

Dr. Woods also educated the Board on dementia. He indicated that dementia is not the same as memory loss or what we typically view as Alzheimer's disease. Rather, it

involves a “loss in the richness of life.” In other words, the person has a loss of what the memory means or a loss of how the memory is connected. He stated that dementia is a disorder that starts earlier in life, and not in the late eighties as is commonly thought. Rather, dementia can begin as early as the mid fifties.

Dr. Woods stated that Bedford has multi-infract dementia. This form of dementia is consistent with the structural brain injury documented in Bedford’s 2005 CT scan. This is a type of “patchy dementia” and is like having “islands of understanding” in the brain. Dr. Woods pointed out that this is why Bedford keeps notebooks listing the days of the week, his pen pals’ names, and other information related to day-to-day functioning. For example, Bedford’s daughter has to tell him that his best friend has died every time she visits, in that he cannot retain this information. In turn, Bedford has to experience this grief over and over again. In addition, essential hypertension can cause the condition of multi-infract dementia. In fact, Bedford continues to be treated for essential hypertension which is the most likely cause of his most recent cognitive deterioration. This is a disease that continues to impair the brain even when blood pressure readings are normal. Because the form of dementia Bedford suffers from is “patchy”, he does have moments of clarity, which is the reason why he can still perform daily functions, such as his job assignment, in the structured prison setting.

In addition to dementia, Dr. Woods also found that Bedford meets the clinical definition for Mild Mental Retardation. The DSM-IV-TR diagnostic criteria for Mental Retardation includes: 1) significantly sub-average intellectual functioning; 2) concurrent deficits or impairments in present adaptive functioning in at least two of the following areas: communication, self-direction, functional academic skills, work, leisure, health and safety; and 3) onset before 18 years of age.

Dr. Woods shared that Bedford’s school records indicate that he scored a 70 on an intelligence test administered in 1960 when he was 13 years of age. He also stated that this score is consistent with the one Bedford received in 1984 at the age of 36, when administered the WAIS-R where he scored a 76. Dr. Woods pointed out that this score does not reflect an adjustment for the “Flynn Effect” which is widely accepted by courts and psychologists. In other words, if the Flynn Effect was applied to Bedford’s 1984 IQ score, this would put his score in the 70-75 range.

Dr. Woods believes Bedford is Mildly Mentally Retarded. He described an adult suffering from this condition as appearing like an 11-year old child. In other words, a person who suffers from Mild Mental Retardation could get a driver’s license, get married, hold a repetitive menial job, and read up to the 6th grade level, and even read the newspaper. Dr. Woods also pointed out that mental retardation focuses on deficits and not strengths when making a diagnosis. Therefore, the fact that Bedford was employed when he committed the crime and planned some aspects of the crime does not refute the diagnosis of Mild Mental Retardation, given the deficits that were manifested.

Dr. Woods explained that gullibility is the core characteristic present in someone suffering from Mild Mental Retardation. To illustrate the presence of this characteristic

in Bedford, Dr. Woods presented videotaped testimony of Bedford's family and friends. Bedford's daughter explained how he gets upset when he calls home and hears her answering machine. She indicated that this makes him think that people are mad at him and have disconnected the call. Bedford's long time childhood friend, Dave Miller, relayed that Bedford was easily taken advantage of while they were growing up, in that Bedford was "easily tricked" if Mr. Miller was not around to protect him.

In summary, Dr. Woods stated that individuals who are Mildly Mentally Retarded often develop dementia early in life. Dementia erodes emotional life as well as his memory, augmenting the cognitive deficits found in Mild Mental Retardation. Bedford suffers from cognitive impairments that are greater than would be predicted from either disorder independently. The evidence of Bedford's dementia symptoms has been present since 2004.

Federal Public Defender Erin Barnhart outlined the reasons to the Board as to why Bedford should receive clemency. First and foremost, she stated that Bedford's current impairments prevent him from appearing to express remorse and accept responsibility as fully as someone who can recall committing a crime. She stated that his impairments are outside of his control and should not be held against him.

Furthermore, executing Bedford would not serve the interests of justice in that the death penalty in this case would have no retributive impact on society in that Bedford cannot recall committing the crime. She also stated that Bedford's impairments have prevented his legal counsel from providing meaningful clemency representation. Counsel have been unable to thoroughly investigate and are therefore unaware of potentially helpful and or mitigating information that could exist but cannot be communicated to them by Bedford. Without the ability to effectively communicate with Bedford, the clemency application may very well be incomplete.

Attorney Barnhart also stated that the jury did not know about the extent of Bedford's global, life-long impairments, as they did not know that he suffers from Mild Mental Retardation. They also did not know that he would be facing execution while suffering from further deterioration in his functioning due to dementia.

Attorney Barnhart also focused on the dissenting opinion by three justices of the Ohio Supreme Court. The prosecutor argued that if the jury did not sentence Bedford to death, the law might be amended to provide for early parole under the life-with-possibility-of-parole options. Justices noted that such conduct on the prosecutor's behalf was "in direct conflict with the foundation of our system of criminal jurisprudence." Three justices were concerned that the "improper prosecutorial influence upon a jury is particularly acute in the penalty phase of a capital case, especially where it tends to rebut a substantial amount of mitigation, as was the case here."

Attorney Barnhart also pointed out that there is evidence to suggest that jurors struggled over their sentence recommendation, asking the judge after nearly 12 hours of deliberation what would happen if they could not agree and how long they would have to

keep trying before the court would declare them deadlocked. The court instructed them improperly, at which time the jury quite possibly felt pressured into recommending death as the sentence. One juror fell ill while deliberating, and required medical treatment for high blood pressure. After this juror was released by the treating physician, the penalty recommendation was reached quickly. Had the jury had the sentencing option of Life without Parole, it is quite possible that they would have chosen that option, given their struggles during deliberations and the significant mitigation presented.

Attorney Barnhart vehemently opposed the State's contention that they are making an "eleventh-hour claim of mental retardation and dementia." She pointed out that the statute governing claims of mental retardation permit filing of claims at this stage, despite the state's argument that the claim had to be brought by June 2003, 180 days post-Lott.

Attorney Barnhart assured the Board that they are not attempting to avoid judicial scrutiny and would, in fact, welcome it, but the state has opposed their attempts. She stated that the courts have not afforded Bedford the opportunity to litigate his claim of mental retardation, which would make him ineligible for execution if substantiated. In fact, on October 18, 2010, the trial court issued a final judgment denying Mr. Bedford's petition and gave no reason for that denial. She stated that it is disingenuous of the state to oppose a hearing in court on the merits of the mental retardation claim, and at the same time argue that the information presented to the Board during the clemency hearing is better suited for the courts to decide. The mental retardation information is being presented to the Board because Bedford has been unsuccessful in having it heard by the courts, and presentation to the Board is the only current option.

Presentations were then heard from multiple friends and family members as to how they would be affected if Bedford is executed. The Board heard from Kristi Schulenberg who began to correspond with Bedford in 1995 while she was attending the University of Dayton, and was involved in an organization that wrote to death row inmates. Ms. Schulenberg shared that their letters turned into phone calls and then into visits. Their first visit was approximately one year after they began writing one another.

Ms. Schulenberg considers Bedford to be a part of her family and just completed a three-day visit with him at the prison. However, she described those visits as being like the movie "Groundhog Day" in that Bedford talks about the same thing over and over again. Ms. Schulenberg shared that while there is no "depth to their relationship", she considers her interaction with Bedford as a way to "live out her faith." She is also concerned about the dramatic decline that she has seen in his memory and stated that she would be devastated if Bedford were to be executed. Finally, she shared that she never spoke to Bedford about the crimes he committed and only learned the details of the offense after seeking out information on her own.

Michele Connor, Bedford's daughter also presented to the Board. She shared that she has witnessed her father grow and become a nice person. She described him as a sweet old man whom she loves dearly. Ms. Connor stated that her father is a funny and religious man and is in no way the same person he was years ago. She recently introduced her

grown daughter to her father during her last visit. Ms. Connor asked the Board to let “God take him in His own way.” Ms. Connor stated that her father made a mistake and deserves to live and asked the Board to grant her father mercy.

David Miller who is Bedford’s childhood friend gave a statement to the Board via videotaped testimony. He stated that he and Bedford met when they were 13 years old. He spoke about how he feels that Bedford is not healthy and does not have long to live anyway. He stated that he loves Bedford and has always been his friend and that he does not want him to be executed.

ARGUMENTS ADVANCED IN OPPOSITION OF CLEMENCY:

Arguments in opposition to clemency were presented by Assistant Hamilton County Prosecutor Ron Springman and Assistant Attorney General Brenda Leikala. Assistant Prosecutor Springman noted that Bedford is not deserving of clemency. He shared that this case involved a relatively short trial where 14 witnesses testified on behalf of the State. Information presented at trial involved largely undisputed evidence, much of which came from eyewitness testimony. Following his crimes, Bedford fled to Tennessee where he confessed to his friend, the Tennessee authorities, and to the Cincinnati Police Department that he committed these crimes because he was jealous. He admitted that his crimes were a result of an intentional killing.

Assistant Prosecutor Springman stated that Bedford contemplated his offense over a period of time. Bedford called to determine that Gwen Toepfert was at home and knew prior to going there that Johnny Smith was also present at the apartment where Gwen lived. Assistant Prosecutor Springman stated that Bedford went to Gwen’s apartment armed with two weapons, hid in the laundry room, waited until he saw Johnny Smith come out, and then shot him. Bedford continued to shoot Gwen Toepfert multiple times, and instead of shooting Gwen’s roommate, Ms. Funk, when Bedford confronted her, he went back to shoot Gwen one more time with a shotgun blast to her groin to make sure that she was dead.

Assistant Prosecutor Springman told the Board that the jury had no difficulty in determining guilt in this case in that the evidence of prior calculation and design was so overwhelming. He also shared that the issues regarding Bedford’s mental deficiencies were explored at both phases of the trial; therefore, the jury did consider essentially the same information that is being presented at the clemency hearing, and it is not new information. In fact, Bedford admitted in his own unsworn statement at the mitigation phase of his trial that he had difficulty recalling some of the details of his crime. Thus, jurors were able to see his memory issues firsthand during his unsworn statement. Finally, Assistant Prosecutor Springman pointed out to the Board that Bedford received more than adequate representation at trial, as he was represented by two esteemed attorneys.

Assistant Attorney General Brenda Leikala urged the Board not to consider an unrelated medical condition as legitimate grounds to recommend clemency when it had no relation to the crime. She argued that Bedford's current medical condition has absolutely no bearing on his culpability regarding his crimes, and that the Parole Board should not put itself in the position of a "medical review board." In addition, she pointed out that the only medical condition for which Bedford is currently under treatment is that of a seizure disorder and that he is currently prescribed Dilantin for that condition. It is not clear, as Bedford argues that he is suffering from dementia.

Attorney Leikala argued that there are six additional reasons not to recommend clemency for Bedford. First, Bedford's counsel is attempting to combine and confuse the issue of mental retardation and dementia. Mental retardation is not a condition that develops over time. The condition exists prior to the age of 18. Mental retardation does bear a relationship to culpability at the time of the crime. Dementia, on the other hand, is a medical condition that develops over time, is measured by various degrees, and would not bear a relationship to the crime.

Second, the Board should be skeptical of Bedford's 11th hour claim of mental retardation. Bedford asks the Board to accept the copy of the 1960 IQ test result as evidence that he is mentally retarded, but has provided no information about the 1960 test that supports its validity. We have no idea which specific IQ test was given, who administered the test, and /or under what conditions the test was given. The 1984 test administered prior to trial, wherein Bedford scored a 76 is the only valid IQ test that exists. The Board should also be skeptical of Bedford's claim that he is not competent to participate in the clemency proceedings. No constitutional right exists in this regard, and Bedford is asking the Board to afford him rights that go beyond those for which he has constitutional protections. Bedford has never raised the issue that he is not competent to be executed. If counsel truly believed that Bedford does not have the mental capacity to understand the nature of the death penalty, then they would have raised this claim in the trial court under the doctrine of *Ford v. Wainwright*. The court, in turn, would decide if Bedford meets the legal criteria for his sentence to be stayed. To date, no such action has ever been filed, suggesting that the current competency claim as argued in the clemency materials is baseless.

Third, the clemency proceedings are the inappropriate arena to be bringing forth a claim of mental retardation. Bedford argues that he was denied access to the courts to raise these claims. However, it was the defense's choice not to file these claims in the time prescribed by the courts. Bedford was obligated to raise his claim of mental retardation within 180 days following the filing date of the 2002 Ohio Supreme Court decision in *State v. Lott*. When *Lott* was decided, numerous death row inmates brought forth these claims within the timeframe prescribed. Counsel argues that they were unaware of the information that supports a mental retardation claim until recently. However, it is more likely that counsel at that time, after reviewing the information, including Bedford's 1984 IQ test and psychological reports determined that Bedford did not meet the standard enumerated by the Ohio Supreme Court. Since mental retardation is not a condition that

develops over time, if Bedford did not meet the standards in 2002, he certainly does not meet it seven years, two months, and three days later.

Attorney Leikala also argued that the Board should reject the use of the Flynn Effect to consider that the 1984 IQ test result is actually lower than 76. The Flynn Effect is only used to adjust IQ scores in the court in death penalty cases and clemency cases, and is not “convention or norm” in psychology. Attorney Leikala presented an article wherein Dr. Flynn himself refuted utilizing the adjustment. The actual adjustment also dictates plus or minus points, which if applied to Bedford suggests a range of 69.2 to 79.2. Finally, some courts have rejected its use and the Tenth District Court in Ohio has indicated that the Flynn Effect can be presented as evidence, but does not have to be accepted.

Fourth, the Board should consider the bias of Dr. Woods when weighing the information he presented, and further consider that if he would be utilized in court, he would be subject to cross examination. Attorney Leikala indicated that Dr. Woods testified in 50 cases in the State of California. Each time he testified as a defense expert.

The State was also critical of the fact that Dr. Woods used the term “multi-infract dementia” in that this term is not utilized today. The current term is “vascular dementia”. Furthermore, the State feels that Dr. Woods was incorrect in stating that memory loss is the third or fourth criteria on the list when diagnosing dementia. In fact, the DSM-IV finds that memory loss is the number one criteria on this list when diagnosing dementia. Dr. Woods was also incorrect in stating the dementia occurs early in life. Rather, the DSM-IV states that the age of onset is usually later in life with a higher rate of onset over the age of 85.

Attorney Leikala also pointed out to the Board that Dr. Woods is a Neuropsychiatric MD and is not a trained psychologist, meaning that he was not trained to interpret the psychological tests that were administered by Dr. Doninger in 2009, who is a Clinical Psychologist. She also pointed out that some of the articles that Dr. Woods referenced during his presentation to the Board were at least 5 years old and should be considered outdated.

Fifth, Bedford provides inconsistent presentations to the Board regarding his dementia claim. Neither the Board nor anyone else can clearly determine if Bedford truly does not remember his crime. The examples provided of his memory loss due not necessarily demonstrate that he is suffering from dementia. Furthermore, if Bedford does have dementia, it is in the early stages. During his interview with the Board, he was able to give logical answers to questions. He was also able to recall that he used drugs and alcohol, that his drink of choice was rum and that he used to work for Gwen’s father as a bartender. Bedford was also able to answer yes and no questions, along with open-ended questions that were asked of him. Most importantly, he was able to tell the Board that his case is no longer in the United States Supreme Court.

Attorney Leikala believes that Inmate Bedford recalls much more than he is willing to share with the Board. He has no impairments in his daily functioning, is able to work as

a porter, receives good work reviews, and keeps his cell clean. He was also able to recall a recent visit from his daughter and granddaughter. Additionally, he was not distracted with the outside noise occurring within the prison during his interview with the Board.

Sixth, Bedford has not pursued all legal remedies. He has not challenged his competency to be executed pursuant to *Ford v. Wainwright*. The only competency claim he has pursued is competency to participate in clemency proceedings, which is not a constitutionally protected right.

In closing, Attorney Leikala stated that Bedford murdered his victims because he was rejected by Gwen, and he was jealous. He knew that there was only one shot left in the shotgun when he encountered the victim's roommate in the hallway. However, Bedford did not want to waste his last shot on the only eyewitness to the crime. Rather, he used it on Gwen and that last shot in Gwen's groin had a purpose and displayed the utter contempt that Bedford had toward Gwen Toepfert. Bedford's conviction and sentence have withheld judicial scrutiny, and is a lawfully imposed sentence. Bedford has not demonstrated that he is worthy of a favorable clemency recommendation.

VICTIM'S REPRESENTATIVE:

The Board heard presentations from the sister and niece of Johnny Smith. These individuals shared that Johnny was a good person, was full of life, and was always willing to help people. While he quit school when he was 16 years of age, he worked as a mechanic and ran a business. The family pointed out that Johnny's death almost destroyed his mother. The family believes that Bedford knew exactly what he was doing, and they desire justice for his actions.

Presentations were also heard from the family of Gwen Toepfert to include her mother, sister, brothers, and nephew. Gwen's brothers stated that Bedford worked for their father at the bar. In fact, Bedford ran the bar when their father became ill with cancer. Bedford was responsible for opening and closing the business, running the bar, and handled cash on a regular basis. Lois Walsh, Gwen's mother, shared that Bedford took away her daughter's opportunity to live and showed her daughter absolutely no mercy. Gwen's sister, Vicki Harris, shared how she feels that Bedford was on a death hunt and that there was no place for the victims to hide. She also indicated that this crime was committed out of jealousy and that Bedford had previously threatened her sister with a knife.

Both the Smith and Toepfert families urged the Board to let Bedford's sentence be carried out and recommend against clemency.

PAROLE BOARD'S POSITION AND CONCLUSION:

The Board reviewed and considered all information submitted both in support of and in opposition to clemency. All nine (9) Board Members found the following factors pivotal in making an unfavorable recommendation to commute Bedford's sentence to life without the possibility of parole.

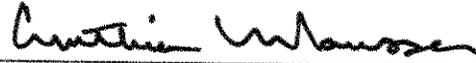
- It is clear from reading the trial transcripts of both the guilt and penalty phases of trial that the jurors in Bedford's case were fully aware through testimony presented by Dr. Winters who was a clinical psychologist and testified at the guilt phase of trial that Bedford had an IQ of 76, his father was murdered by his girlfriend when Bedford was 13, his mother died of cancer, that he could not read or write his name, and that the MMPI test showed that he was under significant stress. Additionally, Dr. Winters testified to the fact that Bedford had a lengthy history of depression, and that he knew the difference between right and wrong. She also testified to the fact that he appeared to be a very jealous individual.
- Bedford admitted to Jimmy Joe Pennington that he killed two people in Cincinnati out of jealousy. He further shared with Pennington that he entered the apartment building and waited until the victims came out of Gwen Toepfert's unit, prior to killing them. He also admitted this same information to police authorities.
- Bedford stalked Gwen Toepfert, called to see if she was home, knew that Johnny Smith was at her apartment, took two loaded guns to her residence and waited for them to come out so he could kill them both. There is absolutely no question in that this crime was a premeditated murder that involved prior calculation and design. The case is further aggravated by the fact that Bedford killed two individuals.
- Although the mitigation was significant as presented at trial, the mitigating factors in this case did not outweigh the aggravating factors mentioned.
- Finally, Bedford's claims that he is now suffering from dementia that is affecting his competency and is mildly mentally retarded are claims that should be ultimately decided by the courts. However, given the information presented, including the interview with Bedford, Bedford does not appear to have deteriorated from dementia to the point where he does not understand the reasons why he is on death row and the stage of those proceedings. In addition, the recent claim of mental retardation is refuted by testing administered at the time of trial, which suggests that he is not mentally retarded. The Board is not suited to make the determination of mental retardation and the information presented to support that claim does not rise to a level wherein a favorable recommendation for clemency is warranted, given all of the aggravating factors.

RECOMMENDATION:

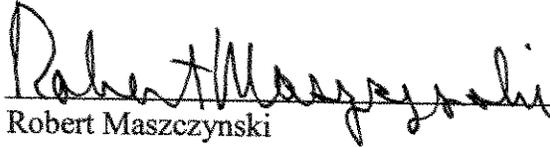
The Ohio Parole Board with nine (9) members participating, by a vote of nine (9) to zero (0) recommends to the Honorable John R. Kasich, Governor of the State of Ohio, that executive clemency be denied in the case of Daniel Lee Bedford, A181-997.

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

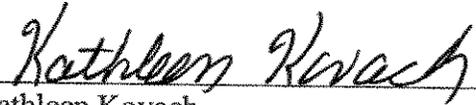
Ohio Parole Board Members
Voting **Unfavorable**



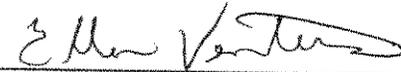
Cynthia Mausser, Chair



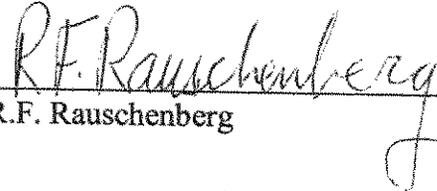
Robert Maszczyński



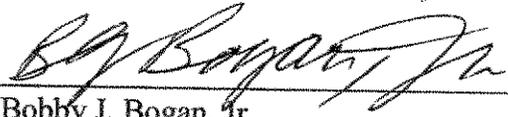
Kathleen Kovach



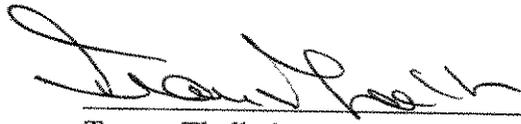
Ellen Venters



R.F. Rauschenberg



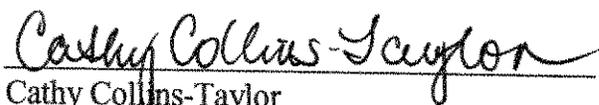
Bobby J. Bogan, Jr.



Trayce Thalheimer



Jose A. Torres



Cathy Collins-Taylor