

In re capital execution of Frank J. Guinan

To: The Honorable Mel Carnahan, Governor  
State of Missouri

The undersigned religious and civic leaders of the State of Missouri for their Application state:

I.  
EXECUTION SET

1. The execution of Frank J. Guinan has been set for October 6, 1993.
2. Court appeals apparently have been exhausted.

II.  
PARDON POWER IS INHERENT TO THE PEOPLE;  
CITIZENS HAVE STANDING TO APPLY

3. The power to pardon, reprieve or commute is inherent in the sovereignty of the people of the State who have conferred the exercise of this power on the Governor by virtue of Article IV, Section 7 of the Constitution of Missouri. The power exists to serve the Common Good and not merely the individual under sentence.

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4. Frank J. Guinan has filed an application for executive clemency in his own behalf through counsel. This Application is made in support of his application.

III.  
CLEMENCY SHOULD BE GRANTED TO GUINAN  
BECAUSE OF BRAIN DAMAGE THAT WOULD HAVE PREVENTED  
THE DELIBERATION NECESSARY FOR CAPITAL MURDER

- S. Due to ineffective assistance of Mr. Guinan's trial counsel, Guinan did not receive any mental evaluation before the trial even though his mental state is an essential element of capital murder.
6. William A. O'Connor, Ph.D. did extensive testing and evaluation of Mr. Guinan in 1990 and 1991. Dr. O'Connor gave expert testimony in a hearing before Federal District Judge Scott O. Wright in 1992 that Mr. Guinan did not have the ability to "deliberate" at the time of the homicide in 1981.
  7. Although Dr. O'Connor labeled Mr. Guinan's brain damage as "mild to moderate," it did prevent him from thinking "logically or clearly in any kind of stressful situation," and "impaired his judgment, his ability to accurately understand a situation when there's any stress or complexity, his ability to handle any situation that's emotionally arousing, complicated, stressful or difficult." Mr. Guinan can "act, but he can't think (His

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reaction) is not a thought reaction." In short, Mr. Guinan could not have considered the taking of another's life with a cool and deliberate state of mind.

8. No other expert has ever offered an opinion to the contrary. No other expert has even evaluated the petitioner specifically for this.

IV.  
CLEMENCY SHOULD BE GRANTED BECAUSE  
THE SENTENCING JURY DID NOT HEAR MITIGATING EVIDENCE  
THAT MAY HAVE AFFECTED THEIR JUDGMENT

9. Frank Guinan's defense attorney at trial did not investigate or present any evidence at all in the penalty phase of trial. Yet there is a substantial mitigating story about Frank Guinan's life. Mr. Guinan has presented evidence that he has spent well over half his life in the Missouri prison system. He has been a victim of alcoholism since he was a child in elementary school, causing him to leave school in 1959 at the age of 14, without even completing the seventh grade. Within a few years, while still a teenager, Mr. Guinan was sentenced to Missouri State Penitentiary on an immature non-violent offense --- for the burglary of an ex-girlfriend's house. Within a very brief time, young Mr. Guinan was repeatedly sexually molested, raped, and assaulted by older inmates at the prison. He subsequently turned to heavy use of alcohol and drugs, including highly toxic prison-made amphetamines, such as "chicken dust" -- a recurrent pattern which is related to chronic depression. In addition to the rapes, alcohol

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and drug abuse, Mr. Guinan encountered other physical and mental trauma the year he entered Missouri State Penitentiary. In 1964, he was stabbed and then stabbed again in 1967, pistol-whipped two years later, and suffered an-other head injury with loss of consciousness in 1976 or 1977, when he was struck on the head with a pipe.

10. Frank Guinan has attempted suicide at least four times over the last several years, including one time prior to the events that led to this conviction. He has taken extensive psychotropic medications at Missouri State Penitentiary, both prescription and non-prescription, including am-phetamines, Percodan, Sinequan, Ativan, Elavil, and whatever other substances were available to him since he has been incarcerated.

11. Dr. O'Connor's diagnosis of organic brain damage was on top of all this.

V.  
COMMUTATION SHOULD BE GRANTED  
BECAUSE THE DEATH PENALTY IS NOT A DETERRENT

12. A recent study concluded the following:

"During the 1950's there is no evidence that executions had even the slightest deterrent effect on murder. In addition, based upon our analysis of this decade, we find no support for the ar-gument that a return to past execution practices will provide an effective solution to the murder problem. Rather, if executions are to again receive a prominent role in the criminal justice system, their use will have to be justified on grounds other than deterrence."

13. This study compared murder and executions in death penalty states in the 1950's. (William C. Bailey, "The Deterrent Effect of Capital Punishment During the 1950's," Suicide and Life Threatening Behavior, Vol. 13, #2, Summer, 1983, pp. 95-109.)

14. There is an alarming correlation between the date of the last period of executions in Missouri and a significant increase in the number of homicides. Prior to the recent renewed use of execution, the last execution in Missouri occurred on February 26, 1965. In 1964, the year prior to the execution, there were 240 homicides in Missouri. The executions occurred early in 1965. In 1965 there were 300 homicides in Missouri, an increase of 60 over the preceding year. In 1966, the year following the executions, there were 246 homicides in Missouri, a decrease of 54 from 1965. That is, there were significantly more homicides during the year of the last executions in Missouri than either the year before or after. This correlation must be given serious consideration in light of the opinions of psychiatrists that killing by the state is an incentive to those with a murder-suicide syndrome and a trigger to increasing intentional homicide.

15. The renewal of executions in January, 1989 shows a similar correlation of increased homicide following the use of capital punishment.

<b>Year</b>	<b>Number of Executions</b>	<b>Murder Rate Per 100,000</b>
1988	0	8.0%
1989	1	8.0%
1990	4	8.8%
1991	1	10.2%

16. Capital punishment does not protect society; rather, the correlation is that homicide increases when the State lases capital punishment. Apparently the State by the use of violence, is teaching that killing is an acceptable means of solving personal problems.

17. Reliance on capital punishment wastes resources which could be better used by society, including the development of better ways to reduce crime. The cost of capital punishment litigation exceeds the cost of life imprisonment. Estimates are that it is about six times as expensive.

18. The Common Good of the people of Missouri would be better served by commutation of the death sentence.

19. Society abhors violence. Violence begets more violence. The death penalty is clearly no more of a deterrent than imprisonment; in fact, it appears to be an incentive to more murders. Execution destroys human life, a gift of our Creator, Redeemer God. It debases humanity, encourages revenge, precludes repentance and sanctions violence as a solution. It is in the interest of the Common Good of the people of our state that the cycle of violence be broken.

FOR THE FOREGOING REASONS, the death sentence should be commuted to life without parole.

Respectfully Submitted,

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Benedictine Sisters  
Our Lady of Peace Community, Columbia, Missouri

Most Rev. Raymond Boland  
Bishop of the Catholic Diocese of Kansas City-St. Joseph

Right Rev. John Buchanan  
As Bishop of the Episcopal Diocese of West Missouri

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October 4, 1993

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