

In re capital execution of Frederick Lashley

APPLICATION FOR GRANT OF REPRIEVE OR COMMUTATION OF SENTENCE

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 Frederick Lashley has been set for July 28, 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. Frederick Lashley 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 LASHLEY
BECAUSE OF THE CUMULATIVE EFFECT OF HIS ADOLESCENCE
AND MENTAL INCAPACITIES ARISING OUT OF HIS FAMILY HISTORY
AND ABUSE OF ALCOHOL AND DRUGS

5. Lashley is the product of a broken home and a father who was physically abusive. Early in his life Lashley was depressed and underwent psychiatric care. He began heavy drinking at the age of 10. Lashley also started at about the age of 11 abusing drugs. On the day of the murder of Janie Tracy, he had tried PCP (phencyclidine).

6. Dr. Vernon Green described the effects of PCP as follows:

"Persons on PCP react to threats, actual or perceived, in a most aggressive manner and due to the fact that they can exhibit unusual strength, they can be dangerous. Reports of PCP induced psychotic behavior have been prevalent in the pharmacology and psychiatric literature for more than 30 years." (Exhibit 2 to Lashley'B Application for Clemency)

7. Lashley was never violent towards the victim or family members in the past. As part of his trial, Lashley was not examined by experts nor defense presented in connection with the effects of PCP.

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IV.

CLEMENCY SHOULD BE GRANTED

BECAUSE LASHLEY WAS A JUVENILE AT THE TIME OF HIS OFFENSE

S. Society recognizes that juveniles, because of their immaturity in life experience, are less capable in making prudent judgments than adults. This philosophy is reflected in the separate system of juvenile courts and also in the recent actions of the Legislature in excluding, by statute, those under 14 from the death penalty. The immaturity of Lashley, combined with other factors, warrants the Application of Clemency in his case

9. Neither deterrence nor retribution is served by the execution of juveniles. The threat of a death sentence does not "deter" adolescents because they typically live for today with little thought of future consequences. Adolescents most likely to commit homicides share a common profile of cognitive deficits, psychotic disorders and histories of being physically and sexually abused in childhood. These "mitigating circumstances" are frequently overlooked in the legal process. Thus the death penalty for juveniles is neither effective nor just.

10. Neither deterrence nor retribution -- the two penological goals most commonly advanced as reasons for having a death penalty -- is served by the execution of juveniles.

11. The death penalty is not an effective tool in stopping (detering)

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future acts of juvenile violence or murder. Adolescents live primarily for today and do not consider the *long-range consequences* of their actions. Victor Streib, a professor of law at Cleveland-Marshall College of Law and a foremost expert on juvenile death penalty issues, states the following in his book, "Death Penalty for Juveniles":

"Child development research reveals that the ability to engage in mature moral judgments develops significantly during middle and late adolescence, reaching a plateau only after an individual leaves school or reaches early adulthood. Most adolescents have insufficient social experience for making sound value judgments and understanding the *long-range consequences* of their decisions. Supreme Court opinions have recognized this universally understood principal: 'During the formative years of childhood and adolescence, minors often lack the experience, perspective and judgment to recognize and avoid choices that could be detrimental to them., All of this generally accepted information about typical adolescent behavior leads to the conclusion that juveniles do not commonly engage in any 'cold calculus that precedes the decision to act., Thus the Supreme Court's premises behind its assumed

general deterrence of the death penalty simply do not apply in any reasonable *manner to juveniles.*"

12. There are other reasons why the death penalty has no deterrent effect on violent juvenile crime. Adolescents view death differently than adults. High speed driving and other death defying behavior are common. Juveniles convicted of capital murder have been known to prefer death over life imprisonment. In addition, adolescents under the sway of strong emotion will ignore their fear of death. It is no accident that suicide is the second leading cause of death among young people. (It is the eighth leading cause of death for the rest of the population.)

13. Juveniles who commit homicides share all of these characteristics of adolescence but they have additional characteristics that limit their ability to think rationally or to premeditate action. Common problems

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include cognitive deficits, psychotic disorders and histories of being physically and sexually abused in childhood.

14. Clearly, therefore, the death penalty is not effective in deterring future acts of juvenile violence or murder. Although the death penalty will stop the person executed from committing any more murders, life imprisonment with no opportunity for parole will also accomplish this objective with much less expense to the State. (For Missouri this is no formal study that examines the comparative cost of the death penalty versus life imprisonment. However, a 1982 New York study by the New York State Defenders Association entitled, "Capital Losses: The Price of the Death Penalty for New York State" found that it cost the state's taxpayers \$1.8 million per death penalty case while the cost of life imprisonment for 40 years was only \$602,000. More recent figures in Florida indicate a cost of \$3.17 million per death penalty case. A Tampa Tribune article of July 11, 1988 reported that Florida taxpayers had spent \$57.2 million to execute the 18 men who died in the electric chair since the death penalty was reinstated.

15. Since deterrence is not served by the use of the death penalty on juveniles, what about retribution? Proponents of the death penalty claim it is an appropriate way for the community to express its moral outrage at the heinous crime which has been committed. However, even those who believe in the retributive purpose of the death penalty normally will concede that it must be tied to the moral culpability of the offender. That is one reason why death penalty statutes normally include a list of mitigating circumstances. However, in the case of juveniles homicides the legal process sim

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ply has not worked well.

16. An indepth study of 14 of the 37 juveniles currently condemned to death in the United States found the following: Nine of the 14 had major neurological impairment; seven suffered psychotic disorders; only two had full scale IQs above 90; 12 of the 14 had been

brutally physically abused; and five had been sodomized by relatives. The study indicated that most of the juveniles attempted to hide evidence of cognitive deficits or psychotic symptoms. In addition the juveniles were ashamed of their parents, brutality and tried to conceal or minimize it. In commenting on the legal process involved in examining these potentially mitigating circumstances, the study stated:

"Brain damage, paranoid ideation, physical abuse, and sexual abuse, all relevant to issues of mitigation, were either overlooked or deliberately concealed. of note, in only five cases were any pretrial evaluations performed at all. These tended to be perfunctory and provided inadequate and inaccurate information regarding the adolescents' neuropsychiatric and cognitive functioning." (Lewis, D. et al., "Neuropsychiatric, Psychoeducational and Family Characteristics of 14 Juveniles Condemned to Death in the United States," 145 AM, J. Psychiatry, 584.37 - May, 1988.)

Lashley shares a similar profile to those evaluated in this study. He was physically abused in the home at an early age. He was introduced to drugs and alcohol at an early age.

Clearly, then, even if one believes that retribution is sometimes called for, it is not justified in the case of juvenile offenders.

19. Lashley was 17 at the time of the offense. Consider the following:

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a) International law and practice recognizes the age of 18 as the appropriate dividing line between childhood and adulthood for purposes of the death penalty.

b) Two-thirds of the states which have already adopted age limits on infliction of the death penalty have used the age of 18 as the cutoff point.

c) American society treats children differently than adults in a multitude of areas. This differential treatment is based on the recognition that children are peculiarly vulnerable, incapable of mature decision making and are still dependent on parents or

guardians for care and guidance. Eighteen is the age of responsibility for other important areas of life such as voting and registration for the draft.

V

COMMUTATION SHOULD BE GRANTED

BECAUSE THE DEATH PENALTY IS NOT A DETERRENT

20. 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 argument 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."

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21. 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.)

22. 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 serous 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.

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

YEAR	Number Of Executions	Murder Rate per 100M
1988	0	8.0%

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YEAR	Number Of Executions	Murder Rate per 100M
1989	1	8.0%
1990	4	8.8%
1991	1	10.4%

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

25. 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.

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

27. 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

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life without parole.

Respectfully Submitted,

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As Bishop of the Episcopal Diocese of West Missouri

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Dated July 23, 1993

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