

In re capital execution of Gerald Smith

APPLICATION FOR GRANT OF REPRIEVE OR COMMUTATION OF SENTENCE

To: The Honorable John Ashcroft, Governor
State of Missouri

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

I.
EXECUTION SET

1. The death of Gerald Smith by execution is set by order of the Supreme Court for December 20, 1988.
2. Gerald Smith has dismissed his attorneys and ceased all judicial review of his conviction although several judicial procedures remain available and have not been exercised by him.
3. The circumstances of this execution are extraordinary in that the execution is not occurring subsequent to the completion of the normal Judicial review processes, but is occurring because the offender has requested execution without further judicial process. He has chosen to

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forego judicial remedies which are available to him to challenge his conviction and sentence.

II.
POTENTIAL JEOPARDY TO COMMON GOOD EXISTS
GERALD SMITH MAY NOT WAIVE RIGHTS OF SOCIETY

4. This matter presents issues of grave concern to the common good of the people of this State and potential jeopardy to innoc-int third persons. These matters ought to be inquired into and deliberately determined whether or not Gerald Smith chooses to present them. The exercise of the pardon power is not dependent upon "one (the offender) who, on no sound principle, ought to have any voice in what the law should do for the welfare of the whole." Biddle v. Perovich, 274 US 479,487 (Justice Holmes).

5. Society has fundamental rights and interests that may not be waived by individuals. The courts have recognized that this State has a compelling interest in (1) the preservation of life; (2) the protection of innocent third parties; (3) the prevention of suicide; and (4) the maintenance of the ethical integrity of a profession such as law and medicine. The State's interest in these matters is sufficiently compel-ling that they have been held to outweigh an individual's Exercise of personal choice even under the First Amendment. (For example, see cases where courts have ordered Jehovah's Witnesses to have blood transfusions even though objected to for religious reasons.)

III.
PARDON POWER IS INHERENT IN THE PEOPLE
CITIZENS HAVE STANDING TO APPLY

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6. 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.

"A pardon in our days is not a private act of grace from an individual happening to possess the power. It is a part of the Constitutional scheme. When granted, it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than the judgment fixed. * * * The public welfare, not his (the prisoner's) consent, determines what shall be done." Biddle, supra p. 486.

7. Precedent has been established for the right of applicants as citizens of the State to apply for reprieve or commutation in behalf of the common good and to have the Board of Probation and Parole review such application pursuant to Section 217.800, RSMo. In 1984 the same prisoner was set for execution on November 9. On October 31, 1984 religious leaders and others, including some of the present applicants, filed an Application for Reprieve or Commutation with then Gov. Christopher S. Bond. Gov. Bond accepted the Application, referred it to the Board of Probation and Parole for review. Again in 1988 this prisoner was set for execution. On September 28, 1988 religious leaders and others, including some of the present applicants, filed an Application for Reprieve and Commutation. This Application also was accepted by the Governor and referred to the Board of Probation and Parole for review. The Board did not recommend reprieve or commutation. On both occasions a federal court stay order intervened making the Applications moot.

IV.

REVIEW UNDER SECTION 217.800, RSMo. REQUESTED

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8. The undersigned invoke the requirements of Section 217.800, RSMo, which requires that "all applications for pardon, commutation of sentence or reprieve shall be referred to the Board (of Probation and Parole) for investigation." Further we request timely notice of the Board's proceedings and an opportunity to be heard prior to the completion of their investigation. The Board should be directed to conduct a professional investigation of the alleged facts including interviews of persons known to have information relevant to the events.

V.

A REPRIEVE SHOULD BE GRANTED PENDING INVESTIGATION
OF THE ALLEGED NEW EVIDENCE RELATING TO THE
ELEMENTS OF THE OFFENSE FOR WHICH THE DEATH SENTENCE WAS IMPOSED.

9. The only crime for which the law of Missouri allows the use of capital punishment is murder in the first degree. This requires that the offender "knowingly causes the death of another person after deliberation upon the matter." Sec. 565.020, RSMo. 1986. Commission of a battery, commission of a homicide, commission of a murder without deliberation does not allow a punishment of death. Only one crime, first degree (capital) murder, allows that penalty.

10. Recently information has come to public knowledge raising the question as to whether or not Gerald Smith (1) committed first degree(pre-meditated) murder or (2) committed even a homicide.

11. The present question is not whether or not the new information is true. The question at this time, especially in the face of the

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irreversibility of death, is -- Is it in the public welfare to investigate the allegations of fact prior to execution?

12. The integrity and credibility of the judicial system is the value that must be preciously guarded. Irreparable harm would flow if citizens lacked faith in the role of the-jurisprudence system to meet out justice. The pardon power exists for the promotion of the public welfare, including the preservation of the integrity and credibility of the jurisprudence system. This power should be exercised even in the face of the objections of the offender because it is the good of society that is primarily to be served and not the wishes of the offender.

13. A copyrighted article in the Kansas City Star of December 11, 1988 sets forth the substance of a sworn affidavit of Timothy Smith, brother of Gerald Smith. See: Attachment A. The affidavit, if true, negates clearly the commission of capital murder and also would appear to negate even the commission of any homicide. We do not know whether the affidavit is true or false. That is not the question. The question is whether it is in the public interest to prudently and seriously nvestigate the statements made in the affidavit'prior to implementing the death penalty.

14. What facts indicate that the affidavit is worthy of this degree of consideration?

a. What are the motives of the affiant? We note that on one hand Timothy is Gerald's brother and one could conclude that he is sympathetic to Gerald's avoiding punishment. However, Timothy is

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also Eugene's brother and the affidavit states facts which, if true, would justify his conviction of capital murder. Also it must be noted that Timothy's actions are contrary to Gerald's expressions that he wishes to receive the death penalty. Also relevant to Timothy's motives we should ncte that Timothy states that he has been threatened by Eugene if he tells his story. Eugene's threats have been substantiated by Joyce Dobson. In addition, an event wherein the threats were made is substantiated by a police report.

b. Timothy's story is also supported independently by other individuals: Betty Roller, Kay Starcher, Timothy's wife, Jo Anne Smith.

C. The believability of Timothy's story is also supported by two professional law enforcement officers who took his statement: Sgt. Ralph Bottone and Det. Dan Calvey.

d. Timothy's story is also consistent with the physical facts.

e. Gerald Smith has, over the years, told two different stories. One story is consistent with Timothy's story. This is the story that he tells in letters to people such as his wife, Lynn Smith. Note the letter of April 25, 1986. The other story that Gerald Smith tells is one when his motivation appears to be to cause himself to get the death penalty. For example, the letter of March, 1981 to the St. Louis Globe-Democrat. This second group of letters,

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however, are not consistent with the physical evidence. Further, see part IX infra.

f. It should also be noted that there is no physical evidence linking Gerald Smith to the crime that does not depended upon Gerald Smith's statemert regarding the physical evidence, particularly the iron bar offered as the murder weapon.

15. The facts in the case of Whitaker v. State, Mo., 451 SW 2d 11, were similar to the instant situation. In that case the offender alleged in a collateral attack under Rule 2726 that there was new evidence that he was not guilty of the offense for which he was convicted. He offered hearsay evidence of a witness indicating that two other persons had committed the crime. The Court found that he was not entitled to relief from the courts but went on to state that he is not without remedy.

"[A] pardon ' * * * may be used to the end that justice be done by correcting injustice, as where after discovered facts convinced the official or board invested with the power that there was no guilt or that other mistakes were made." Whitaker, supra. p. 15.

The Court's opinion goes on to note that in the exercise of the pardon power the governor is "not restricted by rules of evidence." More on the use of the pardon power "to correct imperfections of the judicial system" see 12 Col. Journal of Law and Soc. Prob. 149.

16. Gerald Smith stands in the same position as Whitaker. The remedy is through the exercise of the pardon power. Since the truth of the new evidence has not been determined, the immediate question is not

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whether to pardon Gerald Smith or even to commute his sentence. Rather, the present question is whether or not to grant a reprieve because it is in the interests of the public welfare to responsibly investigate the new evidence. It is in the interest of the common good that no penalty be imposed upon a person who has not committed the offense. Since the death penalty is a supreme penalty, it becomes of supreme importance that it not be administered by mistake.

17. The Kansas City Star story reflects a thorough journalistic investigation. But apparently the persons interviewed by the Kansas City Star (except Timothy Smith) have never been interviewed by an attorney or other legally skilled or authorized person.

18. The facts alleged in the Timothy Smith affidavit have apparently never been presented in a court of law due to the alleged intimidation of Eugene Smith or the intervention by Gerald (who repeatedly has sought execution) in attempts by his attorneys to defend his life.

19. After 12:01 a.m. on December 20, 1988, if there is substance to the alleged facts Gerald Smith cannot be called back to life. If there is substance to the alleged facts, the blot on the integrity of the justice system will be indelible. There is no need to stand at the edge of the precipice looking over. It is in the control of the Governor representing the public welfare to back us away and take a careful and deliberate look before the State jumps.

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20. If executive action is not taken now to reprieve the time of execution and direct a legally competent investigation, then the public doubt about the legal basis for this execution will remain unanswered. This would be a disservice to the justice system and the common good. Common sense, common decency and the common good call out for time to be responsible and deliberate. We call out for a reprieve of the execution date.

VI.
A REPRIEVE SHOULD BE GRANTED
BECAUSE THE STATE'S COMPELLING INTEREST
IN PREVENTING SUICIDE OVERRIDES
SMITH'S RIGHT OF INDIVIDUAL AUTONOMY

21. There is growing concern about suicide in our society, particularly the rise in adolescent suicides. Suicide has become the second largest cause of death in young people and the eighth for the rest of the population. Last year in Missouri 130 persons, ages 15 to 24, committed suicide. The overall suicide rate has jumped dramatically from 587 in 1982 to 745 last year.

22. Smith has a prior history of attempted suicide and has been medically diagnosed as suicidal. For Smith, the death penalty is a means of escaping the anxiety and suffering that he experiences on Death Row. For the State to fulfill the "contract" (confer Dr. West, infra) and to be the active means by which Smith carries out his suicidal attempt would be to give a form of official approval to suicidal actions, to suicide as an acceptable means of avoiding pain and anxiety. It is contrary to the

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State's interest and the welfare of the people that even implicit approval will be given to suicide.

VII.
COMMUTATION SHOULD BE GRANTED
BECAUSE OF THE ALARMING CORRELATION BETWEEN
EXECUTIONS AND SUBSEQUENT HOMICIDES

23. We abhor 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 chain of violence be broken. Therefore, we urge that the death sentence be commuted.

24. There is an alarming correlation between the date of the last execution in Missouri and a significant increase in the number of homicides. 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 execution 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 execution, 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 execution 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

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the state is an incentive to those with a murder-suicide syndrome and a trigger to increasing intentional homicides.

VIII.
EXAMINATION OF MENTAL CONDITION
(Section 552.060, RSMo)
SHOULD BE CONDUCTED

25. It is the public policy of this State that a person not be executed if he lacks mental capacity to understand the punishment, arguments for clemency, or reasons why the sentence should not be carried out. Section 552.060, RSMo. The policy is not only in the interest of the person under sentence but also the common good.

26. Gerald Smith has a long history of mental problems. They include abuse and abandonment as a child, multiple head injuries, depression, several suicide attempts, and changes of mood. Numerous times since his trial he has changed his mind on whether he wants to be executed. Smith has not had a mental examination since 1985, three years ago.

27. Since Smith's execution would be as the result of his personal decision and not the decision of a court, all doubt should be removed as to his current mental condition. A reprieve should be granted to conduct examination of his current mental condition.

28. There is substantial information that Smith's decision is not truly voluntary or made with requisite mental capacity, to-wit:

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(a) Smith has limited education and intellectual ability. He as only completed the 8th grade at age 16 and that at a reform school (Endnote #2, p. 2).

(b) Psychologists have found that Smith's "judgment in practical situations is in the mentally handicapped range" (#1). There have also been findings that his visual and auditory memory are impaired and that such "functioning may be the result of organic impairment", noting Smith's case history of alcohol/drug abuse and several concussions (#1). This same psychologist, in 1981, following an evaluation, found "intellectually, Mr. Smith is currently functioning in a borderline to low average range. His PPVT IQ score is 79 and indicates a below average understanding of word meanings and verbal concepts." (#4, page 2). A psychiatrist, in 1981, evaluated Smith saying he is, 'functioning at a dull-normal to borderline range of intelligence.' (#3, page 2). The same psychologist and psychiatrist reaffirmed their conclusions in affidavits signed May 23, 1983 (#5 and #6). The psychologist, in his affidavit stated, "Smith's thought content and productivity are impoverished and his awareness of self and others is constrictive. His thought processes are impulsive and he would react to his environment without sufficient information to make an appropriate response." (#5, page 2).

(c) Smith's ability to relate cause and effect are at a primitive level.

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(1) In 1981 a psychiatrist evaluating Smith stated,"(Smith) would conclude when under stress or in an

unstructured and ambiguous situation, that two or more events are causally related simply because they occurred close together in space and time. This results in unique beliefs about himself and the world in which he lives." (#3, page 3)

(2) A psychologist also concluded, "(Smith's) conclusions about external events and himself are sometimes based on erroneous information and his responses ineffective because they are based on faulty reasoning." (#4, page 2). The psychologist, in an affidavit signed May 23, 1983 stated,

"(Smith's) failure to make causal connections between behavior and consequences is comparable to a young child's belief in superstition or magic. For example-- the first anniversary of his mother's death is on June 10, 1983, the date on which his execution is scheduled. This coincidence to him may have a particular significance." (#6, page 3)

(d) Smith has psychological disorders. He has been treated for characterological disorder and alcohol abuse. He also is diagnosed as suffering from a Borderline Personality Disorder. (#2) Smith has a very dependent personality. "He has a strong need for support and understanding from those around him, especially from someone who he could look up to as a father figure. These feelings, however, are not acceptable to Mr. Smith and, in fact, a source of conflict to him." (#1, page 2) He has a very low self-esteem (#5, page 2). In 1984 the psychologist found,

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"Mr. Smith fails to exhibit any mental disease or defect severe enough to render him incapacitated or incompetent. However, he does have psychological problems which may help to explain his past behavior and his erratic present behavior in regard to his fluctuating support for the legal appeal process being pursued in his behalf. Basically, Mr. Smith is a rebellious, non-conforming individual who is chronically hostile and dependent and who lacks a firm and stable self-identity. A great deal of anger with and dissatisfaction towards others, as well as a strong dependency on their acceptance and approval is the central personality dynamic influencing Mr. Smith's behavior. * * * Bizarre, self-defeating behavior become likely. Mr. Smith will do things that seem stupid and which may be vicious and assaultive." (The psychologist went on to state) "In a somewhat attenuated form, Mr. Smith continues to exhibit the cyclical pattern of behavior, bouncing between aggressive acting out and dependent inhibition and restraint of aggressive impulses. He attempts to provoke and dominate the situation re'using to support the appeal process and then becomes inhibited, allowing his lawyers to move ahead without disruption. A hint to the quality of Mr. Smith's motivation is provided by his insistence that he is not going to 'beg for his life' nor 'ask for favors' and also when he takes precautions to insure that he retain his right to make his own decisions in this matter. As Mr. Smith sees it, to 'beg' and ask for 'favors' is socially unacceptable behavior, worthy of disapproval and rejection, and to allow another to control your fate is not acceptable for an adult. Such evaluations threaten his limited sense of self-worth. Instead, by identifying with the frustrating and humiliating aggressors (the prosecutor prior and during his trial and now the judiciary in his appeal process) and taking over their functions, Mr. Smith is able to feel in harmony with the values and goals of the larger group (something he has rarely experienced in his life) thereby protecting his limiting and tenuous self-esteem and maintaining his self-respect." (#7, page 4, emphasis added.) The psychiatrist who also examined Smith in 1984 agreed on the evaluation of Smith's "cyclical pattern of behavior in his current legal situation" was due to his "poorly formed identity" and his dependence upon social acceptance. (#8, page5).

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(e) The conditions in Death Row, while perhaps necessitated for security purposes, nonetheless have the effect of reducing the ability to make free choices. Death Row inmates are "locked down," that is, confined to their cells many hours a day. They do not have access to rehabilitation or education programs, therefore, there are long periods of enforced idleness. Visitation is limited. Communication and contact with other human beings is very limited. It is basically a situation of isolation. The psychologist, in his 1983 affidavit, noted the impact of death row on motivation. He said,

"These factors (the pending execution date, his confinement on death row) clearly could contribute to significant decrease in his motivation to protect himself and to appropriately utilize legal safeguards to this end. Instead he is actively self-destructive in using his knowledge of the legal system to receive the maximum penalty." (r15, page 3) Mr. Smith's active suicidal tendencies adversely affect his ability to make a voluntary decision in this matter. His self-destructive tendencies would appear to be compelling him to make this decision in favor of execution. Smith has a history of attempting suicide. His actions in connection with his legal defense from time to time have been "indicative of a self-destructive tendency within him." (Dr. Parwatikar) He also exhibits the characteristics of the murder-suicide syndrome. (The effect of his suicidal mentality is discussed at length under Point No. VI, infra).

(g) Smith denies wanting to die (#7, #8 p. 2). He is making the choice of death now as a means of avoiding the pain and anxiety

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of continuing to live on Death Row. This Hobson's choice is an inherently coercive. A confession to a crime made under similar circumstances would be unconstitutional and involuntary. (See for example, Stidman v. Swenson, 506 F2d 478 (8th Cir. 1971).)

29. In determining mental condition and voluntariness, the standard should be appropriate to the seriousness of the decision. Obviously to decide to live or die is of utmost seriousness and irrevocable finality. Once the decision is implemented, it cannot be reconsidered or reversed. Thus the standard for judging the voluntariness ought to be of the highest degree. Standards for determining voluntariness of a confession or a plea of guilty in relation to this decision would be too low since each of these decisions is subject to review of trial or appellate courts and is correctable if erroneous. This lower standard is the standard recently applied by the 8th Circuit Court of Appeals. Since Smith's decision here will directly result in his death, Applicants submit that a higher standard of voluntariness should apply. Gerald Smith clearly has mental and psychological problems. It is inappropriate to allow him to make an irrevocable choice not to live.

VI.
INNOCENT LIVES WILL BE THREATENED
BY THE STATUS PARTICIPATION IN SMITH'S SUICIDE DESIRES

30. The execution of Smith pursuant to his suicidal requests will be a threat to the lives of innocent third parties. A reprieve should be granted so that innocent lives will be protected from murder by persons suffering from the murder-suicide syndrome.

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(a) Psychiatrists have identified the murder-suicide syndrome. Persons with this syndrome have suicidal urges but are unable to carry out their own suicide. They then murder another so that the State will kill them

through capital punishment. Psychiatrist Louis J. West, M.D. describes it as follows:

"It [the death penalty] becomes a promise, a contract, a covenant between society and certain (by no means rare) warped mentalities who are moved to kill as part of a self-destructive urge. These murders are discovered by psychiatric examiner to be, consciously or unconsciously, an attempt to commit suicide by committing homicide. It only works ifl the perpetrator believes he will be executed for his crime. I believe this to be a significant reason to find proportionately more homicides in death penalty states than in those without it." ("Psychiatric Reflections on the Death Penalty," American Journal of Orthopsychiatry, July 1975. Emphasis added.)

(b) Some characteristics of the murder-suicide syndrome are:

- (1) History of prior suicide attempts.
- (2) Committing murder in a jurisdiction that has the death penalty.
- (3) Committing murder under circumstances where the offender is certain to get caught.
- (4) Expressing the desire to be executed.
- (5) Manipulating the judicial process to attain the death penalty as a result. For example, agreeing to extradition to a

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state with the death penalty, or dismissing or not cooperating with the defense attorneys.

(6) Threatening subsequent murders if the first offense does not result in execution.

(c) Smith demonstrates the characteristics of the murder-suicide syndrome.

- (1) Prior to the murder of Karen Roberts, Smith had attempted suicide at least twice. On July 26, 1980, just a few weeks prior to the murder of Karen Roberts, he attempted to jump off a third-story roof. (#2, p.3)
- (2) Smith was arrested on September 18, 1980 within 10 days after the murder. His defense counsel negotiated a plea bargain for a 20-year sentence. Before going to trial, Smith wrote two letters to the Globe Democrat for the purpose of getting the death penalty. As a result of these inflammatory letters, the prosecution withdrew the plea bargain arrangement and went to trial. Dr. Parwatarikar described this letter as "indicative of a self-destructive tendency in Smith." (#8, p.2)

(i) When confronted by the psychiatrist with the letters that he wrote to the newspapers Smith stated, "Yeah, I wrote them because I wanted to die. I made all those things up because I wanted to give them reason to

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send me to the gas chamber." (#4, -page 2) The psychiatrist, in the same evaluation, said, "He understood that his lawyer was trying to defend him and minimize the sentence in case he is found guilty, but he has made up his mind that he does not want to go back on the streets and that he would rather be dead." (#1, page 2) The psychiatrist concluded,

"Currently, and on previous evaluation, Mr. Smith is depressed and suicidal ideation is present. * * * Because of his depression, his inefficient thinking and faulty reasoning, his suicidal ideation, and his belief that he is worthless and that he will kill again should he live, Mr. Smith is not adequately motivated to protect himself and to appropriately utilize legal safeguards to this end. Instead, he is actively self-destructive and is using his knowledge of the legal system to receive the maximum penalty. He is actively

interfering with the reasonable efforts of counsel to provide a legitimate defense. (#3, page3)

The psychiatrist went on to state, "He has now decided to embellish facts surrounding the alleged crime and make himself eligible for death penalty." (#3, page 3)

(ii) In conversation with the examining psychologist, Smith said that, "He confessed to the crime he was charged with in a way that would make it appear to be a capital offense but said that it really didn't happen the way he confessed to it. He said the crime wasn't a capital offense but that he wanted the death penalty. (#4, page 1)

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The psychiatrist found, "Mr. Smith is not adequately motivated to protect himself and to appropriately utilize legal safeguards to this end. Instead he is actively self-destructive in using his knowledge of the legal system to receive the maximum penalty." (#4, page 3)

(3) While in jail prior to trial, Smith again attempted suicide. (#3, p . 2)

(4) At trial, Smith told his attorney not to use character witnesses or witnesses to mitigate the punishment. (#8, p.2)

(5) During May 1983, Smith sought to dismiss his attorneys and wrote letters requesting his execution. After intervention of his family and others, Smith changed his mind. (K.C. Times, June 2, 1983)

(6) While on Death Row, Smith made further suicide attempts. He also threatened the lives of guards if he was not executed. (K.C. Times, April 27, 1983)

(7) In 1984 during a psychiatric evaluation the psychiatrist reported that he (Smith) stated that "he didn't have enough guts to kill himself, thus, he had decided to write the letters to the newspaper and the judge so that he would get the gas chamber." (#8, page 2) The psychiatrist found "Smith's writing of letters to the newspaper as well as to the

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judge was also indicative of such a self-destructive tendency within him." (#8, page 2) The psychiatrist also noted,

"Mr. Smith, at the time of his trial, also actively interfered with the reasonable efforts of his counsel to provide legitimate defenses, evidencing his ideosyncratic acting out. These examples support the diagnosis of borderline personality. During his stay at Missouri State Penitentiary Mr. Smith reportedly showed suicidal tendencies and acting out toward his attorney, threatening him with bodily injury if he pursued any course to block his death penalty. This also exemplifies Mr. Smith's characterological problem." (#8, pages 2 and 3)

The psychiatrist further stated, "Mr. Smith is currently unwavering in his unwillingness to pursue the matter any further, albeit this decision is affected by his total characterological makeup." (F#, page 6)

(8) A significant psychiatric report prepared in June,1983, was not presented to either the Circuit Court or the Missouri Supreme Court in connection with the proceedings determining Smith's competence to dismiss

counsel and move directly to execution.

(i) The report concluded, "Smith suffers from a mental disorder which substantially affects his capacity to appreciate his position and make a rational choice with respect to abandoning further litigation."

(ii) The psychiatrist's conclusion most seriously questions Smith's capacity and ability to make a voluntary

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choice to abandon judicial process and go directly to execution. The psychiatrist offered this in his report, "Mr. Smith appears to be an immature, impulsive, individual who more often says things which he really does not mean. Once having made a statement, he stubbornly sticks with it mainly because his low self-esteem prevents him from considering the pros and cons of the issue. To me, his reasons for taking the position of no further appeals are clearly superfluous and faulty. I believe that he has clearly set himself on a relentless progressive self-destructive path from the very beginning of his judicial process by his active request for the maximum penalty for the crime he committed and by actively blocking his attorney from pursuing any legal safeguards open to him. Again, his contrary statements in the letters and his attempt to escape reflect his impulsivity and instability in his thinking." (#9) (Emphasis added.)

(9) Again, at this time, Smith is asking the State to effectuate his suicidal urges by his actions in dismissing his attorneys and his post-conviction judicial proceedings.

(d) If this execution is carried out at Smith's request, then the "contract" described by Dr. West is complete and others of warped mentality such as Smith will be encouraged to kill an innocent victim in order to carry out their suicidal urges.

(e) Even if only one innocent life were endangered by proceeding with this execution, it would be enough, but studies show that the correlation between murder and suicide is not rare. In Florida, 42 percent of death row inmates seriously considered suicide and 35 percent actually attempted suicide. P. Lewis and K.

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Peoples, *The Supreme Court and the Criminal Process: Cases and Comments* 1164-72 (1978). Also see Watt Espy, "Capital Punishment: An Incentive to Kill." (Copy attached.)

(f) The point here is to protect the lives of innocent third parties. There is psychiatric evidence to demonstrate that an execution under these circumstances will trigger additional murders.

Will we remember the season of Christmas and Hannaka, 1988 as the time when our State executed a mentally and psychologically deficient person who wanted to commit suicide and who may not (or was not) guilty of capital murder?

FOR THE FOREGOING REASONS, a reprieve staying the carrying out of the death penalty pending further actions as hereinabove described should be granted or in the alternative the death sentence should be commuted.

Respectfully Submitted, Benedictine Sisters
Our Lady of Peace Community, Columbia, Missouri

Michele Coleman
Jefferson City, Missouri

Lucy Torres
President, Missouri Association for Social Welfare

Bishop W. T. Handy, Jr.
Missouri Area United Methodist Church

The Rt. Rev. William A. Jones, Jr.
Episcopal Diocese of Missouri

Most Reverend John Leibrecht
Bishop of the Catholic Diocese of Springfield-Cape Girardeau

Most Reverend John L. May

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Archbishop of the Catholic Diocese of St. Louis

Most Reverend Michael F. McAuliffe
Bishop of the Catholic Diocese of Jefferson City

Elder Roy Schaefer
Reorganized Church of Latter Day Saints

Most Reverend John J. Sullivan
Bishop of the Catholic Diocese of Kansas City-St. Joseph@-

Rev. James Tomlinson
Church of the Brethren

Right Rev. Arthur Vogel
As Bishop of the Episcopal Diocese of West Missouri

Dr. John L. Williams
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ENDNOTES 1. Psychological evaluation, St. Louis State Hospital by J. R. Fontana, clinical psychologist,
December 9, 1980.

2. Report to Richard Kaslick, assistant court administrator, St.Louis, of psychiatric evaluation by S. D. Parwatikar, M.D., forensic consultant dated December 16, 1980.
3. Report to Richard Kaslick, assistant court administrator, St.Louis, of psychiatric evaluation by S. D. Parwatikar, M.D., forensic consultant dated May 22, 1981.
4. Psychological evaluation, St. Louis State Hospital, by Richard Fontana, clinical psychologist, dated May 26, 1981.
5. Affidavit of Richard Fontana, psychologist, dated May 23, 1983.
6. Affidavit of Sadashiv Parwatikar, M.D., psychiatrist, dated May 23, 1983.
7. Psychological assessment by Richard Fontana, clinical psychologist, dated July 16, 1984.
8. Report to Richard Kaslick, assistant court administrator, St. Louis, from S. D. Parwatikar, forensic consultant, dated July 23, 1984.
9. Report to Paul R. Ahr, Ph.D., M.P.A. Dir. Department of Mental Health at request of Donald Wyrick, warden by Anasseril E. Daniel, psychiatrist, dated June 13, 1983.

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ATTACHMENT A

The Kansas City Star: Sunday, December 11, 1988.
Martin Connelly

Did Gerald Smith really murder woman? Affidavit raises doubts about guilt of death row inmate. Page A1.

Gerald Smith, on the verge of becoming the first person executed in Missouri in 23 years for a murder conviction, may not have committed the crime that put him on Death Row.

An investigation by *The Kansas City Star* indicates that Smith, 30, probably did not premeditate the murder in 1980 of Karen Roberts and may not have struck the blow that killed the south St. Louis woman.

Smith's brother, Timothy, says Gerald struck Roberts during a fight, but then ran home to get medical help for her. Gerald's older brother, Eugene, returned to the scene and later told his brothers he "took care of everything."

Timothy's story appears in an affidavit that has never reached the courts. But it is supported by others, including Gerald's former girlfriend who is the mother of his daughter.

Gerald Smith, who has sought the death penalty and done little to establish his innocence, appeared stunned recently when shown copies of photos of the crime scene. But he refused to say whether another person was involved.

"All I know now is I didn't do it," he told his wife, Lynn, who showed him the pictures.

Eugene Smith, in prison for burglary, told a reporter that he "knows what's been insinuated and it's not true." He said Timothy was "an airhead just like Gerald is and they'll fabricate anything to make somebody believe something."

In a rambling phone call to *The Star*, Eugene said that he didn't know what happened the night Roberts, 20, was killed but that he believed a train may have struck and killed her.

The Star began examining the case more than two months ago. The newspaper sought out and interviewed dozens of persons who had not talked publicly about the case. It also reviewed hundreds of pages of records.

Flaws, discrepancies and little known details about the case were uncovered, including:

- A police investigation that contained omissions and conflicting information, including a lack of physical evidence linking Smith to the murder.
- A conviction based in part on the testimony of a key prosecution witness who told police one story, the jury another.

(See Smith, pg. 10A, col.1)

[Enclosure incomplete]

ATTACHMENT

"Capital Punishment: an Incentive to Kill", by Watt Espy. Los Angeles Times, Monday, December 9, 1985, section II, page 5.

Now that execution of Nevada inmate Carroll Cole has been carried out, as he wished, we should take a look at the issue of capital punishment from a different perspective: Does it actually *create* an incentive to kill in certain people, rather than servin as a deterrent?

While four of the first five U.S. executions that followed the lifting of the 1972 Supreme Court-ordered moratorium were, like Cole's, consensual, there were no others where the condemned man actually wanted to die until this year. Then three of the 17 persons executed before Cole also demanded their deaths at the hands of the state.

Regardless of the reason why a Death Row inmate abandons his appeals and requests the death penalty, this must be regarded as a suicidal act wherein the state, which supposedly opposes acts of self-destruction, is used by an individual who has already shown his disregard for the rules of society to bring about his own death. This is by no means a new phenomenon.

By 1992 England had long abolished capital punishment. So, with the ingenuity all too often possessed by the insane, Arthur Richard Jackson, 47, legally changed his middle name so that he could obtain a visa to return to the United States, from which he had been earlier deported.

According to written documents that he carried at the time of his arrest and his own subsequent admissions, his sole purpose in going to California was to murder a young actress whom he had never met in order that he might be legally put to death. Fortunately, he did not succeed, but he did inflict emotional and physical scars on the woman whom he had selected as his victim.

Even though Jackson failed, many have been successful in their quest to use capital punishment to satisfy their own perverse wish for death.

Two of the earliest such incidents occurred in Pennsylvania. In August, 1760, John Bruelman, a jeweler and member of the provincial militia, entered a Philadelphia tavern where he shot and killed a billiard player whom he had never seen before. His only explanation was that he was ". . . weary of life, and had

committed the crime to escape from the toils and troubles of the world. . . ." He was hanged on Oct. 22, 1760. Five years later, Henry Halbert, who was also tired of living, cut the throat of a 12-year-old boy ". . . in order that he might lose his own life. . . ." Halbert also was hanged.

A more recent example is the case of James D. French, who had stabbed an adult when he was only 5 years old, was 22 in 1958, when he was released from the psychiatric ward of an Alameda County, Calif., hospital.

French hitchhiked to Oklahome, and shot and killed a motorist who had given him a ride. At his trial he asked that his attorney request the death penalty. The lawyer properly refused, and French was infuriated when he was given a life sentence. In 1961 he told the Oklahoma prison chaplain that he planned to murder someone else so that the state would be forced to kill him. The chaplain warned prison authorities, but they did not isolate French, and four days later he strangled his cellmate. After conviction for this second senseless murder, he finally received the death sentence that he had sought.

In his 1983 book, "Brothers in Blood," Clark Howard clearly establishes that the primary motive for the shocking 1973 murders of sixmembers of the Alday familiy in Seminole County, Ga., was the desire of the leader of the quartet of killers, 19-year-old Carl Isaacs, to be executed. An escapee from a Maryland prison, where he had been brutally gang-raped, Isaacs was determined that should he be recaptured, he would be executed rather than returned to prison.

The four murdered a youth in Pennsylvania and stole his car. Pennsylvania had no valid death-penalty statute at the time, so Isaacs and his companions went south, where most of the states had reenacted the death penalty. They slaughtered five men in the same family, then sexually assaulted and killed the wife of one of them. Isaacs was, as he wished, sentenced to die, as were two of his companions. They are now on Death Row at Georgia State Prison, while the fourth killer, who was allowed to give state's evidence in exchange for his life, is serving a sentence in Pennsylvania for the murder committed there.

While it might be argued that, with the exception of Gary Gilmore, none of the other consensual executions since the reinstitution of the death penalty were by persons whose reasons for murder were based on a suicidal desire, it must nonetheless be conceded that the very existence of the death penalty has resulted in the deaths of, and serious injuries to, innocent persons by suicidally inclined individuals who lacked the willpower or courage to kill themselves.

In these and many other cases the instrument of death has actually been an incentive to violence.

Watt Espy, director of the Capital Punishment Research Project in Headland, Ala., has documented more than 14,500 executions in the United States.