

IN THE MATTER OF: ROOSEVELT POLLARD JR.  
Potosi Correctional Center  
Mineral Point, Missouri 63660

TO: THE HONORABLE MEL CARNAHAN  
Governor of the State of Missouri

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APPLICATION FOR A REPRIEVE FROM, OR  
COMMUTATION OF, A SENTENCE OF DEATH

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## I. INTRODUCTION

Article IV, § 7 of the Missouri Constitution and Missouri Revised Statutes §§ 217.800 and 552.070, authorizes the Governor to grant reprieves, commutations and pardons.

This application is presented on behalf of Roosevelt Pollard Jr., who is scheduled to die by lethal injection at 12:01 a.m., on January 11, 1994. Roosevelt is presently being held in the administrative segregation unit at the Potosi Correctional Center, under warrant of death issued by the Missouri Supreme Court. Pursuant to the Missouri Constitution and the Statutes of the state of Missouri, Roosevelt Pollard respectfully requests the Honorable Mel Carnahan, as Governor of the State of Missouri, to issue an indefinite stay of execution in order for Roosevelt to present facts and evidence in support of this application. Counsel is in possession of evidence from several experts along with documents kept by the department of corrections that will show Roosevelt to be a young man suffering from chronic schizophrenia, paranoid type, and organic brain damage. Roosevelt is presently psychotic, delusional, and subject to prominent visual, auditory and somatic hallucinations.

Evidence to be presented will show that Roosevelt received inadequate legal representation prior to trial and through the state and federal appeals process. Roosevelt has never had a court adequately review evidence that was available before trial showing his chronic schizophrenia and brain damage. Never having had a full and fair trial, or appellate review of the facts, it will

become apparent once the facts are presented that Roosevelt is not a candidate for execution. Roosevelt is not requesting to be released from prison, he is requesting a commutation of his sentence to life in prison and placement in a secure mental health facility that will provide medication and a stable environment in which he will be of no harm to himself or others. Facts will be presented to show that as a result of his mental disease and defects he lacks the capacity to understand arguments for executive clemency and reasons why his sentence should not be carried out. Roosevelt has sustained memory loss to the point of no longer being able to relate information that would be of assistance to counsel, and due to his periods of being actively psychotic he is not a reliable source and can not participate in a constructive manner in his own defense.

Roosevelt does not understand the proceeding that will be taking place before he is to be executed and is of no assistance to his counsel in attempting to represent him. Due to the extensive amount of evidence that needs to be presented and the short period of time that Roosevelt has prior to execution, Roosevelt respectfully requests an indefinite stay of execution and for full access to all records and documentation on Roosevelt held by the Department of Corrections. Counsel has just recently taken over Roosevelt's case and can not fully prepare and present all evidence which will be needed for the Governor to make an informed decision as to whether to commute the sentence of death into a sentence of life in prison without possibility of parole without a stay of

execution. The Missouri Constitution and statutes grants the authority to the executive to stay executions and grant pardons, clemency and reprieves. The United States Supreme Court has also determined the Office of the Governor has the obligation to be the "fail safe" in our criminal justice system. Herrera v. Collins, 113 S.Ct. 853, 854 (1993).

The Missouri Supreme Court set an execution date before Roosevelt or his counsel was able to respond to the motion to set execution date, filed by the Attorney General's Office. This young man who is brain damaged and suffering from chronic schizophrenia should not be rushed to his death without someone assuring society is not guilt of the same crime he is sentenced to die for. Judge Lay of the Eighth Circuit Court of appeals, in Mercer v. Armontrout, 864 F.2d 1429, 1431 (8th Cir. 1988) most eloquently stated:

Human life is our most precious possession. Our natural instincts guide us from birth to sustain life by protecting ourselves and protecting others. All notions of morality focus on the right to live and all of man's laws seek to preserve this most important right. When presented with challenges to a capital sentence, it would be easy to respond rhetorically by asking "what about the victim whom the defendant has been found guilty of unmercifully killing." But this approach fails to reflect on the ideal that a government founded by a moral and civilized society should not act as unmercifully as the defendant is accused of acting. If the original murder cannot be justified under man's laws, it is equally unlawful and inhumane to commit the same atrocity in the name of the state. What separates the unlawful killing by man and the lawful killing by the state are the legal barriers that exist to preserve the individual's constitutional rights and protect against the unlawful execution of a death sentence. If the law is

not given strict adherence, then we as a society are just as guilty of a heinous crime as the condemned felon. It should thus be readily apparent that the legal process in a civilized society must not rush to judgment and thereafter rush to execute a person found guilty of taking the life of another.

If given the opportunity, counsel will present evidence that will show Roosevelt Pollard is a victim of mental illness and a legal system which has failed to correct itself. Roosevelt is not competent to be executed and is not a person the public would find to be a reasonable candidate for execution.

## II. PROCEDURAL HISTORY

Roosevelt Pollard was sentenced to death on January 27, 1986, in the Circuit Court of Cole County. The judgment and sentence was affirmed on direct appeal to the Missouri Supreme Court. State v. Pollard, 735 S.W. 2d 345 (Mo banc 1987). Roosevelt was denied relief at his post conviction hearing in the circuit court and the denial of relief was appealed and affirmed. Pollard v. State, 807 S.W. 2d 498 (Mo banc 1991). Roosevelt then filed a writ of habeas corpus in the Federal District Court for the Western District of Missouri, before the Honorable Fernando Gaitan, on July 14, 1992. The District Court entered an order on August 2, 1993, denying Roosevelt's Request for Evidentiary Hearing and Petition for Writ of Habeas Corpus. On September 16, 1993, the District Court entered an order granting Roosevelt's Application for Certificate of Probable Cause. A panel of the Eighth Circuit Court of Appeals affirmed the ruling of the District Court. Pollard v. Delo, 28 F.3d

887 (8th Cir. 1994). The Eighth Circuit en banc denied rehearing and rehearing en banc, on August 22, 1994, and the United States Supreme Court denied Cert. on November 14, 1994.

**REASONS TO GRANT EXECUTIVE CLEMENCY**

**III. INEFFECTIVE COUNSEL PRIOR TO TRIAL**

Roosevelt Pollard was arrested and charged with the murder of Richard Alford. John Nichols, an attorney in Kennett, Missouri, was appointed to represent Roosevelt on the charge of capital murder. Counsel did not discuss the reason for or necessity of a preliminary hearing with Roosevelt. Counsel failed to inform him of the need to test the credibility of witnesses and use the preliminary hearing for a discovery tool. Counsel simply waived the preliminary hearing and requested a change of venue. Counsel did not press for the hearing which could have resulted in a finding of a lack of probable cause. In a capital case testing the evidence held by the prosecution on ones client is vital to a rigorous defense.

The state is required to prove probable cause that the defendant, in this case Roosevelt Pollard, had committed capital murder. The prosecution would have to present evidence showing Roosevelt, more likely than not, had committed capital murder. In doing so, the prosecution would have to present a good portion of their evidence in order to meet their burden of proof. Witnesses called by the prosecution would be subject to cross examination. This would give the defense attorney an indication as to what evidence the state had against his client and the strength of that

evidence. This information would have allowed the defense time to prepare and better understand what evidentiary issues they would have to overcome in defending Roosevelt. In waiving Roosevelt's right to his preliminary hearing, counsel's performance fell far below the standard of a reasonable criminal defense attorney in a similar position. After waiving Roosevelt's right to his preliminary hearing, counsel filed a motion for change of venue and withdrew as counsel.

#### **IV. TRIAL COUNSEL ERROR**

Roosevelt was represented at trial by James Elliott and Peter Sterling of the Public Defender's Office. Elliott and Sterling failed to investigate Roosevelt's background and family history and also failed to properly prepare an adequate defense for the guilt phase of Roosevelt's case as well as failing to investigate and prepare information for the penalty phase of the trial.

Had counsel investigated, they would have discovered that Roosevelt has a documented history of mental retardation with IQ scores, from tests given while attending public schools, ranging between 57 and 64. (Exhibit 1, Records and IQ test scores from the St. Louis Public School District). Roosevelt has never done well in school as the records from his years in the St. Louis school district tend to show. (Exhibit 1).

Roosevelt's family life was full of unstable living arrangements as well as physical and emotional abuse. Roosevelt suffered numerous head injuries, including falls from trees and

persistent headaches. (Exhibit 2, Affidavit of Roosevelt Pollard Sr.). He was tied to the porch and beaten by his grandfather. As a youth, he would jump out of the windows of his house onto mattresses in the yard and sustained injuries while engaging in this activity. (Exhibit 3, Affidavit of Cassandra Pollard). Had this information, along with other information presented in Section VI of this application been gathered and presented to experts, there would have been a greater basis for a defense of diminished capacity and evidence to present in the penalty phase of the trial for mitigation. However, this information was not obtained by trial counsel due to their lack of investigation and interest in the case.

Counsel also failed to investigate the crime scene and the story of the state's key witness, Robert Sands. Robert Sands was the individual who testified that Roosevelt shot Richard Alford at the rest area along Interstate 55. Counsel failed to request an analysis of vomit that was found in the car and near the body in the drainage ditch near Interstate 55. It may have been possible to prove through this analysis, that the vomit did not belong to Roosevelt and may have been that of Robert Sands. This information could very well have been used to argue that Roosevelt was not the murderer and that Robert Sands had actually committed the murder. If nothing else, this could have raised reasonable doubt in the minds of the jurors. None of this however, was pursued by counsel who went forward with a diminished capacity defense based upon



Roosevelt's ingestion of Phencyclidine (PCP) and other drugs prior to the murder of Mr. Alford.

After the jury returned the verdict of guilty of capital murder, counsel did not make an opening statement, or put on any evidence in the mitigation phase of the trial. Counsel's representation does not reach the level of effectiveness for attorneys handling the defense of capital cases due to the enormous amount of evidence that was available for mitigation. Roosevelt has had IQ scores of as low as 57. This is clearly within the range of mental retardation and should have been presented to the jury along with evidence that Roosevelt is suffering from organic brain damage and chronic schizophrenia delusional type.

Counsel testified at Roosevelt's 29.15 hearing that Roosevelt did not want them to present any family witnesses in the mitigation phase of the trial. Counsel was in error for following this request, if in fact it was made by the client. Counsel knew or should have known of Roosevelt's mental illness and that Roosevelt was taking Librium during the trial and was not capable of making that type of decision. (Exhibit 4, Records of the Cole County Sheriffs Department).

Family members were available and ready to testify on his behalf. Counsel never discussed testifying with either Roosevelt's grandmother, who was at the trial, or his father. Counsel never spoke with his mother or many of his sisters or brothers regarding Roosevelt's childhood, mental problems or deprived upbringing. (Exhibit 5, Affidavit of Annie B. Hayes). Counsel

clearly had not prepared for this trial. In the penalty phase of the trial, counsel did not make an opening statement, and presented no evidence. Counsel failed to present evidence to the jury that would have revealed Roosevelt did not shoot the victim in Illinois which resulted in a murder conviction. The murder charge from Illinois was then used as a non-statutory aggravating circumstance in his trial. Roosevelt's counsel failed to present evidence that he was not the trigger man and had not shot anyone. During the closing statement, counsel revealed to the jury that he had not prepared for the penalty phase of the trial stating that he didn't want to think about it and that he put it off and did other things. (Exhibit 6 Trial transcript). Clearly Roosevelt did not receive any representation before or during trial, and if one would venture to call this representation it certainly could not be considered effective representation.

#### **V. POST-CONVICTION REPRESENTATION.**

Roosevelt was represented during the post-conviction stage of his case by the public defender's office. On January 29, 1988, Roosevelt timely filed a pro se motion for post-conviction relief under Missouri Supreme Court Rule 29.15. The court appointed Donald Catlett on February 2, 1988. Catlett requested and was granted an additional 30 days to file an amended motion. Catlett never filed an amended motion on Roosevelt's behalf. On March 3, 1988, the Director of the State Public Defender System assigned Roosevelt's case to Cyril Hendricks and instructed Hendricks to immediately enter his appearance with the court. At this time,

Roosevelt's 29.15 motion was due to be filed on April 3, 1988. However, Hendricks did not file his entry of appearance until April 22, 1988 and did not file the amended motion until May 11, 1988. The amended motion was not filed in a timely manner pursuant to Rule 29.15(f) and was therefore not given consideration. The amended motion was, as the Missouri Supreme Court states; "virtually identical to the pro se motion". So counsel in effect did nothing more than file with the court another copy of the pro se motion that Roosevelt had earlier filed. Due to the failure on the part of counsel to file an amended motion, the court ruled upon the pro se motion which was prepared by a brain damaged, paranoid schizophrenic. The court found that Roosevelt had not presented facts to substantiate his claim of ineffective assistance of counsel and also found that the witnesses Cyril Henricks presented at the hearing did not address the claims of ineffective assistance of counsel that were raised in the pro se petition. The court denied relief from the Rule 29.15 motion. Pollard v.State, 807 S.W. 2d 498 (Mo Banc 1991). Roosevelt fared no better in his direct appeal to the Missouri Supreme Court which addressed nine claims of error. Roosevelt was denied relief on his direct appeal on September 15, 1987. State v.Pollard, 735 S.W.2d 345, (Mo banc 1987).

#### **VI. FEDERAL APPEALS**

Roosevelt's case was then taken up by the Federal District Court for the Western District of Missouri. Mark Kempton of Sedalia, Missouri was appointed as counsel and filed an amended

petition on Roosevelt's behalf. The District Court found that Roosevelt's amended petition did not meet the minimum standards for briefing as required by Rule 2(C) under 28 U.S.C. § 2254. The brief to contain 62 photocopied pages of the Roosevelt's state court motions and briefs and the Court stated it would have required petitioner to refile the amended motion in a more acceptable form but for the renumbering and reorganization of claims by the respondent in the respondent's brief.

Judge Fernando J. Gaitan denied relief on most claims due to procedural defaults. All of the substantive ineffective assistance of counsel claims were deemed procedurally defaulted due to the failure of post conviction counsel to timely and properly file the 29.15 Motion at the state court level.

The U.S. Court of Appeal for the Eighth Circuit found that Roosevelt made over 60 claims of error in his habeas petition and the majority of those claims were held by the Court as being procedurally defaulted. The Eighth Circuit reviewed only three claims on the merits and upheld Judge Gaitan's finding that the rest of the claims were procedurally defaulted due to the fact that they were not properly raised in Roosevelt's 29.15 motion.

Had post conviction counsel filed a proper timely motion and presented the available information, the District Court would have had the opportunity to rule on the merits of the claims. For these reasons, Roosevelt has not had an adequate review of any of his claims of ineffective assistance counsel at either the state or federal level.

Roosevelt has been denied representation before, during and after his trial. He has not received effective assistance of counsel in his appeals through the state and federal courts and commutation of his sentence of death may be the only avenue of relief for Roosevelt even though he has legitimate claims which would require a new guilt as well as penalty phase trial, had the claims received a full and fair review.

#### **VII. FAMILY LIFE AND BACKGROUND**

Roosevelt Pollard was born on March 13, 1964 to Annie Hayes and Roosevelt Pollard, Sr. Annie Hayes entered into her relationship with Roosevelt Pollard, Sr. as a way of getting back at her husband for having an affair with Mr. Pollard's wife. (Exhibit 5). It is unclear whether she planned on becoming pregnant, however, she used this opportunity to leave her husband and started living with Mr. Pollard. Ms. Hayes drank heavily during her pregnancy and was battered by Mr. Pollard on numerous occasions. Mr. Pollard would knock her down, throw her into walls and on at least one occasion, choked her until she lost consciousness. (Exhibit 5). During her pregnancy she never sought medical attention or prenatal care. Throughout the entire pregnancy, Roosevelt was suffering physical abuse even before his birth.

After Roosevelt was born, Ms. Hayes continued her drinking. On occasion she would attempt to care for him, and while in a drunken stupor, she would drop the child. (Exhibit 2). At night she

would not get up to attend to him if he cried or needing feeding or changing. Due to the family's economic circumstances, they did not have a crib for Roosevelt so he slept in a regular bed with nothing to keep him from rolling off. As he grew older, he would roll off the bed and hit the floor. This happened on numerous occasions.(Exhibit 2).

The family situation was very unstable due to Mr. Pollard living with several women at the same time and place. All of these women having bore children by him.( Exhibit 7, Affidavit of Lillie B.Clark). Very early on in the relationship, Ms. Hayes tired of the beatings and living arrangements and left Mr. Pollard and Roosevelt.

Ms. Hayes did not return to seek custody of the child until he reached the age of 2 years. Ms. Hayes was abusive to Roosevelt and on many occasions if young Roosevelt cried, his mother would shake him violently and yell and scream at him until he stopped. On one occasion while intoxicated, Ms. Hayes attempted to change Roosevelt's diaper and in the process stuck a safety pin through his scrotum. Roosevelt was never taken to the hospital, nor did his parents take him to see a physician following the incident.(Exhibit 8, Affidavit of Pearlie Mae Pollard). Ms. Hayes would leave alcoholic beverages within Roosevelt's reach and at the age of 2 or 3 he would consume these beverages often to the point of passing out. Family members also report petitioner would often be by himself in a sitting position, rocking himself back and forth. This behavior went on until he reached the age of 7 or 8

years.(Exhibits 2, 5). Roosevelt complained of awful headaches that would last for 2 or 3 days during a week. Roosevelt would say it felt as if his eyes were going to pop out of his head. It has also been reported that Ms. Hayes would strike Roosevelt about his head when disciplining him.(Exhibit 8). Roosevelt never had a stable home environment. Family members report that every 4 to 5 months, he would be shuttled back and forth between the parents.

As a small child, Roosevelt was involved in a traffic accident. He had just learned to walk and his father was holding him while driving the car. They were hit on the driver's side and Roosevelt hit his head on the steering wheel. He was never taken to the hospital or seen by the doctor. By the age of 6 or 7, Roosevelt had fallen out of trees on several occasions.(Exhibit 2). He also fell out of the window of the house on one occasion, and often times would perform acrobatic stunts by jumping out of windows or off of the roof onto mattresses, at times missing his mark and landing on his head.(Exhibit 3).

While Roosevelt was living with his mother she would not provide for him and he was left to provide for himself. Angela Williams, Roosevelt's half sister, spent some time with Roosevelt and his mother. Roosevelt's mother would work during the day and would go out in the evenings. Angela would not see her before they went to bed. Roosevelt's mother did not provide food or money for them and Roosevelt would be left to his own devices to provide food for them. (Exhibit 10, Affidavit of Angela Williams).

By the age of 13 or 14, Roosevelt started drinking alcohol quite heavily. Not only family, but acquaintances and friends of Roosevelt observed bizarre behavior. Family members have reported Roosevelt would often talk to people who were not there, was very forgetful, and that they thought he had mental problems. (Exhibits 8,9,10).

Acquaintances who knew him at school said that he was always by himself and that they would see him laughing and talking although no one else was with him. When someone would ask who he was talking to, he would say "Don't you see this dude here?" (Exhibit 11 Affidavit of Alice Murphy). Roosevelt would also pick fights and when asked why he did, he would respond, "Didn't you hear what they said to me?" although the person with whom he had picked the fight had not said anything. He was always talking to himself and at one point changed his name and was offended when anyone called him Roosevelt or by his nickname "Say-Say." (Exhibit 11).

Teachers at East Junior High School in Blytheville, Arkansas noticed Roosevelt's strange behavior when he attended school at East in the late 1970's. Gloria Howard remembers Roosevelt and although she did not have him in any of her classes she remembers seeing him and some of his bizarre behavior. Ms Howard recalled Roosevelt as being a loner. The teachers were required to monitor the halls and she remembers seeing him walking in the halls by himself and talking as if he were having a conversation with someone, but no one was near him. At times after lunch he would go



out and sit by the flagpole and talk to himself. He was never a trouble maker at school, but if someone glanced at him he would think they were talking about him. She considered him to be a very disturbed child. (Exhibit 12, Affidavit of Gloria Howard).

Roosevelt was also physically abused by his paternal grandfather. It is reported by Rosa Mae Jefferson that Roosevelt would often go off wandering through town by himself and that the police would have to pick him up and bring him home. When Roosevelt was 8 or 9 years old, his grandfather would tie him to the porch to keep him from wandering off. On one occasion it was pouring down rain, his grandfather had to go out and find him. After being retrieved, he was tied to the porch and left out in the rain. On another occasion, after wandering off, he was tied to the porch and beaten by his grandfather. (Exhibit 9)

#### VIII. PSYCHOLOGICAL PROBLEMS

Roosevelt Pollard, Jr. is currently suffering from chronic schizophrenia, paranoid type, and brain damage. School records which indicate that at age 11, Roosevelt had a full scale IQ of 60 on the WISC-R IQ evaluation. Roosevelt was also administered a IQ test in December of 1977, the "LT4V" which rendered a full scale IQ score of 57 and on June 12, 1979, Roosevelt received an IQ score of 64. (Exhibit 1). At the time, Roosevelt was clearly scoring in the mentally retarded range of intellectual functioning while attending public schools in St. Louis, Missouri. Records from the St. Louis School District only report grades from Roosevelt's 9th and 10th

grade years. He was flunking practically all of his classes both years. Roosevelt was assigned to the special education program for high school students and continued in the programs until he was withdrawn from the program for non attendance in February of 1981.(Exhibit 1).

The first psychological evaluation that counsel has in his possession is one that was conducted by the St.Louis Public Schools in June of 1979. Roosevelt was 15 years old at the time. The reason he was referred for the evaluation was based on observations of teachers. The report states:

"Difficulty in reading. Very playful. Five minute attention span. Immature." teacher's behavioral checklist suggest that Roosevelt: tires quickly; is easily distracted; disruptive in class; is fidgety; seeks attention; lacks confidence; gives up easily; is withdrawn; tends to overconform; is defiant; is unable to express ideas; seems worried and depressed; does not trust others; is disoriented; has frequent physical complaints; and has difficulty following directions.

Report of Hattie Isen, Psychological examiner dated June 12, 1979. Ms.Isen's test results revealed Roosevelt was functioning in the mentally deficient range of intelligence. His reading and math scores were on the 3rd grade level and his psychomotor development was at the 7 to 10 year level for visual-motor perceptual development. According to the tests given by Ms.Isen, Roosevelt had a full scale IQ score of 64.(Exhibit 13, Psychological Evaluation as reported by Hattie Isen).

Roosevelt was given a psychological evaluation in 1991 by Dr. Carroll B. Bernard. Dr. Bernard reports:

" Roosevelt Pollard on formal testing achieved an estimated IQ score of 73, which places him in the borderline range of intellectual functioning at about the 3rd percentile. His completed psychological history supports the present diagnosis of chronic schizophrenia, paranoid type with the possibility of an organic condition and a further memory disturbance at more lucid periods. Mr.Pollard's behavior and symptoms have also been consistent with schizoid personality disorder. On initial screening, he does not seem to have significant neurological signs. It is most likely that Mr.Pollard has been actively psychotic for many years predating his 1983 crimes. He does not appear to have been persistently treated and then subsequently evaluated with a useable course of anti-psychotic medications".

(Exhibit 14, Psychological Evaluation by Dr.Carole B.Bernard).

On September 18, 1992, Dr. Dennis Cowan, a neuropsychologist, examined Roosevelt. Dr. Cowan is of the opinion that Roosevelt is within the brain damaged range of neuropsychological functioning. He attributes this damage to congenital, chronic substance abuse/dependency, and head injuries. The neurological dysfunctions Roosevelt suffers from are many and long standing. In his report Dr.Cowan states:

"Clearly this patient has manifest some degree of cognitive and neuropsychological dysfunction for the majority of his life. I suspect that the neuropsychological dysfunction has been magnified through the multiple head injuries and heavy substance abuse/dependency. With such he is likely to be extremely impulsive and act without considering the full ramifications of his actions and such would definitely become worse when/if he is under the influence of any alcohol or drugs. It is my opinion that this patient's present level of neuropsychological functioning is indeed classified within the brain damaged range of neuropsychological functioning and thus I cannot rule out this

dysfunction and damage would be (1) congenital; (2) chronic substance abuse/dependency, and; (3) head injuries. It is virtually impossible to determine which of these three factors is the most likely cause of his present dysfunctions and I would be more inclined to view the etiology as a combination of the three."

Dr. Cowan goes on to discuss specific areas of neurological dysfunction:

"Several areas stand out in which he [referring to petitioner] demonstrated very significant impairment/dysfunction. One such area was in regards to his memory functioning. On the M.A.S., his Global Memory Scale Score was found to be at the 4th percentile, in other words out of 100 individuals his same age and level of education, 96 of the 100 individuals would have performed better on this test than this patient did. His short term memory function was found to be at the 8th percentile with verbal memory and visual memory functioning at the 6th percentile. Another area which the patient manifests very significant neuropsychological dysfunction was in regard to his ability to engage in abstract reasoning, judgment, decision making and in the ability to reason out complex problems and integrate the learning into an ongoing behavioral pattern. The patient's level of functioning was found to be at the moderate level of impairment. In this regard this level of functioning was found to be extremely concrete and stimulus bound."

(Exhibit 15, Neuropsychological Evaluation by Dr. Dennis Cowan).

Most recently, Roosevelt was evaluated by Dr. Steven Molden. Dr. Molden is of the opinion that Roosevelt is suffering from chronic schizophrenia and that he is presently delusional and psychotic. Dr. Molden has recently stated his opinion based on over 10 hours of interviews with Roosevelt and after reviewing numerous documents including psychiatric records and reports, school

records, prison records, trial transcripts and interviews with family members. Dr.Molden states:

"Mr.Pollard has schizophrenia, paranoid type according to the criteria of DSM-IV, and has brain damage which is associated with a combination of head trauma, schizophrenic illness, and abuse of PCP. Based on my evaluation, he had a history of PCP abuse, as defined in DSM-IV. The onset of schizophrenia, brain damage and PCP abuse preceded the time of the crime, which occurred in 1983."

Dr.Molden goes on to say:

"Mr.Pollard is actively psychotic and delusional at the present time. He has prominent visual, auditory, and somatic hallucinations. For example, he has visions of demons, he hears voices, and he feels his arms grow large. He has thought disturbances, including thought broadcasting, thought intersection and thought withdrawal. He has religious delusions, prosecutorial delusions, grandiose delusions somantic delusions, and delusions of influence."

It is Dr. Molden's professional opinion that:

" Mr.Pollard has a mental disease or defect which causes him to lack capacity to understand the punishment imposed upon him and which causes him to lack capacity to understand matters in extenuation, arguments for executive clemency or reasons why the sentence should not be executed. He has no true understanding that the execution is a punishment in response to any real behavior he has exhibited."

(Exhibit 16, Affidavit of Dr.Steven Molden).

**IX. REPORTS FROM THE DEPARTMENT OF CORRECTIONS**

Reports of individuals from the Missouri Department of Corrections have documented mental confusion, impaired memory, incoherent and irrational speech, delusional thoughts, hallucinations and psychotic behavior. Listed below are several examples of Roosevelt's behaviors observed by corrections workers.

IOC from C.O. I Minor to Donald Cline, acting warden, concerning Roosevelt Pollard, dated September 22, 1986: Officer Minor observed Mr. Pollard acting "very paranoid and spacey". He reported that Mr. Pollard would not clean himself or cell, urinated in his bed several times and slept in it. It was also reported that Pollard eats very little, if at all, and won't turn his lights out. (Exhibit 17).

IOC dated September 22, 1988, from C.O. I Blevins to Philip Vance, C.O. III. C.O. Blevins reported that at 7:30 p.m. Roosevelt Pollard, requested to go to the fifth floor of the hospital because he "was in need of an exorcism to get demons out his head. Pollard stated his bed shook and vibrated during the evening while he was asleep." C.O. Blevins went on to state:

"It is recommended that something be done with this inmate soon as the evening officers have no, if very little, training in dealing with mentally unstable individuals and the staff that is available works day watch. Pollard was checked every 15 minutes the rest of the evening per Sgt. Thomas' instructions."

(Exhibit 18).

A psychological service report, dated 9/23/88 by James D. Baker, Assoc. Psychologist II. Mr. Baker reports Mr. Pollard's "delusional thought". Noting his "visual, auditory and olfactory hallucinations", the psychologist stated:

"[Inmate Pollard's] affect and mood was flat with mild depression, paranoid indenture was expressed, as were undefined feelings of persecution by entities unknown."

"Inmate claimed his bed was shaking violently and voices were emanating from his turned-off radio saying 'shit' and 'do you want me to kill any of the inmates on the walk?'"

"[Inmate Pollard] was disoriented as to time and person, mental confusion manifest, recent memory impaired. Speech was frequently incoherent and irrational, delusional thought and hallucinations behavior still noted by inmate and behavior observed. Affect flat and detached."

Mr. Baker thus gave the following impressions and recommendations:

- 1 - Possible psychotic state
- 2 - Hallucinations and delusional thought observed
- 3 - Indication of decompensation of personality
- 4 - Behavior to be considered irrational and unpredictable
- 5 - Suicide watch to be continued

6 - Further evaluation requested ASAP by  
physician/psychologist.

(Exhibit 19).

Psychology Report by Associate Psychologist James Baker dated  
September 26, 1988 reports:

Inmate continues to exhibit severely delusional thought. Inmate states two M.A.s told him last night that he was dead. Inmate says he told M.A.s he was not dead. According to inmate M.A.s then told him that to prove to them he was not dead he had to masturbate. Inmate stated he did but was told this was not good enough proof and he would have to do it again which he said he did. Inmate says even this did not satisfy M.A.s who he claimed were going to kill him by sticking pins & needles into his head and then cut him up and put him in a box.

Wanted me to talk to his mother (& entire family) who he said were on the second floor of the hospital and in telepathic communication with him. I was requested to convince them he was not dead. Inmate claims demonic /spirit possession continues perhaps as a result of a curse cast on him by persons unknown. \_\_\_\_\_ movement and unfocused vision continues to manifest during lapses in conversation.



Impression: probable active psychotic state, delusional thought, decompensating personality, not oriented to time, person or situation during delusional state.

Recommended: psychiatric evaluation A.S.A.P.

(Exhibit 20).

Medication records during 1988 and 1989 show that Mr. Pollard required psychiatric drug treatment with Trazadone, Prolixin, and Cogentin for delusional thought patterns and depression. (Exhibits 21, 22 and 23).

Department of Corrections Medical Service Request dated July 15, 1990. Officers Hendrix and Blatner report that they witnessed Roosevelt Pollard "shaking involuntarily", that he responded slowly to verbal communication and was transported to the medical area for observation. (Exhibit 24).

Mr. Pollard's own request for medical services dated February 4, 1991 reveals yet another example of delusional thought. Under "Chief Complaint", he has written: "Min cool, witch dose not rerecreation", with current medications listed as "cool pills". (Exhibit 25).

#### **X. RESPONSIBILITY OF THE GOVERNOR**

Article IV, section 7 of the Constitution of Missouri (1945) states as follows:

The Governor shall have the power to grant reprieves, commutations and pardons, after conviction, from all offenses except treason and cases of impeachment, upon such conditions he may deem proper, subject to provisions of law as to the manner of applying for such pardons. The power to pardon shall not include the power to parole.

The Constitution of this state vests in the Governor the power of checks and balances in most criminal matters and does so in the matter of sentences of death. One quality of our system of justice is the idea that one accused of a crime is guaranteed due process, or a fair trial. If this does not take place or the system has failed for some reason, it can only be corrected by act of the Governor.

This is a situation that calls for intervention by the executive branch due to the failure of the criminal justice system to correct itself. Although the courts have determined that a sentencer should not be precluded from considering as mitigating factors any aspect of a defendant's character or record and any circumstances of the offense that the defendant proffers as a basis for a sentence less than death. Lockett v. Ohio, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed. 2d 973 (1978). There are cases where this does not happen. Roosevelt did not have any evidence of his low IQ scores, brain damage or schizophrenia presented to the jury. There was no information about his dysfunctional family life or the abuse he suffer prior to birth and throughout his young life. His counsel did not even put on evidence of his age so that a

instruction on his age at the time of the offense could be presented to the jury.

The courts have taken special interest in mentally retarded individuals being sentenced to death, Penry v. Lynaugh, 492 U.S. 302, 328, 109 S.Ct. 2934, 106 L..Ed. 2d 256 (1989). In Penry, the court stated: "full consideration of evidence [of mental retardation] is essential if the jury is to give a reasoned, moral response to the defendant's background, character and crime".

Roosevelt's school records were quite easy to obtain. It has been documented since Roosevelt was 11 years old that he has had low IQ scores. Yet, no one took the time to get his school records which show scores as low as 57. The jury was never told of this information. They could not make a competent and rational decision as to the question of life and death without this information. Due to ineffective assistance of counsel from the beginning of his journey through the legal system, to the present, Roosevelt has not had his case adequately presented. This should be the time for a reasoned response to a system that has failed. If not for any other reason than for the protection of the United States Constitution and the rights of all of the citizens of this state.

The Eighth Amendment precludes the states from sentencing to death one who is insane. Ford v. Wainwright, 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed. 2d 335 (1986). Roosevelt Pollard lacks the competency to be executed. He is actively psychotic and delusional and has prominent visual/auditory and somatic hallucinations. He

has religious delusions, prosecutorial delusions, grandiose delusions and delusions of influence. To execute him would violate the Eighth Amendment of the United States Constitution.

It is the responsibility of the governor to intervene and grant pardon when there has been a miscarriage of justice or violations of the constitution which our legal system has not adequately addressed. In Herrera v. Collins, 113 S.Ct.853 (1993), the court noted "clemency is deeply rooted in our Anglo-American tradition of law and is the historic remedy for preventing miscarriages of justice where judicial processes have been exhausted. Clemency provided the principle avenue of relief for individuals convicted of criminal offenses, most of which were capital because there was no right of appeal." Herrera at 224. Justice O'Connor concurred with the majority and added "throughout history the federal courts have assumed that they should not and could not intervene to prevent an execution so long as the prisoner had been convicted after constitutionally adequate trial. The prisoner's sole remedy was a pardon or clemency." Herrera at 230 (O'Connor, J., concurring). In light of Herrera there can be no doubt as to your proper role in the criminal appeals procedure. Executive action of clemency would not be in conflict with the judicial system. The highest authority of the judicial branch has deemed clemency as an intrinsic part of the judicial system. Indeed, the Herrera majority relied upon their perception that "executive clemency has provided the 'fail-safe' in our criminal justice system." Herrera at 226.

This position is even more significant in Roosevelt's case due to procedural impediments which were beyond Roosevelt's control. Ineffective assistance of counsel is the cause of many significant claims not being raised during the post-conviction proceedings as well as through his federal habeas corpus litigation. Roosevelt's counsel, prior to trial and through his federal appeals, simply did not do their jobs. Due to this breakdown in the criminal judicial system, it is necessary that intervention be made and that checks and balances prevail.

#### **XI. CONCLUSION**

As governor of the State of Missouri, the power has been vested in you by the Missouri Constitution, the statutes of the State of Missouri and the United States Supreme Court to exercise you executive power to prevent miscarriages of justice and to act as the "fail-safe" in our criminal justice system. The facts in Roosevelt Pollard's case are clear and indicate Roosevelt is not a proper candidate for death by lethal injection. The judicial system has failed Roosevelt Pollard, a brain damaged, chronic schizophrenic who has had ineffective assistance of counsel during his entire criminal proceedings. This miscarriage of justice has culminated in his sentence of death and the affirmance of that sentence by the highest courts of the state and the federal government. In this application for commutation of sentence, Roosevelt has presented substantial evidence to prove he is incompetent to be executed and that the state has nothing to gain by putting to death a person who cannot understand or comprehend

the reason for his execution. For the above stated reasons, a stay of execution should be granted pending a hearing on Roosevelt's competency to be executed and so that full consideration of this application for commutation of sentence can be reviewed and given the necessary consideration in determining whether Roosevelt Pollard lives or dies.

Respectfully submitted,

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