

PETITION FOR CLEMENCY

**TO THE HONORABLE BOB HOLDEN
GOVERNOR OF THE STATE OF MISSOURI**

**IN RE: PAUL KREUTZER
Sentenced to be Executed on April 10, 2002**

Capital punishment . . . fails to live up to our deep conviction that all human life is sacred The antidote to violence is love, not more violence We are asking whether we can teach that killing is wrong by killing those who have been convicted of killing others We cannot overcome crime by simply executing criminals, nor can we restore the lives of the innocent by ending the lives of those convicted of their murders. The death penalty offers the tragic illusion that we can defend life by taking life.

U.S. Catholic Bishops, November 15, 2000

I. INTRODUCTION

On September 2nd, 1992, Paul Kreutzer, then age 20, murdered thirty-six year old Louise Hemphill at her home in Pike County near Louisiana, Missouri. Paul lived only a quarter of a mile from the Hemphill's home and had once met Mrs. Hemphill when he went to look at a house that the Hemphill's were selling. The murder of Louise Hemphill was a particularly brutal homicide, involving the victim having been sexually assaulted, stabbed with a knife, hit with a baseball bat, and, finally, strangled with a belt. She was later found by her children when they came home from school.

Paul Kreutzer did not deny that he had committed the murder when his case went to trial some eighteen (18) months later. His defense was only that the murder had not been with deliberation, cool reflection upon the matter, but was instead a spontaneous, impulsive act arising out of anger and deep-seated mental illness. He

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was diagnosed as suffering from a sexual identity disorder, a schizoid personality, borderline personality disorder, identity disorder of childhood, and post-traumatic stress syndrome. Even the State's psychologist, Dr. Richard Gowdy, Ph.D., testified at trial that he believed Paul had an unspecified sexual disorder.

The jury, however, was not persuaded by this testimony. They convicted Paul and sentenced him to death. Now, in his final hours, Paul Kreutzer asks the Governor to assess the personal hell that has been his childhood and his abusive background and afford Paul the one commodity that has to date been missing from his experience – some understanding, compassion, and mercy. We ask Governor Holden to spare his life.

II. A CHILDHOOD SPENT IN HELL

Paul Wayne Kreutzer had a broken nose when he was adopted by Donald and Ruth Kreutzer in 1975. He was three years old. He had been born into a family of drug and alcohol abuse, and was physically abused before he could walk or talk, so adoption certainly seemed like a good idea. Instead, the life Paul would experience with his adoptive parents would be every bit as bad, if not worse, than any childhood he would have experienced with his natural parents.

Doctor and Mrs. Kreutzer adopted not only Paul, but his twin brother, Patrick, and his younger sister, Melissa. The family initially lived in Arkansas, but moved to a small farm in Pike County, Missouri when Paul was still very young. The Kreutzers were very strict parents who eventually scorned the public school system in favor of home schooling for their children. They were isolated on their little farm and had little interaction with the local community.

Mrs. Kreutzer had a quick temper and exhibited it regularly on her hyperactive stepson, Paul. To punish their adoptive son, the Kreutzers would put pliers on Paul's fingers and put him in a large wooden box for long periods of time. Paul was frequently hit with items from fly swatters to wooden boards, and the withholding of food was a common punishment. Although Paul was enuretic (bed-wetting), and

eventually needed surgery to correct the problem, Mrs. Kreutzer punished his bed-wetting by making him drink his own urine. On at least one occasion, Mrs. Kreutzer undressed all of the children, made them look at their body parts, and then forced them to spit on themselves.

For his part, Mr. Kreutzer, Paul's adoptive father, was away from home so long the children believed him to be in prison. When he was home, he and Paul lived together in a trailer, apart from the main house, where there was neither running water nor heat. Paul had a bath only twice a month.

When only in kindergarten, Paul was exposed to pornographic photographs by a schoolmate's mother. His own brother, and other relatives, schooled him in deviant sexual behavior, leading to a sexual obsession with his sister that developed when he was only a young boy. His mother's prescription for Paul's preoccupation with his sister was to instruct her son to have sex with the family's cows. When Paul did in fact have sex with the cows, he was punished by being chained to his bed each night with a heavy dog chain.

Paul ran away from this abuse when he was 14 or 15, becoming classified by the Division of Family Services as an abused or neglected child. He would have a history of learning disabilities and deficient academic skills, with IQ testing indicating borderline intelligence.

Although Dr. Patricia Fleming, a noted Wyoming psychologist, testified about petitioner's horrific childhood, and the mental disease it caused in Paul, the court told the jury, both orally and in writing, to disregard this compelling evidence, the very basis for the diagnosis of mental illness that rendered Paul unable to deliberate, unable to coolly reflect on the killing of Louise Hemphill, and, consequently, not guilty of first degree murder.

Immediately before Dr. Fleming testified, the trial court instructed the jury as follows:

THE COURT: Ladies and gentlemen of the jury the Court will now read to you an oral instruction of the law.

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The next witness to testify is Dr. Patricia Fleming. She will testify concerning the mental condition of the defendant at the time of the alleged offense. In the course of her testimony, Dr. Fleming may testify to statements and information that were received by her during or in connection with her inquiry into the mental condition of the defendant.

In that connection, the Court instructs you that under no circumstances should you consider that testimony as evidence that the defendant did or did not commit the acts charged against him.

(Tr. 1792-93). MAI-CR3d.300.20

At the close of all the evidence, the court read Instruction No. 8, over petitioner's objection:

You will recall that certain doctors testified to statements that they said were made to them and information that they said had been received by them during or in connection with their inquiry into the mental condition of the defendant.

In that connection, the Court instructs you that under no circumstances should you consider that testimony as evidence that the defendant did or did not commit the acts charged against him.

MSI-CR3d 306.04 (L.F. 423)

Although possibly appropriate in cases wherein mental disease or defect is perhaps one of many defenses, including "I didn't do this crime," these instructions are the antithesis of the law in a diminished capacity defense, where only the mental element of the crime is in issue. See State v. Anderson, 515 S.W.2d 534, 539-540 (Mo. Banc 1974) (recognizing the "diminished capacity" defense as valid). These two instructions provide a one-two punch to any diminished capacity defense by telling jurors that "under no circumstances should you consider" the underlying information that is the very basis for the doctor's opinion that this defendant lacks the required mental state for this crime! Nonetheless, the Missouri Supreme Court found this instruction properly informed the jury that the doctors' testimony could be used by them in determining whether the defendant committed the act of murder in the first

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degree.

III. HIS LAWYERS DROP THE BALL

There were several powerful legal claims raised in Paul Kreutzer's federal habeas petition which were denied by the District Court in Kansas City, yet accepted for appellate review by the Eighth Circuit Court of Appeals in St. Louis. Those issues included:

1. Whether the trial court had unconstitutionally limited the jury selection questioning in Paul's trial;
2. Whether one venireman, a Mr. Sartain, was improperly removed from the jury after indicating he could and would be able to serve, and to vote for the death penalty if appropriate, but did not want to be the foreman who would sign the death verdict form; and
3. Whether Division of Family Services records which documented the horribly abusive and neglected childhood of Paul Kreutzer were wrongfully kept out of evidence and from consideration by the jury.

The Eighth Circuit never reached these issues, however, because Paul's lawyers, including the author of this clemency petition, filed Paul's federal habeas petition two weeks too late. How that happened is worthy of brief discussion.

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Neither of Paul's counsel had ever handled a federal habeas proceeding of any kind before, much less a capital habeas case, when appointed by the District Court to represent Paul. On December 29, 1997, more than two weeks before the Petition was due, counsel filed with the District Court a Motion to Extend Time Within Which to File Initial Petition For Writ of Habeas Corpus. The motion requested an additional thirty (30) days and relied upon 28 U.S.C. § 2263 (b)(3) as authority for the request. On December 31, 1997, the State of Missouri quickly filed a response, contending among other objections, that "If 28 U.S.C. § 2263 applies, a showing of good cause is required to receive and extension. See 28 U.S.C. § 2263 (b)(3). Petitioner has not made such a showing." The State later filed an additional supplemental response,

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concisely stating its position that 28 U.S.C. § 2244 (d) set a one-year statute of limitations for federal habeas petitions, “regardless of whether the 180 day statute also applies.”

The District Court disagreed with the State’s position and found that, if the opt-in provisions of the Anti-Terrorism and Effective Death Penalty Act applied in this case, then Mr. Kreutzer’s motion for extension was timely, that the motion demonstrated sufficient good case, and that it would be granted. The Court also found the statute of limitations set forth in 28 U.S.C. § 2244 (d)(1) determined the due-date of the petition to be January 17, 1998, but since Mr. Kreutzer had filed his Motion to Extend Time well before the expiration of the statute of limitations, Fed. R. Civ. P. 6 (b) would allow the court to extend the time for filing until January 27, 1998, the date the Petition was filed.

This issue did not thereafter arise until the last two minutes of oral argument before the Eighth Circuit Court of Appeals, the parties having neither briefed the timeliness of the Petition, nor having raised it by motion before that Court. Only when the Eighth Circuit issued its ruling disallowing the District Court’s filing extension and dismissing Paul’s Petition did the magnitude of the problem become evident to counsel.

“Dismissal of a first federal habeas petition is a particularly serious matter, for that dismissal denies the petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty.” Lonchar v. Thomas, 116 S. Ct. 1293, 1299 (1996). To dismiss the habeas petition of a death row inmate who files his petition *two weeks* past the deadline is, as far as counsel can determine, unprecedented. Although equitable tolling has been denied to extend statues of limitations in many circumstances, counsel has been unable to discover a circuit court opinion which, strictly to enforce a time bar, denied a condemned man an opportunity to have his claims heard, at least in a first habeas petition. See, i.e., Davis v. Johnson, 158 F.3d 806 (5th Cir. 1998) (Fifth Circuit allows equitable tolling to extend for over

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one year the filing of a death row inmate's habeas petition in Texas.).

The Fifth Circuit Court of Appeals, at least, has allowed a thirty day extension granted by the District Court under 28 U.S.C. § 2263 to extend the one year statute of limitations imposed by 28 U.S.C. § 2244(d), the identical situation present in appellant's case. See, Hill v. Johnson, 210 F.3d 481, 482-484 (5th Cir. 2000). Although not specifically addressed in Hill, the Fifth Circuit implicitly recognizes that which the Ninth Circuit has explicitly discussed in Calderon v. United States District Court, 163 F.3d 530 (9th Cir. 1998), that in death penalty cases the consequences of a district court's erroneous extension of the one year statute of limitations in 28 U.S.C. § 2244(d)(1) weigh heavily in favor of the condemned inmate seeking to have his first petition considered by the Court. (District Court had extended § 2244(d)(1)'s one year deadline almost six months, equitably tolling the statute's period due to petitioner having had to change counsel during the preparation of the habeas petition.).

Although Mr. Kreutzer's counsel well may deserve punishment for their misguided effort to extend a statute of limitations, Mr. Kreutzer himself does not. The Eighth Amendment cannot allow the death penalty to be imposed upon an individual who, relying on counsel specifically appointed to protect and defend his interests in the complicated process that federal habeas law has become, innocently suffers the loss of his first and only substantive habeas petition. Clearly, such a result could not be "within the limits of civilized standards." Woodson v. North Carolina, 428 U.S. 280, 302 (1976), quoting Trop v. Dulles, 356 U.S. 86, 101 (1958) (plurality opinion). This truly would be cruel and unusual punishment.

IV. CLEMENCY

Before Governor Holden is a young man convicted of a brutal murder, now facing the imminent prospect of being lethally injected. Considering his childhood abuse and "punishment," it is hardly surprising that Paul Kreutzer would end up in prison, the seeds sown in him long ago having produced an act such as that which brought him to this point. The hopelessness of his childhood would predict the course

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of his life, brief as it has been so far.

The Constitution protects even, especially, the Paul Kreutzers of this country. He was entitled to a fair trial, with a fair and impartial jury drawn from a fair cross-section of the community, and to be represented by an attorney who would provide *effective assistance* of counsel. He was entitled to due process of law, to equal protection of the law, and to be free from the arbitrary and capricious infliction of the ultimate punishment. He has raised substantial questions about many of these rights, but has received no federal appellate review because of the mistake of his lawyers. In our federal courts he has been denied a hearing, denied funds to prove his claim, denied expert assistance, and denied even an opportunity for appellate review. So far, he has been railroaded toward the death house as fast as the federal courts could carry him. So far, he has had about as much due process in the federal courts as he got at home growing up with Mrs. Kreutzer.

It is time for Governor Holden to finally stop the death train carrying Paul Kreutzer. Allow him to live the rest of his days locked up in the penitentiary. That is severe punishment. But, please, spare his life.

Respectfully submitted,

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