Perry Edward Smith inmate case file

Section 5, Pages 121 - 150

The Kansas State Penitentiary case file on Perry Edward Smith, inmate number 14747. Smith and his accomplice, Richard Hickock, were convicted of first degree murder for the brutal 1959 killings of Herb and Bonnie Clutter, their daughter, Nancy, and son, Kenyon, in Holcomb, Kansas. The murders inspired the non-fiction novel "In Cold Blood" by Truman Capote. Smith was executed by hanging on April 14, 1965. Please note that some images have been removed in accordance with K.S.A. 45-221(a)(29) and have been labeled with pages indicating their removal.

Creator: Kansas State Penitentiary

Date: 1959 - 1965

Callnumber: State Penitentiary, Inmate Files, Executed Prisoners, Box 1

KSHS Identifier: DaRT ID: 208964

Item Identifier: 208964

www.kansasmemory.org/item/208964

Perry Edward Smith inmate case file

KSP No. 64

DATE 4-6-59 19

PLEASE PRINT PLAINLY

FROM: RECORD CLERK.

TO: Name: SMITH, Perry Number: 12649

YOU ARE ELIGIBLE FOR PAROLE CONSIDERATION June 5, 1959.

BELOW ARE SOME QUESTIONS RELATIVE TO YOUR FAMILY AFFAIRS AND YOUR PAROLE PLANS. IF THESE QUESTIONS ARE ANSWERED CORRECTLY, THEY WILL BE OF GREAT BENEFIT TO THE BOARD OF PROBATION & PAROLE AND THE PAROLE OFFICER, WHO WILL INVESTIGATE YOUR CASE BEFORE YOU ARE TO APPEAR BEFORE THE BOARD.

Are you: Married_____ Single X Divorced_____ Widower_____.

Do you have any children? NO (YES OR NO). How many? none

Are these children with your wife or with someone else. _____

GIVE THE NAME AND ADDRESS OF THE PERSON OR PERSONS CARING FOR YOUR CHILDREN

Do you intend to be paroled to a relative? Show relationship: yes (YES OR NO) Father (RELATIONSHIP)

Do you intend to be paroled to someone other than a relative? NO (YES OR NO)

Give the name and address of the person who will sponsor you. This person will be contacted by a parole officer before you appear before the board, so be sure that the name and address you give below is written plainly and correctly.

Name of Sponsor Tex J. Smith

Address c/o Gen Del (STREET OR ROUTE NUMBER)

City Or Town Reno, State Nevada

Employers Name Tex J. Smith

Address c/o Gen Del (STREET OR ROUTE NUMBER)

Town Or City Reno, State Nevada

If you have no job and no sponsor, and if you are paroled, you will be paroled on Placement. Mark this sheet "Placement" on the line below. However, you will not be released on parole until you have a job.

"Placement"

After filling in the above, give a brief outline of your plans and what you intend to do, if you are paroled. The Board of Probation & Parole is interested in knowing what your plans are, in the event you are paroled. Such things as employment, your living conditions, your family interests, your responsibilities to your family. These are all of vital interest in making a thorough investigation of your case, before you appear before the Board.

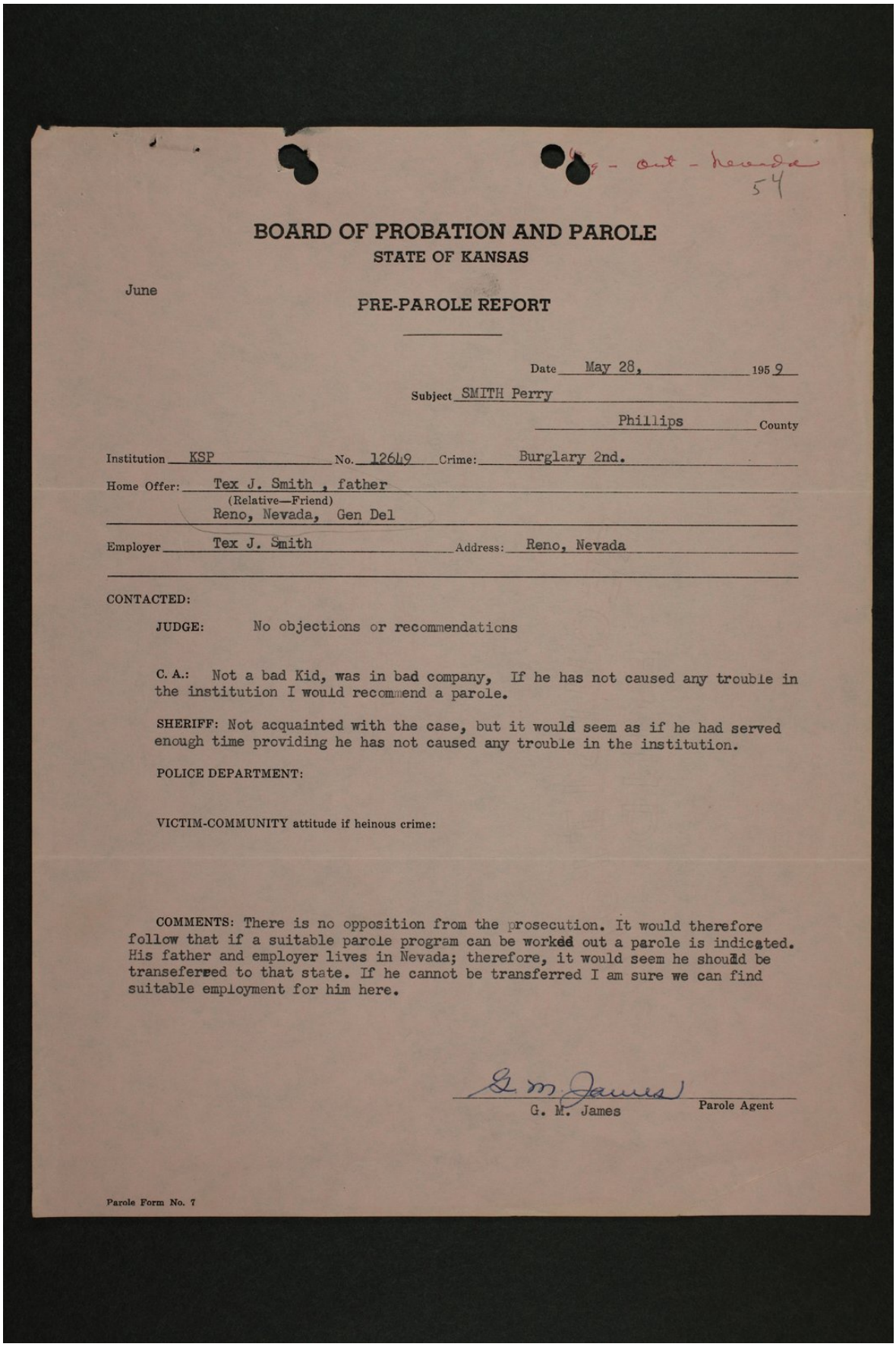
I intend to find, & keep a good job; take certain steps to avoid situations that led to my imprisonment. Help my Father in his old age; & work for those things every man wants, like a family and the respect of decent people.

REMEMBER: If you are going out of the State of Kansas, you MUST have a job and a Sponsor!!!

Please return this form, properly filled out, to the Record Office within fifteen (15) days. DO NOT SEND THIS SHEET HOME. Fill out this form in duplicate.

Signed Perry E. Smith No. 12649

Perry Edward Smith inmate case file



out - Nevada
54

BOARD OF PROBATION AND PAROLE
STATE OF KANSAS

June

PRE-PAROLE REPORT

Date May 28, 1959

Subject SMITH Perry

Phillips County

Institution KSP No. 12649 Crime: Burglary 2nd.

Home Offer: Tex J. Smith , father
(Relative—Friend)
Reno, Nevada, Gen Del

Employer Tex J. Smith Address: Reno, Nevada

CONTACTED:

JUDGE: No objections or recommendations

C. A.: Not a bad Kid, was in bad company, If he has not caused any trouble in the institution I would recommend a parole.

SHERIFF: Not acquainted with the case, but it would seem as if he had served enough time providing he has not caused any trouble in the institution.

POLICE DEPARTMENT:

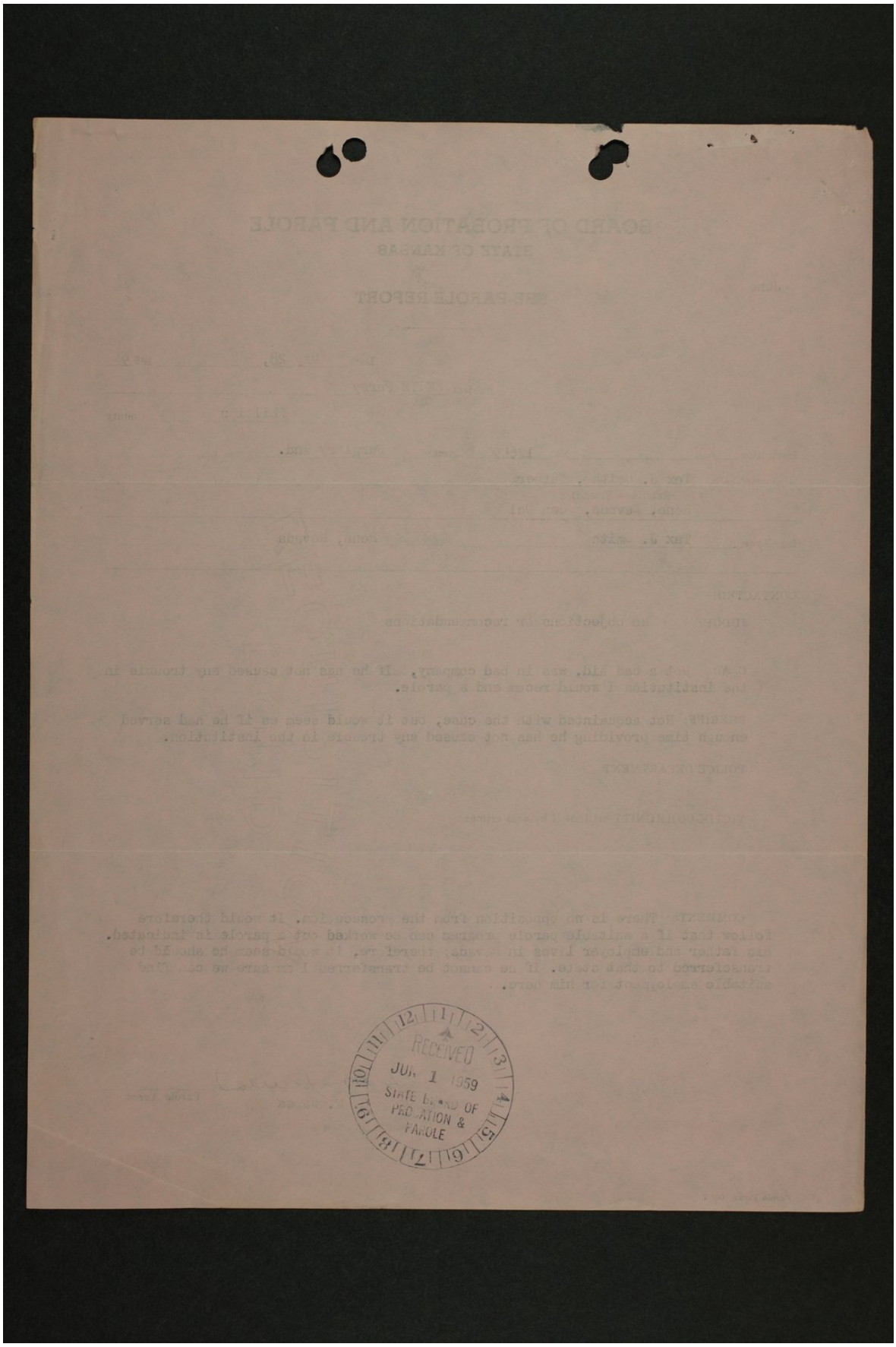
VICTIM-COMMUNITY attitude if heinous crime:

COMMENTS: There is no opposition from the prosecution. It would therefore follow that if a suitable parole program can be worked out a parole is indicated. His father and employer lives in Nevada; therefore, it would seem he should be transeferred to that state. If he cannot be transferred I am sure we can find suitable employment for him here.

G. M. James
G. M. James Parole Agent

Parole Form No. 7

Perry Edward Smith inmate case file



Perry Edward Smith inmate case file

4/59 - Lee 6/54 37

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BOARD OF PROBATION AND PAROLE
STATE OF KANSAS

KSP
April

PRE-PAROLE REPORT

Date March 27, 1959

Subject SMITH, Perry

Phillips County

Institution KSP No. 12649 Crime: Burglary 2nd., G. L. & Jail Break

Home Offer: _____
(Relative—Friend)

Employer _____ Address: _____

CONTACTED:

JUDGE: No objections or recommendations

C. A.: Not a bad Kid, was in bad company. If he has not caused any trouble in the Institution will recomend parole.

SHERIFF: Not acquainted with the case, was not in office at time of crime or commitment.

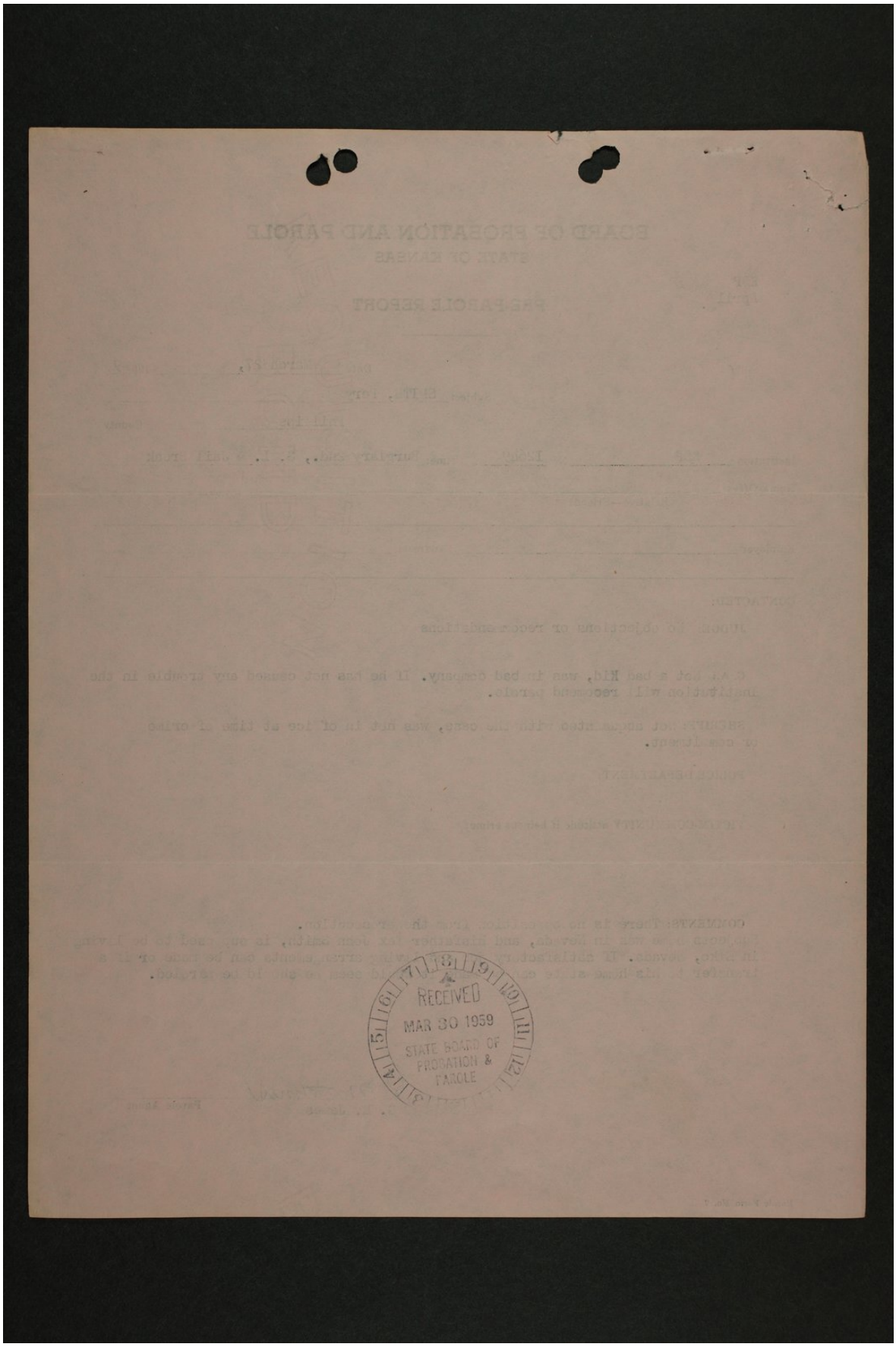
POLICE DEPARTMENT:

VICTIM-COMMUNITY attitude if heinous crime:

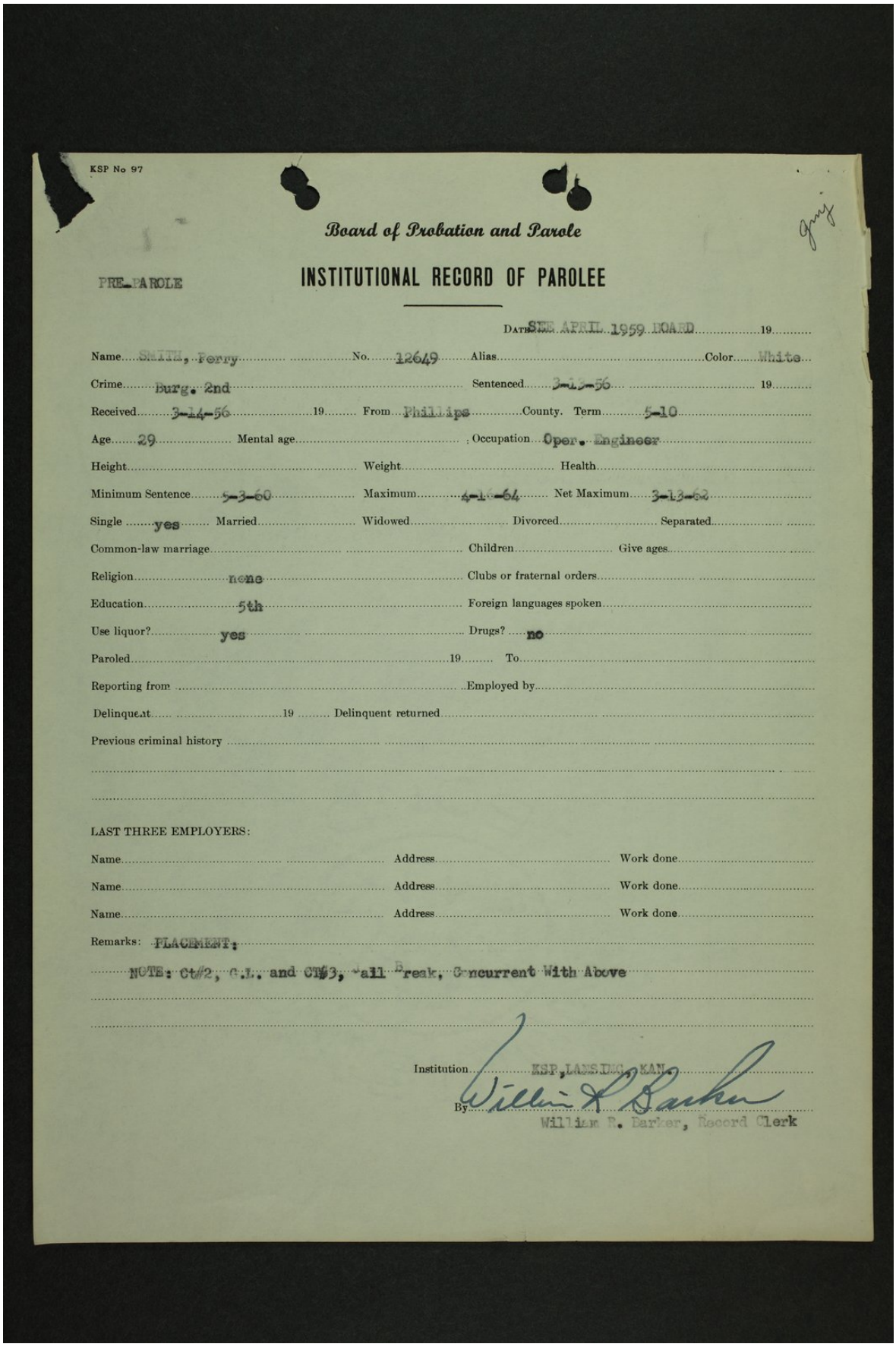
COMMENTS: There is no opposition from the prosecution.
Subjects home was in Nevada, and hisfather Tex John Smith, is supposed to be living in Elko, Nevada. If satisfactory job and living arrangements can be made of if a transfer to his home state can be made it would seem he should be paroled.

G. M. James
G. M. James Parole Agent

Parole Form No. 7


RECEIVED
MAR 30 1959
STATE BOARD OF
PROBATION &
PAROLE

Perry Edward Smith inmate case file



KSP No 97

Board of Probation and Parole

PRE-PAROLE

INSTITUTIONAL RECORD OF PAROLEE

DATE SEE APRIL 1959 BOARD 19

Name SMITH, Perry No. 12649 Alias Color White

Crime Burg. 2nd Sentenced 3-13-56 19

Received 3-14-56 19 From Phillips County. Term 5-10

Age 29 Mental age Occupation Oper. Engineer

Height Weight Health

Minimum Sentence 5-3-60 Maximum 4-1-64 Net Maximum 3-13-62

Single yes Married Widowed Divorced Separated

Common-law marriage Children Give ages

Religion none Clubs or fraternal orders

Education 5th Foreign languages spoken

Use liquor? yes Drugs? no

Paroled 19 To

Reporting from Employed by

Delinquent 19 Delinquent returned

Previous criminal history

LAST THREE EMPLOYERS:

Name Address Work done

Name Address Work done

Name Address Work done

Remarks: PLACEMENT:

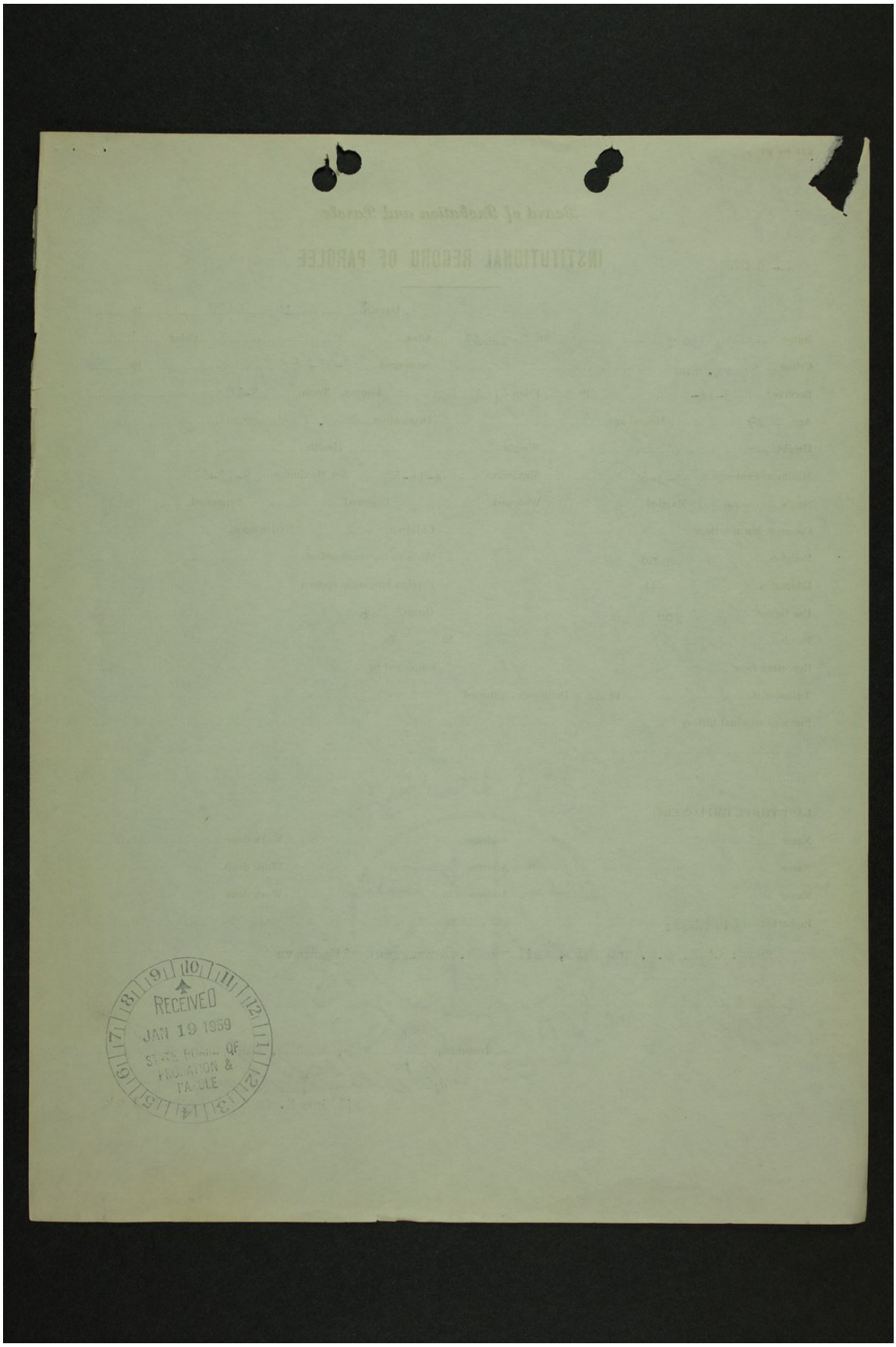
NOTE: Ct#2, C.I. and Ct#3, all Break, Concurrent With Above

Institution KSP, LANSING, KAN.

By William R. Barker

William R. Barker, Record Clerk

Perry Edward Smith inmate case file



KSP No. 64

DATE 1-3-59 19

PLEASE PRINT PLAINLY

FROM: RECORD CLERK.

TO: Name: SMITH, Perry Number: 12649

YOU ARE ELIGIBLE FOR PAROLE CONSIDERATION April 3, 1959.

BELOW ARE SOME QUESTIONS RELATIVE TO YOUR FAMILY AFFAIRS AND YOUR PAROLE PLANS. IF THESE QUESTIONS ARE ANSWERED CORRECTLY, THEY WILL BE OF GREAT BENEFIT TO THE BOARD OF PROBATION & PAROLE AND THE PAROLE OFFICER, WHO WILL INVESTIGATE YOUR CASE BEFORE YOU ARE TO APPEAR BEFORE THE BOARD.

Are you: Married_____ Single ✓ Divorced_____ Widower_____.

Do you have any children? No (YES OR NO). How many? None

Are these children with your wife or with someone else. None

None

GIVE THE NAME AND ADDRESS OF THE PERSON OR PERSONS CARING FOR YOUR CHILDREN

Do you intend to be paroled to a relative? Show relationship: ? (YES OR NO) _____ (RELATIONSHIP)

Do you intend to be paroled to someone other than a relative? ? (YES OR NO)

Give the name and address of the person who will sponsor you. This person will be contacted by a parole officer before you appear before the board, so be sure that the name and address you give below is written plainly and correctly.

Name of Sponsor None as yet.

Address_____
STREET OR ROUTE NUMBER

City Or Town_____ State_____

Employers Name None as yet.

Address_____
STREET OR ROUTE NUMBER

Town Or City_____ State_____

If you have no job and no sponsor, and if you are paroled, you will be paroled on Placement. Mark this sheet "Placement" on the line below. However, you will not be released on parole until you have a job.

Placement

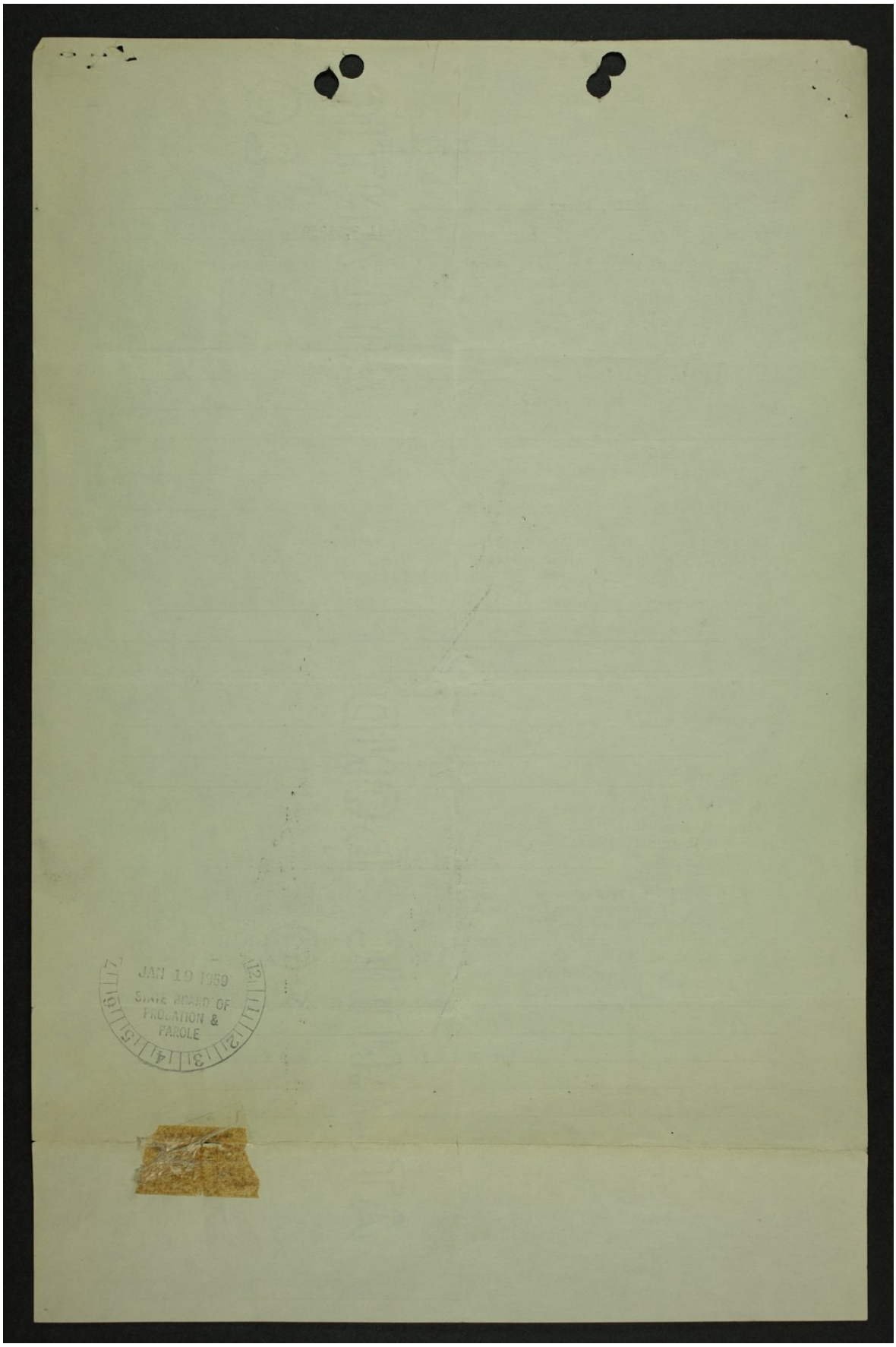
After filling in the above, give a brief outline of your plans and what you intend to do, if you are paroled. The Board of Probation & Parole is interested in knowing what your plans are, in the event you are paroled. Such things as employment, your living conditions, your family interests, your responsibilities to your family. These are all of vital interest in making a thorough investigation of your case, before you appear before the Board.

In the event I am paroled, I plan to keep a steady job & readjust myself to become a useful member of society. At this time I have no family responsibilities, except my father, to whom I am devoted. Plans for marriage & a happy family.

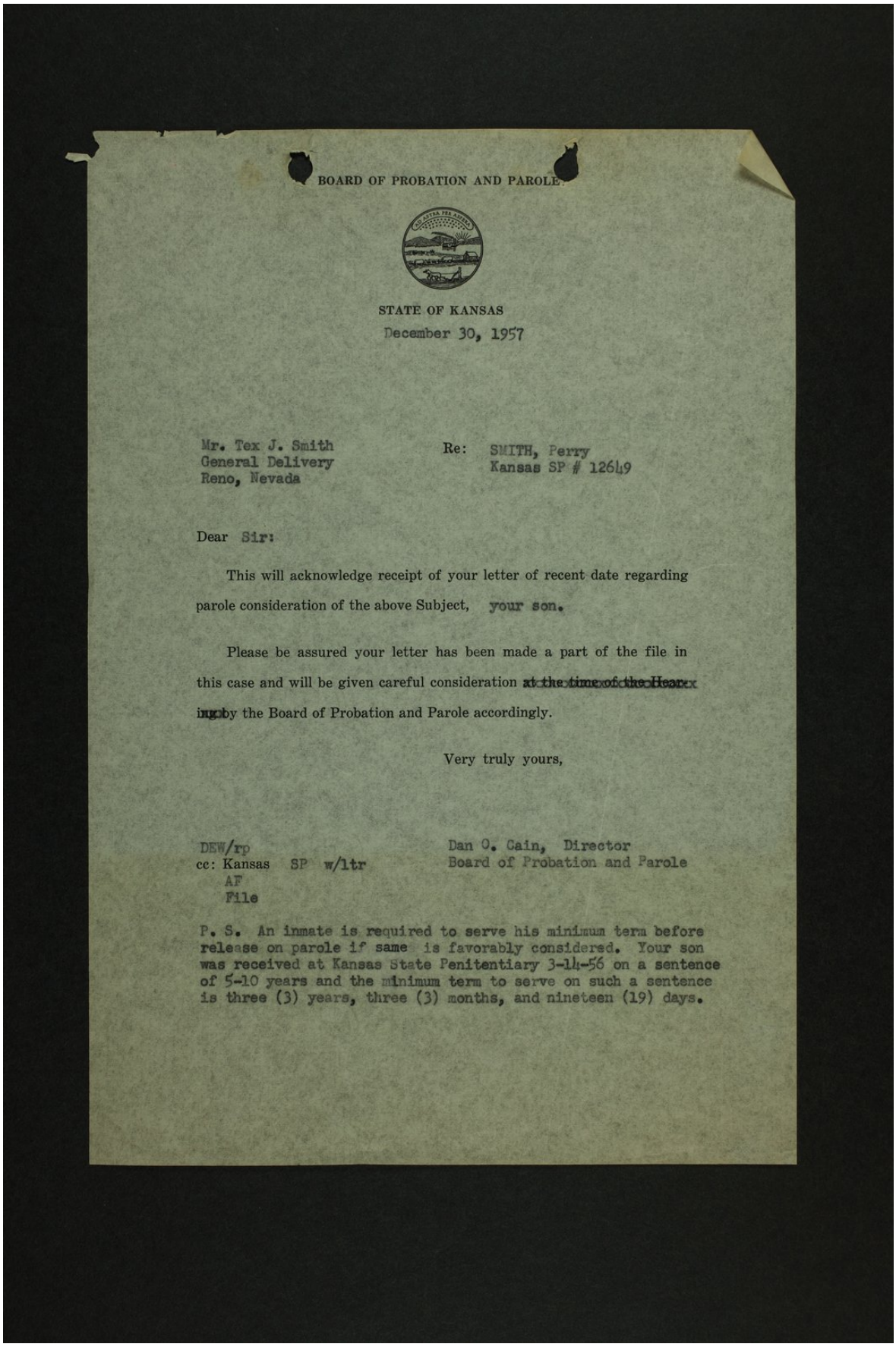
REMEMBER: If you are going out of the State of Kansas, you MUST have a Job and a Sponsor!!!

Please return this form, properly filled out, to the Record Office within fifteen (15) days. DO NOT SEND THIS SHEET HOME. Fill out this form in duplicate.

Signed Smith No. 12649


JAN 10 1969
STATE BOARD OF
PROBATION &
PAROLE

Perry Edward Smith inmate case file



BOARD OF PROBATION AND PAROLE

STATE OF KANSAS

December 30, 1957

Mr. Tex J. Smith
General Delivery
Reno, Nevada

Re: SMITH, Perry
Kansas SP # 12649

Dear Sir:

This will acknowledge receipt of your letter of recent date regarding parole consideration of the above Subject, your son.

Please be assured your letter has been made a part of the file in this case and will be given careful consideration ~~at the time of the Hear~~ ing by the Board of Probation and Parole accordingly.

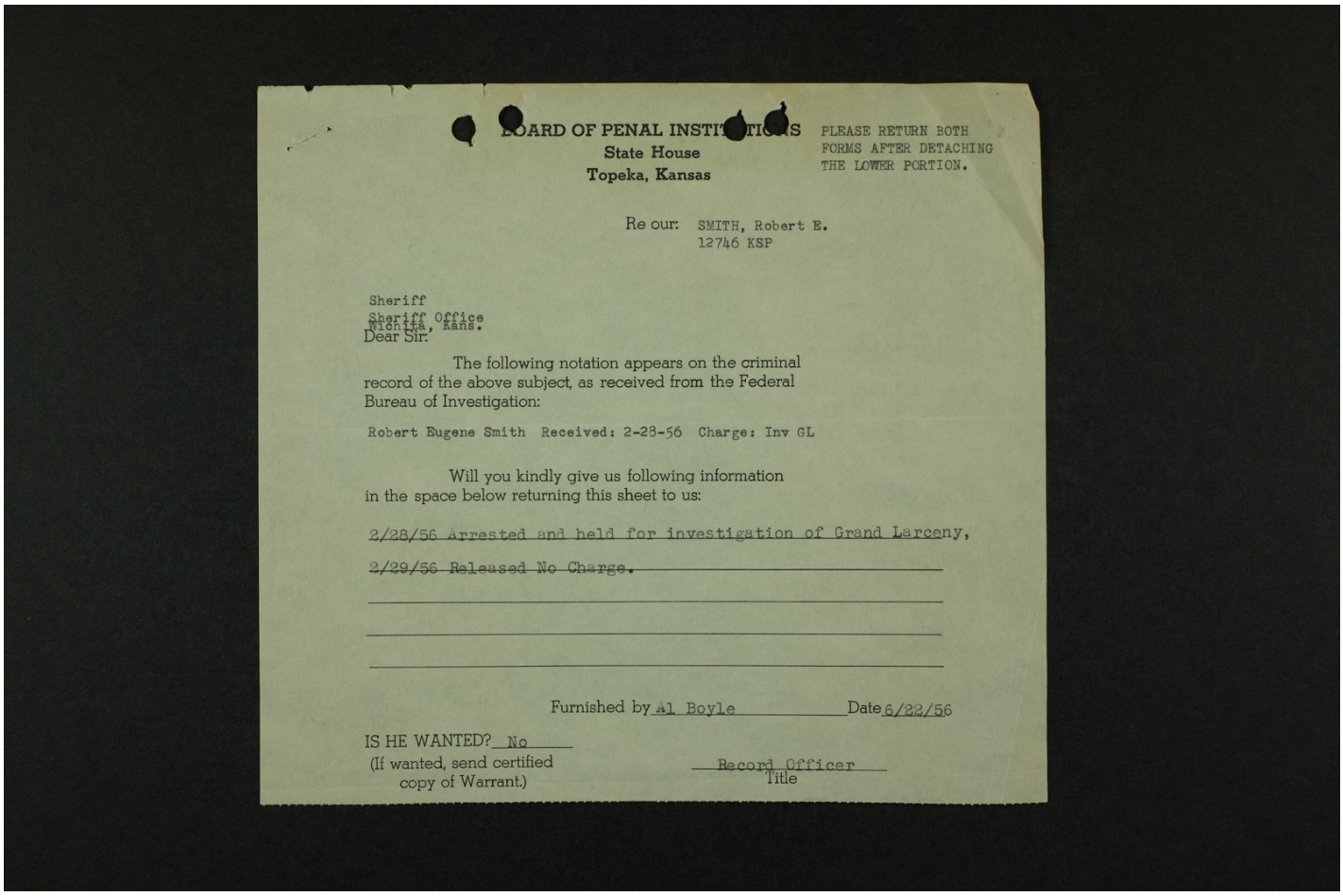
Very truly yours,

DEW/rp
cc: Kansas SP w/ltr
AF
File

Dan O. Cain, Director
Board of Probation and Parole

P. S. An inmate is required to serve his minimum term before release on parole if same is favorably considered. Your son was received at Kansas State Penitentiary 3-14-56 on a sentence of 5-10 years and the minimum term to serve on such a sentence is three (3) years, three (3) months, and nineteen (19) days.

Perry Edward Smith inmate case file



BOARD OF PENAL INSTITUTIONS
State House
Topeka, Kansas

PLEASE RETURN BOTH FORMS AFTER DETACHING THE LOWER PORTION.

Re our: SMITH, Robert E.
12746 KSP

Sheriff
Sheriff Office
Wichita, Kans.
Dear Sir:

The following notation appears on the criminal record of the above subject, as received from the Federal Bureau of Investigation:

Robert Eugene Smith Received: 2-28-56 Charge: Inv GL

Will you kindly give us following information in the space below returning this sheet to us:

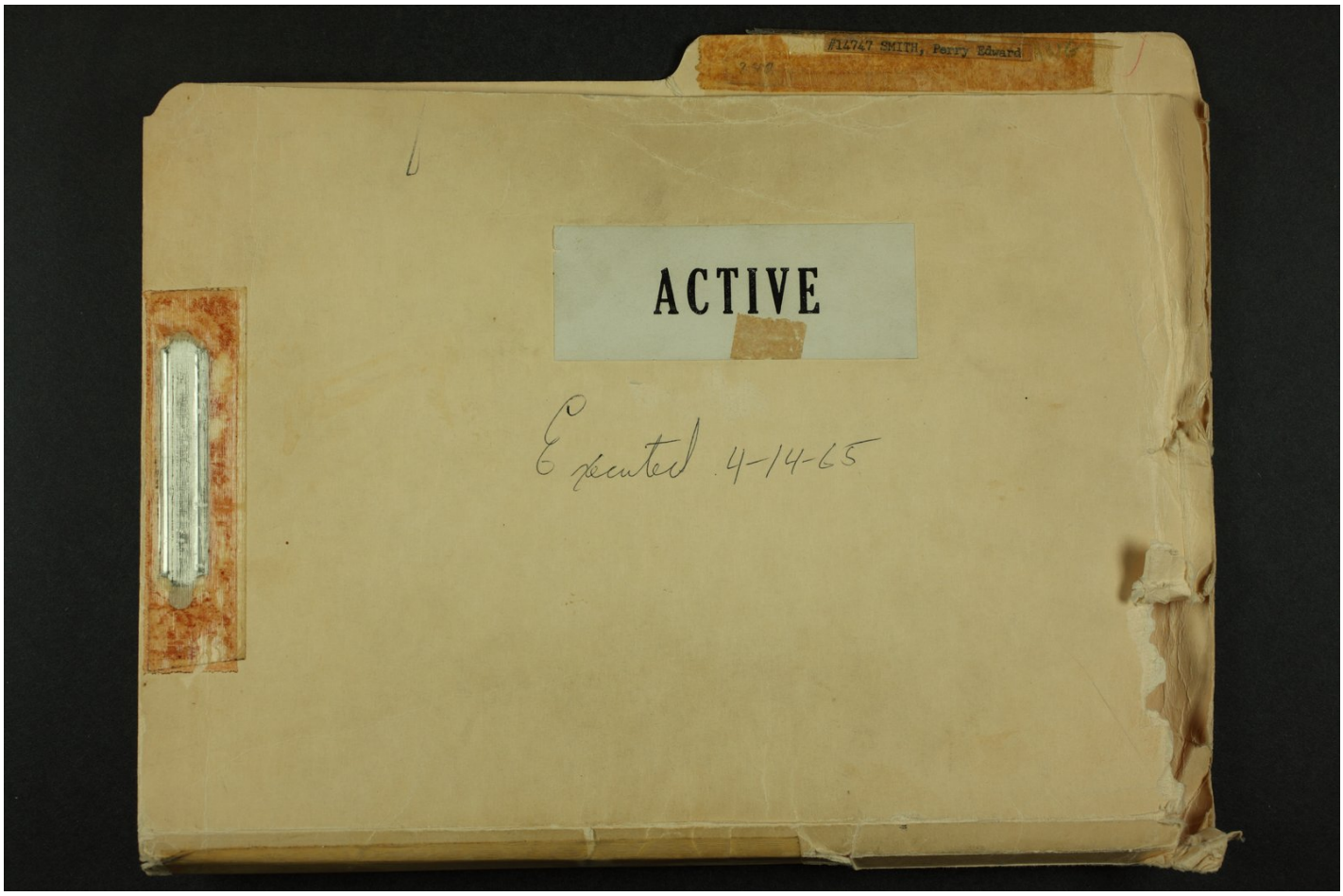
2/28/56 Arrested and held for investigation of Grand Larceny,
2/29/56 Released No Charge.

Furnished by Al Boyle Date 6/22/56

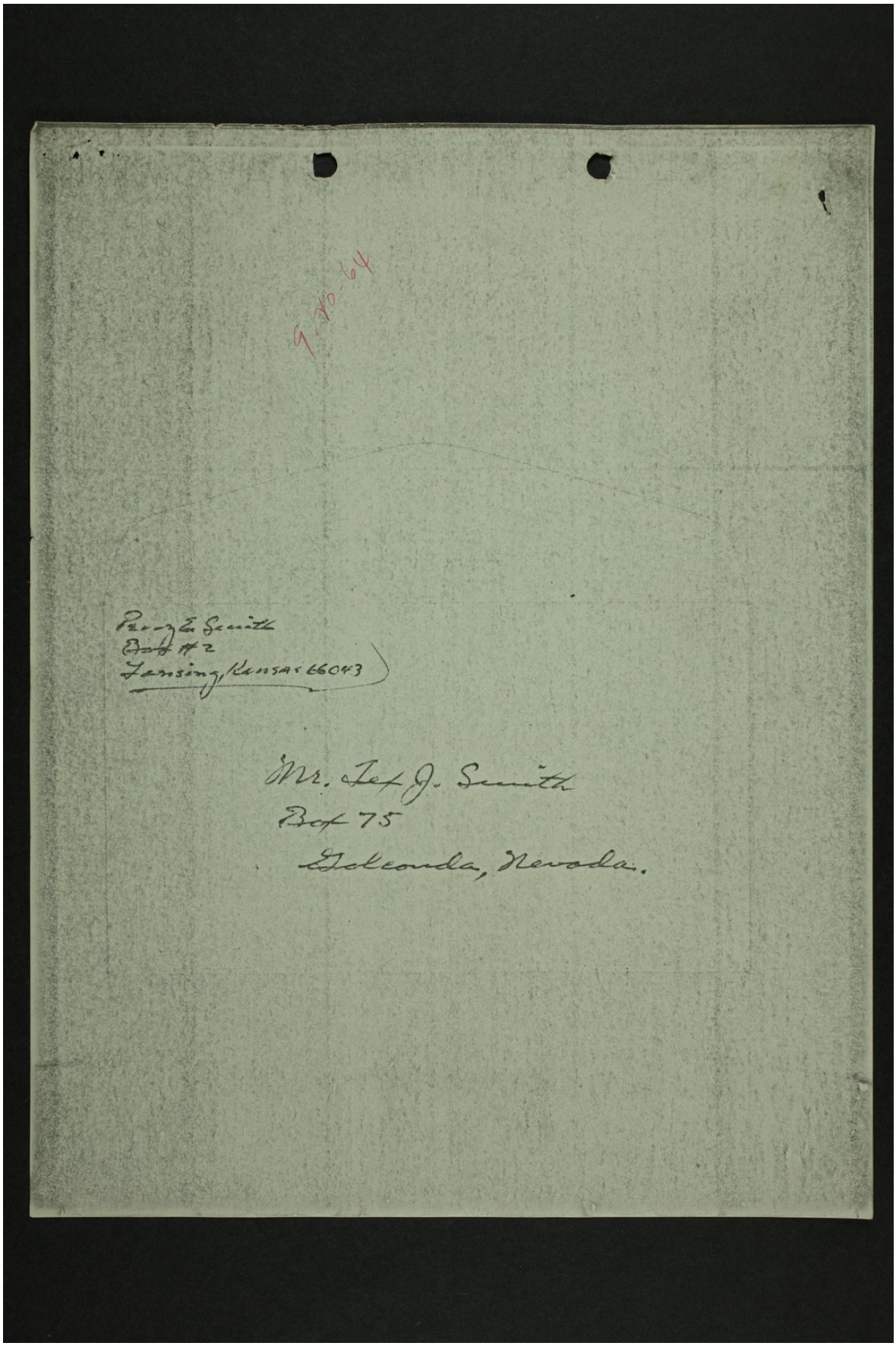
IS HE WANTED? No
(If wanted, send certified copy of Warrant.)

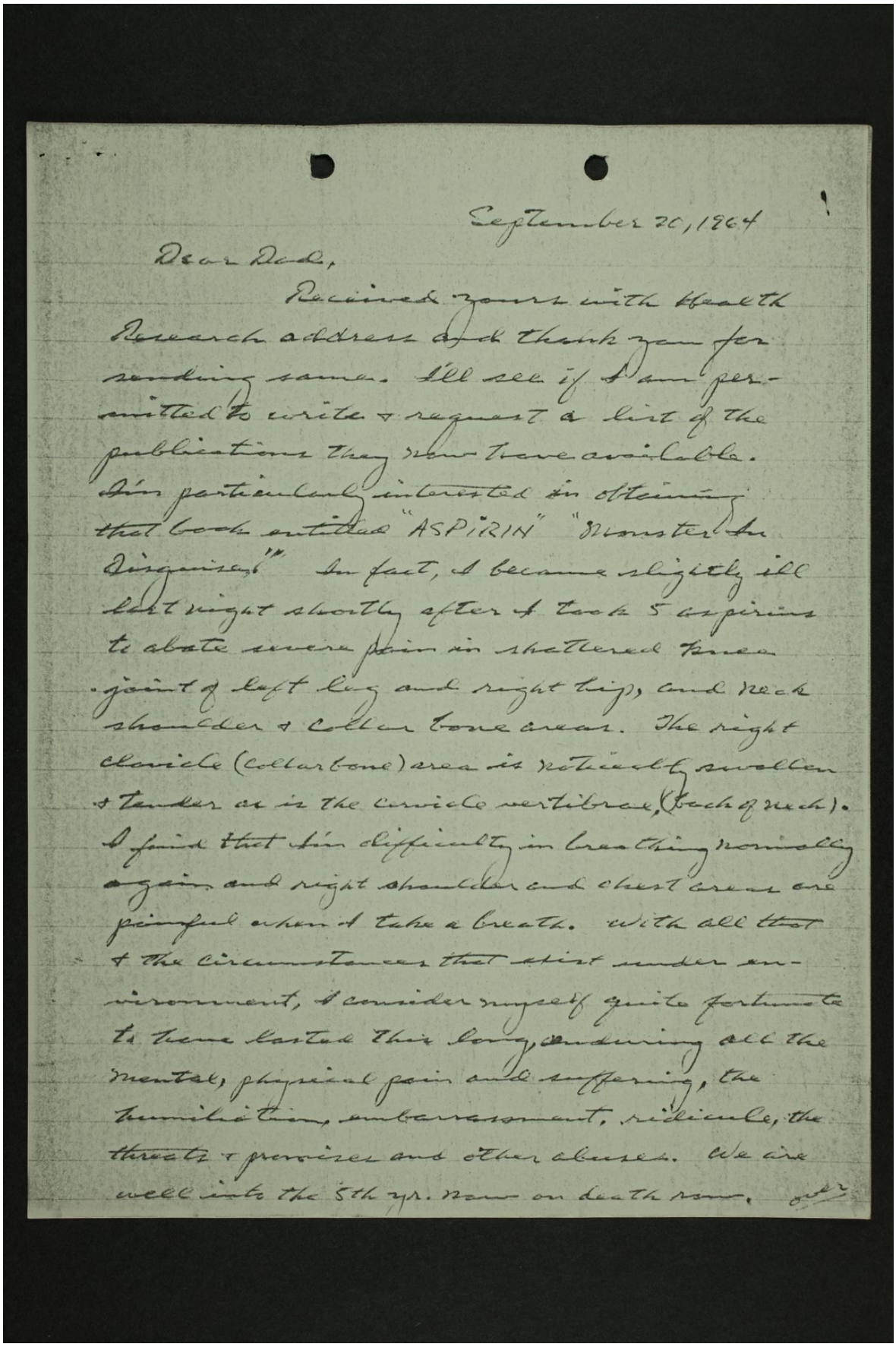
Record Officer
Title

Perry Edward Smith inmate case file



Perry Edward Smith inmate case file





September 20, 1964

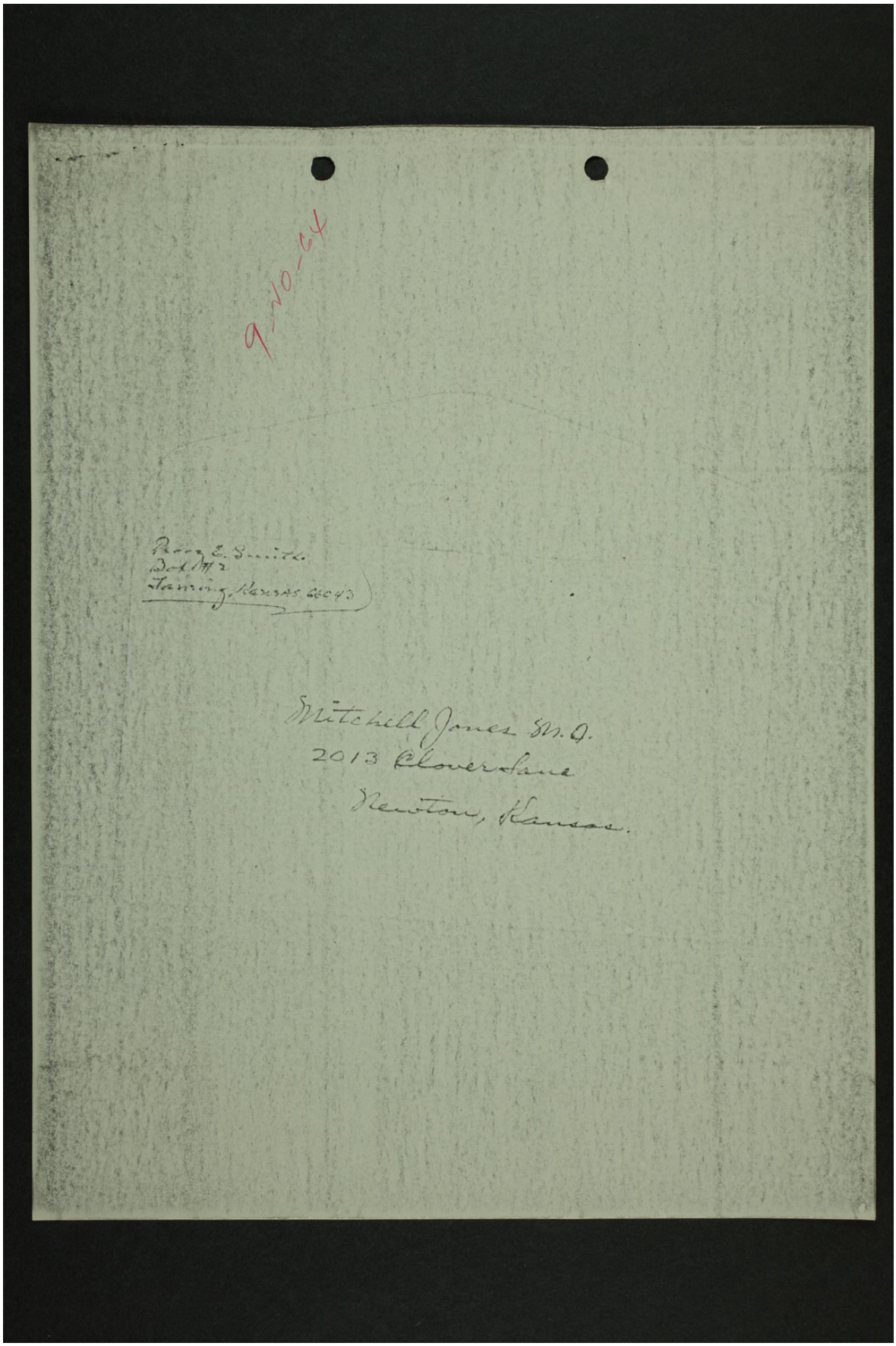
Dear Dad,

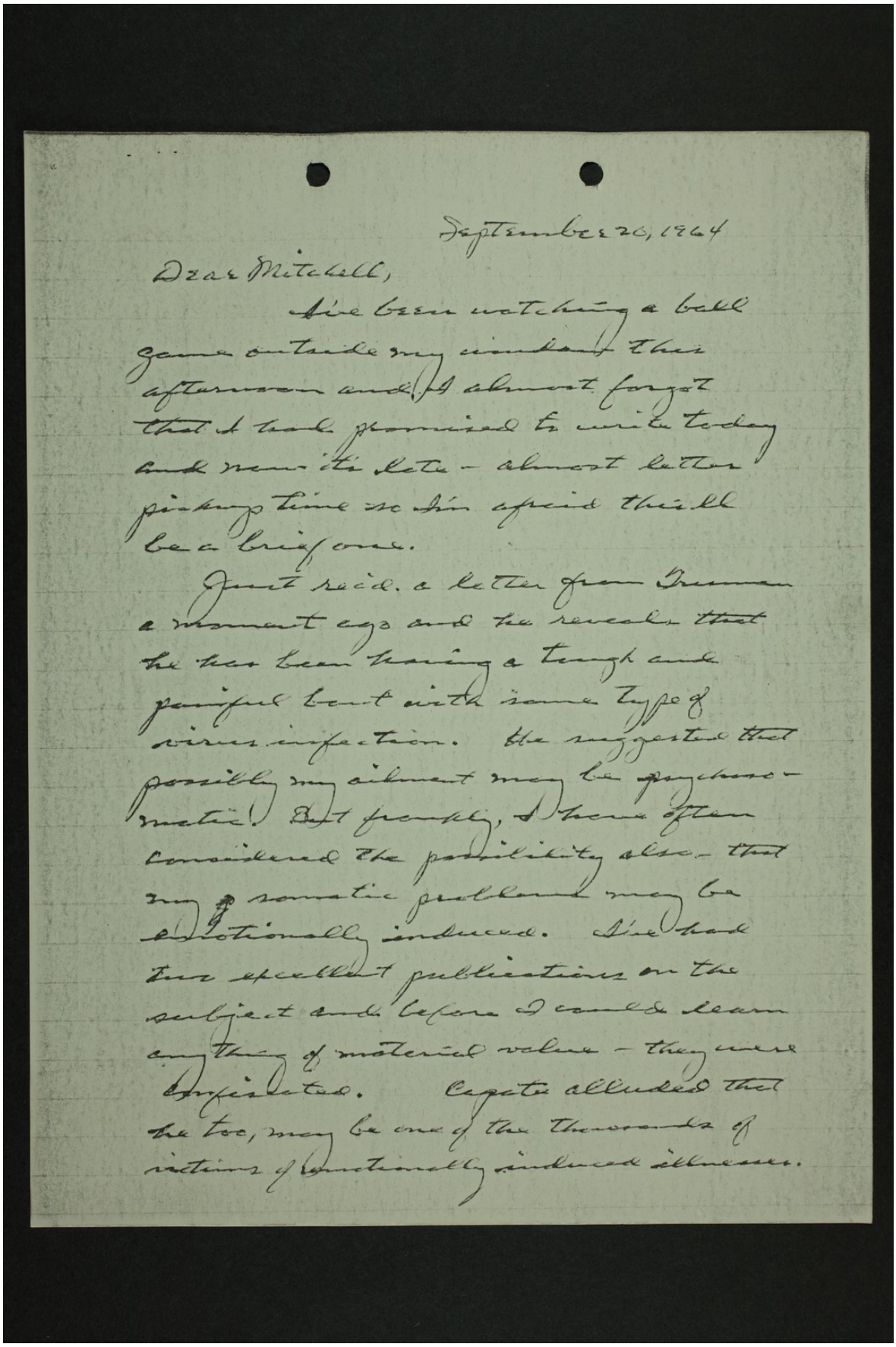
Received yours with Health Research address & thank you for sending same. Ill see if I am permitted to write & request a list of the publications they now have available. Am particularly interested in obtaining that book entitled "ASPIRIN" "Monster in Disguise." In fact, I became slightly ill last night shortly after I took 5 aspirins to abate severe pain in shattered knee joint of left leg and right hip, and neck shoulder & collar bone areas. The right clavicle (collar bone) area is noticeably swollen & tender as is the cervicle vertibrae, (back of neck). I find that am difficulty in breathing normally again and right shoulder and chest areas are painful when I take a breath. With all that & the circumstances that exist under environment, I consider myself quite fortunate to have lasted this long, enduring all the mental, physical pain and suffering, the humiliation, embarrassment, ridicule, the threats & provocations and other abuses. We are well into the 5th yr. now on death row. Gods

Several years ago I recall reading a medical report in some National magazine promulgating the Accumulation effect of the aspirin - the results of the report I recall, were very unfavorable. Since I had little use for the aspirin at that time I did not pay to great attention to what was reported. But I imagine it's along similar lines as this book Aspirin. Considering the libel angle involved, I of course cannot see how such damaging public reports could be published unless same was supported by facts + evidence + reputable research authorities behind them.
Yes, I'll let ya know if I hear from Mukelumne.
I've also read an article or so on the dirty unsterilized needles (needles used again without first being sterilized) and the transferring of diseases (some fatal) caused by them.

Yes, you did mail me a photo of fire opal loan. Of course I am not up on commercial value of gems + minerals but judging by that which you relate to me, the fire opal you have is obviously an especially valuable one, as well as beautiful. Without the beauty it probably wouldn't be of much worth. Well you'll probably have the juice hooked up + water seeping in well by the time you receive this. I hope it's good water. With that completed you'll soon be able to pack up + ramble on to new pastures. What's your view of the presidential election? who are you supporting? why? Always,

Perry Edward Smith inmate case file





September 20, 1964

Dear Mitchell,

Ive been watching a ball game outside my window this afternoon and I almost forgot that I had promised to write today and now its late - almost letter picking time so Im afraid this'll be a brief one.

Just recd. a letter from Truman a moment ago and he reveals that he has been having a tough and painful bout with some type of virus infection. He suggested that possibly my ailment may be psychosomatic! But frankly, I have often considered the possibility also - that my somatic problem may be emotionally induced. Ive had two excellent publications on the subject and before I could learn anything of material value - they were confiscated. Capote alluded that he too, may be one of the thousands of victims of emotionally induced illnesses.

I had a very miserable eve. last night. But the pain has abated slightly now. But for no apparent mental reason that I can detect, the pain always seems to grow as day turns into night. I find it difficult & painful breathing at times when pain centers in right pectoral area.

Will be expecting you the 27th if nothing unexpected develops.

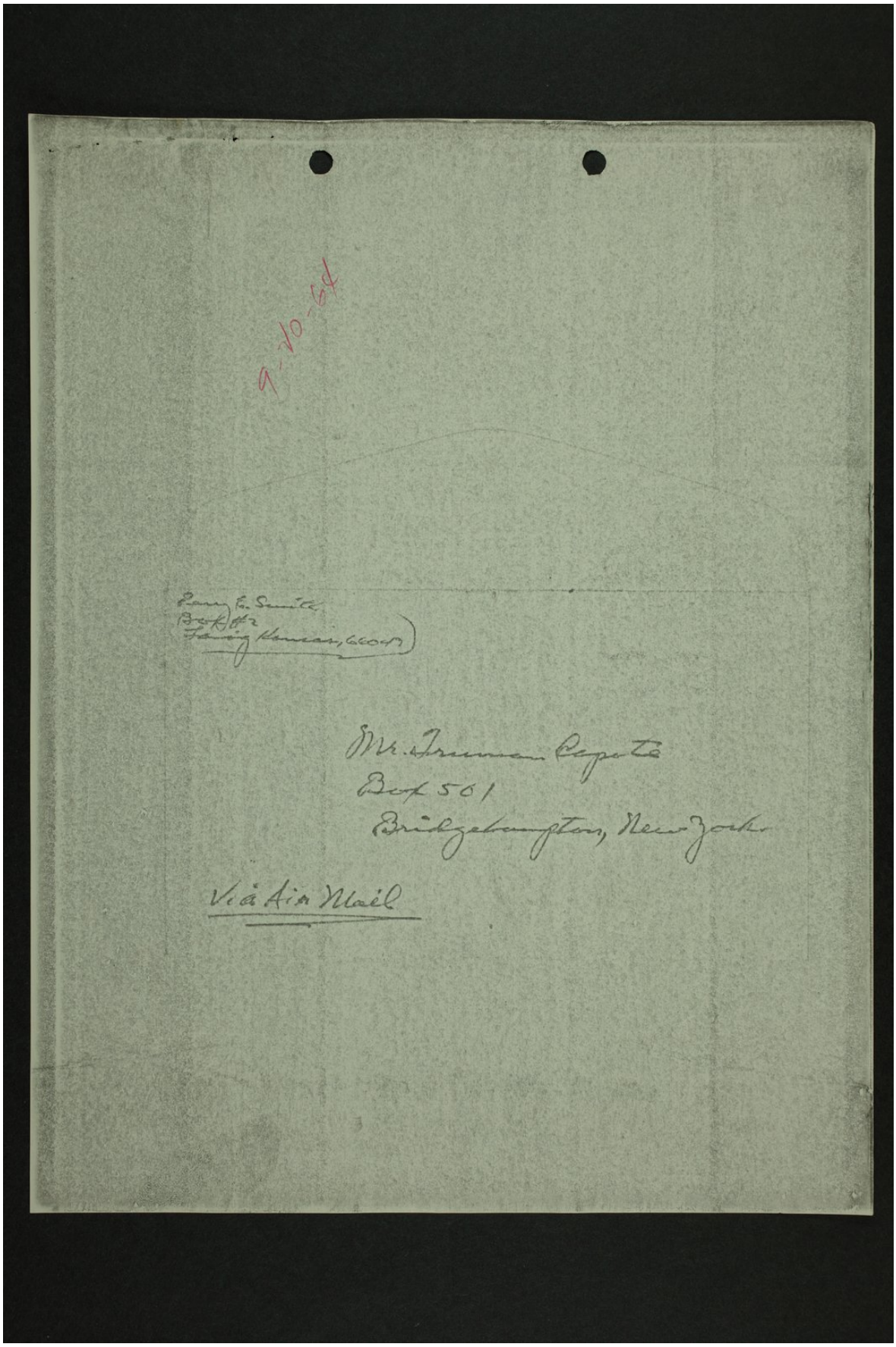
Mitchell, can you tell me from whom are the negroes descended? Just read a story about Malcolm X in recent copy of Sat. Eve. Post, (Sept 12) & became curious.

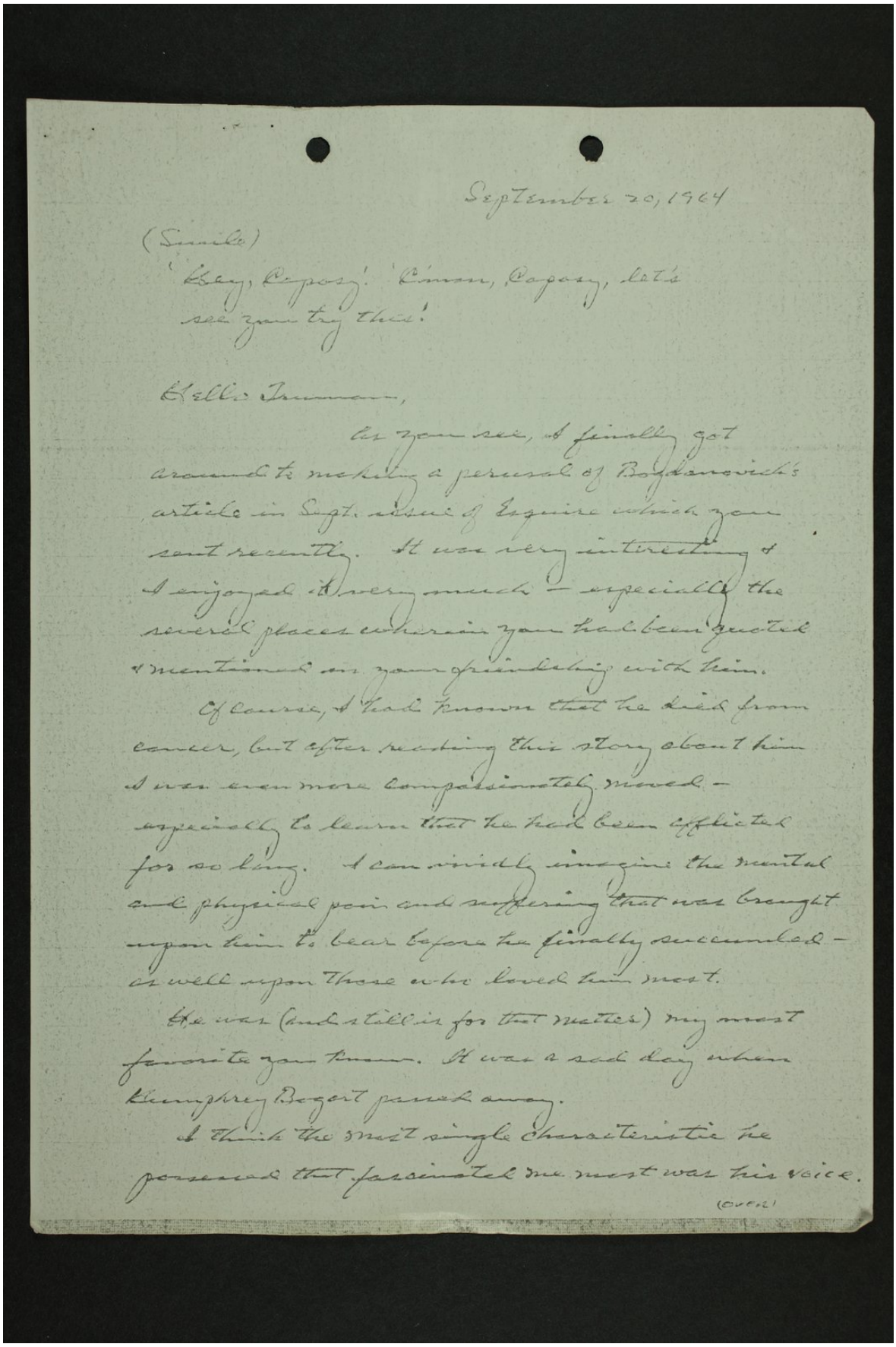
Must go now - hope you have a nice drive up here. Best wishes

Your friend
Perry

P.S. I see where J. E. Hoover comments that during his 40yrs as Chief of F.B.I. he has concluded that all criminals have one thing in common - all are liars. (Smile) "I think he's taking in too much territory". Oh, could you bring a copy of your report on me? (the C.C. matter)

Perry Edward Smith inmate case file





September 20, 1964

(Smile)

'Hey, Pepsy!' 'C'mon, Pepsy, let's see you try this!'

Hello Truman,

As you see, I finally got around to making a perusal of Bogdanovich's article in Sept. issue of Esquire which you sent recently. It was very interesting & I enjoyed it very much — especially the several places wherein you had been quoted & mentioned in your friendship with him.

Of course, I had known that he died from cancer, but after reading this story about him I was even more compassionately moved — especially to learn that he had been afflicted for so long. I can vividly imagine the mental and physical pain and suffering that was brought upon him to bear before he finally succumbed — as well upon those who loved him most.

He was (and still is for that matter) my most favorite gay person. It was a sad day when Humphrey Bogart passed away.

I think the most single characteristic he possessed that fascinated me most was his voice.

(over)

His histrionics were Tops - so realistic. And of course he always played the masculine roles. But that voice, is what moved me most. Have never heard one quite like it, have you?

Thank you for sending them two outdoor mag's. & that Mechanix Illustrated - they are appreciated, but please Dont send me any more Outdoor, Esquire, True, Automobile mag's., or sports magazines anymore. We get many of them here sometimes and it's a waste of $ - and the outdoor, automobile and sports dont interest me in the least anymore.

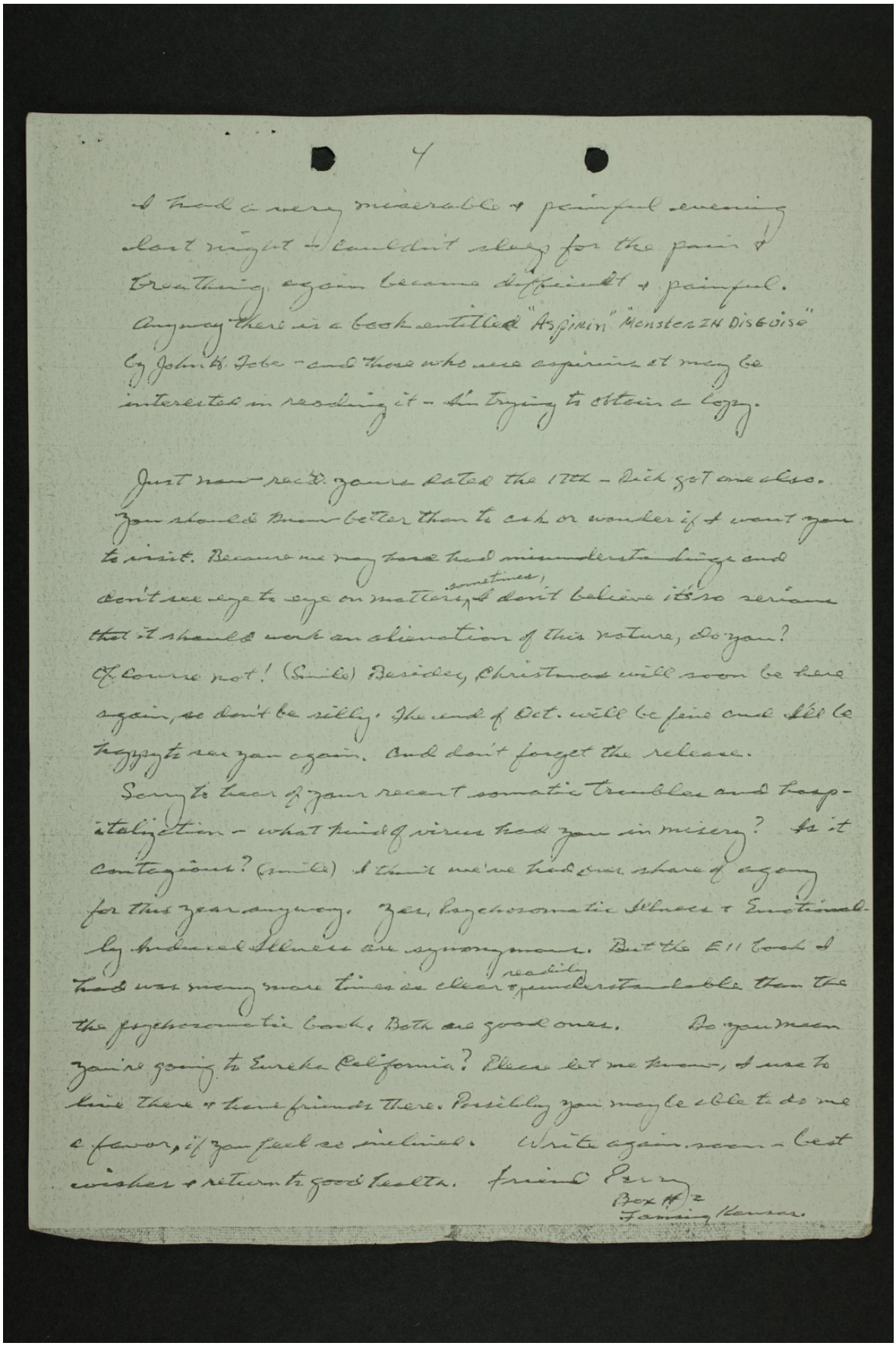
I'm curious as to exactly what type of publication that "FACT" magazine is though. The place reeks with precautions and ~~rules~~ well, it'd be nice to occupy the time with something factual and intellectual. Instead of some of the magazines you have been sending, you may, if you would, send a TIME; U.S. News & World Report; or Newsweek Pageant mag. - either one is ok - I read the Law & Medical sections with interest. Have you ever located any pocket-book on E.D. (Emotionally Induced Illnesses) yet? I had a good one but it was taken away before I got ½ way through it.

Do you recall that pocketbook you sent on Psycho-

somatic Illness? You had hoped that I may find something helpful in it. Well, I did. But I don't recall mentioning it to you before. If I remember, I'll tell you about it in October – ask me about it then.

My information tells me that the last M.O. rec'd. before the one (dated) of August 31st, was June 28th which was for the month of July; None was rec'd. at the end of July for the month of August. Was it sent or lost in the mails? I'm concerned as to what actually did occur.

As of about 4 to 6 wks. ago I began consuming aspirin & rec'd. rel. pills, & the aspirin appear to give slight temporary relief whereas before when first you suggested them use, they had very little effect in abating the pain. I can't figure that one out – can you? Anyway, I'm compelled to take what I feel may be excessive dosage. But lesser amounts take little (if any) effect. I'm now concerned about the 'accumulation' effect – am wondering if you have any knowledge as to bad results of excessive and/or continuous amounts of aspirin?



4

I had a very miserable & painful evening last night & couldn't sleep for the pain & breathing again became difficult & painful. Anyway there is a book entitled "Aspirin" Monster of Disease" by John H. Tobe - and those who use aspirin at may be interested in reading it - I'm trying to obtain a copy.

Just now rec'd. yours dated the 17th - Dick got one also. You should know better than to ask or wonder if I want you to visit. Because we may have had misunderstandings and don't see eye to eye on matters sometimes, I don't believe it's no serious that it should work an alienation of this nature, do you? Of course not! (Smile) Besides, Christmas will soon be here again, so don't be silly. The end of Oct. will be fine and I'll be happy to see you again. And don't forget the release.

Sorry to hear of your recent somatic troubles and hospitalization - what kind of virus had you in misery? Is it contagious? (smile) I think we've had our share of agony for this year anyway. Yes, Psychosomatic Illness & Emotionally induced Illness are synonymous. But the Ell book I had was many more times as clear & readily understandable than the the psychosomatic book. Both are good ones. Do you mean you're going to Eureka California? Please let me know, I use to live there & have friends there. Possibly you may be able to do me a favor, if you feel so inclined. Write again soon - best wishes & return to good health. friend Ezra

Box 447
Lansing Kansas.

Perry Edward Smith inmate case file

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

PERRY EDWARD SMITH — Petitioner

vs.

No. 3386 H. C.

SHERMAN H. CROUSE, Warden
Kansas State Penitentiary — Respondent

FILED
OCT 23 1962
CHARLES W. CAHILL, Clerk
By Edward R. Delich Deputy

ORDER TO SHOW CAUSE

Upon the petition of Perry Edward Smith alleging that he is illegally detained in custody by Sherman H. Crouse, Warden of the Kansas State Penitentiary, and upon reading the verified petition and it not appearing upon the face of the petition that the applicant is not entitled to a writ of habeas corpus, it is hereby

ORDERED that Sherman H. Crouse, Warden of the Kansas State Penitentiary, appear before this court at Kansas City, Kansas, on the 30th day of October, 1962, at eleven o'clock a. m., to show cause, if any he has, why a writ of habeas corpus should not be issued herein as prayed for; and it is

FURTHER ORDERED that a copy of this order, a copy of the petition for writ of habeas corpus filed herein, and a copy of the stay order entered this date, be served upon the said Sherman H. Crouse, Warden of the Kansas State Penitentiary, and upon the Attorney General of the State of Kansas.

Dated at Kansas City, this 23rd day of October, 1962.

(Signed) ARTHUR J. STANLEY, JR.
Chief Judge

U. S. DISTRICT COURT)
DISTRICT OF KANSAS) ss.

I hereby certify that the foregoing is a true copy of the original on file in this court and cause.

CHARLES W. CAHILL, Clerk
By Edward R. Delich
Deputy

Dated: 10/23/62

10-23-62

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

PERRY EDWARD SMITH,
Petitioner
v.
SHERMAN H. CROUSE, WARDEN,
KANSAS STATE PENITENTIARY,
Respondent

No. 3386 H. C.

ORDER

Now on this 23rd day of October, 1962, upon the motion of the petitioner herein for leave to proceed in forma pauperis, petitioner appearing by and through his Court appointed counsel, and the Court after having examined the said motion and affidavit and for good cause shown, finds that said motion should be sustained.

It is therefore by the Court

ADJUDGED, That petitioner, Perry Edward Smith, be, and he is hereby, granted leave to proceed in these proceedings to a final determination thereof without the payment of costs and fees or to give any security therefor and for such other relief and orders as may seem just and proper to the Court in the premises.

(Signed) ARTHUR J. STANLEY, JR.

CHIEF JUDGE, U. S. DISTRICT COURT

Approved:

Robert H. Bingham

ROBERT H. BINGHAM

U. S. DISTRICT COURT)
DISTRICT OF KANSAS) ss.

I hereby certify that the foregoing is a true copy of the original on file in this court and cause.

CHARLES W. CAHILL, Clerk
By Robert M. Mills
Deputy
Dated October 23, 1962

FILED
OCT 23 1962
CHARLES W. CAHILL Clerk
By /s/ Robert M. Mills Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

PERRY EDWARD SMITH,
Petitioner

v.

SHERMAN H. CROUSE, WARDEN,
KANSAS STATE PENITENTIARY,
Respondent

No. 3386 H. C.

APPLICATION FOR STAY OF STATE COURT PROCEEDINGS AND STAY OF EXECUTION

Petitioner moves the court, pursuant to 28 U.S.C., Sec. 2251, to stay all state court proceedings, including the order of the Supreme Court of the State of Kansas, dated September 10, 1962, directing respondent to execute the sentence of death by hanging imposed upon petitioner herein by the District Court of Finney County, Kansas.

Petitioner further moves the court for an order directing the respondent, Sherman H. Crouse, Warden, Kansas State Penitentiary, to take no further action under and by virtue of the above order and warrant issued the same day by the Clerk of the Supreme Court of the State of Kansas directing respondent to execute said death sentence, all pending the determination of a habeas corpus proceedings now pending in this court.

/s/ Robert H. Bingham
ROBERT H. BINGHAM
518 Brotherhood Building-FAirfax 1-7500
Kansas City 1, Kansas

U. S. DISTRICT COURT)
DISTRICT OF KANSAS) ss.

I hereby certify that the foregoing is a true copy of the original on file in this court and cause.

CHARLES W. CAHILL, Clerk
By /s/ Robert M. Mills
Deputy
Dated: October 23, 1962

FILED
OCT 23 1962
CHARLES W. CAHILL, Clerk
By /s/ Robert M. Mills Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

PERRY EDWARD SMITH,
Petitioner

v.

SHERMAN H. CROUSE, WARDEN,
KANSAS STATE PENITENTIARY,
Respondent

No. 3386 H. C.

MOTION AND AFFIDAVIT FOR LEAVE TO FILE IN FORMA PAUPERIS

STATE OF KANSAS)
) SS.
COUNTY OF LEAVENWORTH)

Comes now the petitioner in the above and foregoing cause and respectfully moves this Court for leave to file the attached petition for writ of habeas corpus and proceed thereon in forma pauperis without pre-payment of costs or fees, under the authority of 28 U.S.C., Sec. 1915. Petitioner shows the Court that he is a citizen of the United States of America by birth and of lawful age; that he is without sufficient funds to pay the costs of this action, the filing fee herein or other cost deposit; and that such action is meritorious and is brought in good faith by this petitioner.

WHEREFORE, petitioner respectfully prays that this action be permitted to commence in forma pauperis under the above quoted authority.

Perry Edward Smith
PERRY EDWARD SMITH

Subscribed and sworn to before me this 22nd day of October, 1962.

William D. Powell
Notary Public

My commission expires:

Nov. 19, 1963

FILED
OCT 23 1962
CHARLES W. CAHILL, Clerk
By /s/ Robert M. Miller Deputy

U. S. DISTRICT COURT)
DISTRICT OF KANSAS) ss.

I hereby certify that the foregoing is a true copy of the original on file in this court and cause.

CHARLES W. CAHILL, Clerk
By Robert M. McCall
Deputy

Dated: Oct. 23, 1962

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

PERRY EDWARD SMITH,
Petitioner

v.

SHERMAN H. CROUSE, WARDEN,
KANSAS STATE PENITENTIARY,
Respondent

No. 3386 H. C.

FILED
OCT 23 1962
CHARLES W. CAHILL, Clerk
By /s/ Robert M. Mills Deputy

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable Arthur J. tanley, Jr.,
Chief Judge, United States District Court
for the District of Kansas:

The verified petition of Perry Edward Smith for a writ of habeas corpus respectfully shows the Court that:

1. Your petitioner is unlawfully restrained of his liberty by Sherman H. Crouse, Warden, Kansas State Penitentiary at Lansing, Kansas, and that the body of your petitioner and the said Sherman H. Crouse and the Kansas State Penitentiary at Lansing, Kansas, are all, and each of them, within, and subject to, the jurisdiction of this Court.

2. That this Court has jurisdiction to entertain this petition for writ of habeas corpus under the authority of the United States Constitution, Art. I, Sec. 9 and 28 U.S.C., Sec. 2241, et seq., as amended.

3. That the cause or pretext of said unlawful and illegal detention of your petitioner is the judgment of the Supreme Court of the State of Kansas, and warrant issued thereunder ordering the above-named respondent to carry into execution, on the 25th day of October, 1962, the sentence of death heretofore imposed upon this petitioner by the Honorable Roland H. Tate, Judge of the District Court of Finney County, Kansas, which sentence of death is to be executed on October 25, 1962.

4. That such judgment, sentence, restraint and imprisonment are illegal and void in that said judgment and sentence was procured without due process of law in violation of the Fifth and Fourteenth

Amendments to the Constitution of the United States and in violation of Art. I, Art. V and Art. X of the Bill of Rights of the Constitution of the State of Kansas.

5. That in compliance with the requirements of 28 U.S.C., Sec. 2254, your petitioner has heretofore exhausted the remedies available in the Courts of the State of Kansas, and further states that there is an absence of proper corrective process available within the judicial system of the State of Kansas which is effective to protect the rights of your petitioner.

WHEREFORE, to be relieved of the said unlawful detention, restraint, and imprisonment as aforesaid, your petitioner prays that this petition for writ of habeas corpus be granted and that this Court make its order directing the said Sherman H. Crouse, Warden, Kansas State Penitentiary at Lansing, Kansas, to appear before this Court at a time and place to be specified by the order of this Court and commanding the said Warden to produce the body of this petitioner before this Court at said time and place to show cause, if any, said respondent have, why the foregoing petition should not be granted and why a writ of habeas corpus should not be issued as here prayed.

DATED: October 22, 1962.

Perry Edward Smith
PERRY EDWARD SMITH

Robert H. Bingham
ROBERT H. BINGHAM
518 Brotherhood Building-FAirfax 1-7500
Kansas City 1, Kansas

U. S. DISTRICT COURT)
DISTRICT OF KANSAS) ss.

I hereby certify that the foregoing is a true copy of the original on file in this court and cause.

CHARLES W. CAHILL, Clerk
By Robert H. McCall
Deputy
Dated: October 23, 1962

STATE OF KANSAS)
) SS.
COUNTY OF LEAVENWORTH)

Perry Edward Smith, being first duly sworn, states: That he is the petitioner named in the above and foregoing petition subscribed by him; that he has read the same and knows its contents and that the said things and matters therein stated are true and correct.

Perry Edward Smith
PERRY EDWARD SMITH

Subscribed and sworn to before me this 22nd day of October, 1962.

William Davis
Notary Public

My commission expires:
Nov 19, 1963

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Feb 14747

PERRY EDWARD SMITH Petitioner

vs.

TRACY A. HAND, et al Respondents

No. 3253 H. C.

6-15-62

FILED
JUN 15 1962
CHARLES W. CAHILL, Clerk
By Robert M. Miller Deputy

MEMORANDUM OF DECISION AND ORDER

The petitioner is now confined in the Kansas State Penitentiary under sentence of death following conviction on four charges of murder in the first degree. The judgment of conviction was affirmed July 18, 1961, by the Supreme Court of Kansas. State v. Hickock and Smith, 188 Kan. 473, 363 P.2d 541.

He has now lodged a "Petition for Stay of State Proceedings and Declaratory Judgment on Jurisdiction" and "Motion and Supplemental to Habeas Corpus Adsubjiciendum."

On August 9, 1961, this court denied, without hearing, an earlier application by the petitioner. Smith v. Hand, 199 F. Supp. 333. The Court of Appeals of the Tenth Circuit affirmed. 296 F.2d 925.

As was held by this court in denying the earlier application, the court's first duty is to examine the application for the purpose of determining whether the facts therein alleged, if true, warrant the issuance of a writ. A careful examination of the application and motion leads me to the conclusion that no factual issues are presented by either.

In essence, the petitioner argues (1) that the Kansas statute (Kan. G.S. 21-403) violates petitioner's inalienable right to life, liberty and the pursuit of happiness; (2) that