

PUBLIC

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UA 85/07 Death penalty / Legal concern

USA (Indiana) **David Leon Woods (m), white, aged 42**

David Woods is scheduled to be executed in Indiana on 4 May 2007. He was sentenced to death in 1985 for the murder of Juan Placencia in 1984. David Woods has spent more than half of his life on death row.

On 7 April 1984, David Woods, Gregory Sloan and Patrick Sweet went to the apartment of Juan Placencia, a 77-year-old acquaintance of Woods' mother, with a plan to steal his television. According to the state's evidence, when the elderly man opened the door, David Woods stabbed him repeatedly. A television and some money were stolen. Gregory Sloan and Patrick Sweet received prison terms.

David Woods was 19 at the time of the crime. According to his clemency petition, "not presented at Woods' trial is a litany of graphic, troubling and horrific abuse suffered by Woods as a child... Undiscovered until post-conviction was the magnitude of the abuse. Woods was regularly beaten, starved, sadistically tortured, and left to fend for himself throughout his life... Prior attempts at intervention on Woods' behalf by the local welfare department were thwarted by a lack of resources and available services... Essentially Woods became a product of a failed family system and a failed welfare system".

Some evidence of David Woods' abusive background was raised at his trial, and the trial court found that his "turbulent childhood" was a "significant mitigating circumstance". Post-conviction appeals arguing that his lawyers failed to relate the extent of the abuse have been dismissed under the high bar set by the 1984 US Supreme Court decision, *Strickland v. Washington*. Under *Strickland*, an inmate has to prove not only that the lawyer's performance was deficient, but also that it affected the outcome of the trial. The *Strickland* decision instructed appeal courts that judicial scrutiny of a defence lawyer's performance must be "highly deferential", and "indulge a strong presumption" that the lawyer's performance was reasonable.

According to the US Court of Appeals for the Seventh Circuit in 2005, "Woods unquestionably came from a tragic background", and the jury had heard enough to be left in "no doubt that Woods had a truly horrific childhood". It noted that the jury was told how the defendant's mother "and the various men in her life took sadistic pleasure in physically abusing Woods and his siblings. In addition, the children frequently witnessed [the mother] herself being mercilessly beaten by these men". It recalled that at one point Woods' mother "became the 'mama' of a local motorcycle gang and regularly hosted wild parties at her home, during which much sex and drinking went on in the presence of the children. One evening, [the mother] 'offered' two of her daughters (aged 13 and 11) to some of the bikers". David Woods' father had abandoned the family when the boy was a few years old, and after that the family moved around the country, "often living in very unhealthy and impoverished conditions". The jury also heard some expert evidence on the effects that the abuse had had on David Woods, including depression, anger and emotional problems. A social worker, for example, testified that after he was placed in foster care, Woods was aggressive towards other children and against himself. One at least one occasion, he inflicted knife wounds to his own stomach and arms.

The Seventh Circuit acknowledged that the evidence discovered after the trial had "undeniably revealed additional, often unpleasant details about Woods' upbringing and the nature of the various abuses he suffered... For example, Woods points to additional details of his mother's neglect, such as chaining the refrigerator shut and giving food only as a reward for stealing. Other unsavoury facts... provided additional detail regarding Woods's and his siblings' physical and sexual abuse". However, it concluded that "Woods's claim boils down to the contention that his counsel did not present *enough* mitigating evidence", and that even if his lawyer's performance was deficient, "Woods cannot satisfy the prejudice prong of *Strickland*."

There is evidence that David Woods has borderline mental retardation, and an expert recently noted the "clear evidence of brain damage". In March 2007, the Indiana Supreme Court ruled that the evidence did not support a finding that David Woods had actual retardation which would render his execution unconstitutional. This issue is now in federal court. There are also ongoing challenges to Indiana's lethal injection procedures.

David Woods has been on death row for more than two decades. The US Supreme Court has not ruled whether prolonged confinement on death row violates the US Constitution, but individual Justices have raised concerns. In 1995, Justice Stevens wrote that executing a prisoner who had been on death row for 17 years arguably negated any deterrent or retributive justification for the punishment, supposedly the two main social purposes of the death penalty. If these goals no longer existed, he suggested, the outcome would be "patently excessive and cruel". In 2002, in the case of a Florida inmate who had been on death row for about 27 years, Justice Breyer stated that if executed, the prisoner would have been "punished both by death and also by more than a generation spent in death row's twilight. It is fairly asked whether such punishment is both unusual and cruel."

David Woods is due to be interviewed by the five-member Indiana Parole Board on 20 April at the Indiana State Prison. The Board will conduct a public hearing in Indianapolis on the morning of 23 April before voting on clemency later that day. The Board's non-binding recommendation will then be forwarded to the Governor.

Amnesty International opposes the death penalty in all cases, unconditionally. Since the USA resumed judicial killing in 1977, 1,070 inmates have been put to death. Indiana accounts for 17 of these executions. Capital justice in the USA is marked by arbitrariness, discrimination and error. A recently published study of Indiana's death penalty system noted that it had "aptly been called Indiana's 'other lottery.'" The Indiana report, conducted under the American Bar Association's (ABA) death penalty project, stated that "we are deeply troubled that [the death penalty] is not imposed in a fair or consistent manner upon only the very worst offenders who have committed the very worst of offences." Among the specific problems it identified were inadequate qualification standards for defence lawyers in capital cases. The ABA neither supports nor opposes the death penalty, although it supports a moratorium on executions.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words (please include David Woods' inmate number, #851765):

- expressing your sympathy for the family and friends of Juan Placencia, explaining that you are not seeking to condone the manner of his death, or to downplay the suffering caused;
- noting that David Woods was only 19 years old at the time of the crime, and emerging from what the US Court of Appeals has described as a "tragic" and "truly horrific" childhood of abuse and neglect;
- noting evidence that he has borderline mental retardation and brain damage;
- noting that he has been on death row for more than two decades, adding that US Supreme Court Justices have questioned whether an execution in such circumstances would be constitutional;
- noting that the power of executive clemency is not constrained in the way that the judiciary may be, and can take into account all aspects of a case which the courts have been unable to unwilling to reach;
- calling for clemency for David Woods.

APPEALS TO:

For appeals arriving before 23 April:

Indiana Parole Board, Indiana Government Center – South, Room E321
302 W. Washington Street, Indianapolis, Indiana 46204-2278, USA

Fax: +1 317 232 5738

Emails: rgentry@doc.in.gov (this is the Vice Chairman of the Board, Randall P. Gentry).

Salutation: Dear Board Members (or if sending email, Dear Mr Vice Chairman)

For all appeals between now and 4 May:

Governor Mitch Daniels, Office of the Governor, Statehouse, Indianapolis, Indiana 46204-2797, USA

Fax: +1 317 232 3443

Email via: <http://www.in.gov/gov/contact/index.html>.

Salutation: Dear Governor

COPIES TO: diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.