

**USA (Virginia)Walter Mickens (m), black, aged 47**

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Walter Mickens is scheduled to be executed in Virginia at 9pm local time on 12 June 2002. He was sentenced to death in 1993 for the murder of 17-year-old Timothy Hall. The case against Mickens was circumstantial.

Timothy Hall's body was discovered on 30 March 1992. At the time of his death, he was facing weapons and assault charges. On 3 April 1992 the judge dismissed the charges because of Hall's death. On 6 April, the next working day, the same judge appointed the lawyer who had been representing Hall to represent Walter Mickens. Neither the judge nor the lawyer disclosed to Mickens that he was being defended by the lawyer of the murder victim.

This matter remained undisclosed until it was discovered years later by Walter Mickens's appeal lawyer. However, the conviction and death sentence have been allowed to stand. Most recently, the US Supreme Court voted 5-4 against Mickens, holding that in such a case the defendant must prove that the conflict of interest adversely affected the lawyer's performance.

Amnesty International considers that Walter Mickens was sentenced to death after proceedings which failed to scrupulously protect his rights under international fair trial standards. As such, his execution would amount to an arbitrary deprivation of life in violation of the International Covenant on Civil and Political Rights (see below).

The four Supreme Court justices who dissented did so in no uncertain terms. Justice Souter said that Mickens must get a new trial, while Justices Breyer and Ginsburg said that in a case such as this, "automatic reversal [and a new trial] is required." Justice Stevens described the defence lawyer's concealment of his prior representation of Hall as "indefensible" and "a severe lapse of his professional duty". He continued: "Mickens had a constitutional right to the services of an attorney devoted solely to his interests. That right was violated. The lawyer who did represent him had a duty to disclose his prior representation of the victim to Mickens and to the trial judge. That duty was violated. When Mickens had no counsel, the trial judge had a duty to make a thorough inquiry and to take all steps necessary to insure the fullest protection of his right to counsel. Despite knowledge of the lawyer's prior representation, she violated that duty. We will never know whether Mickens would have received the death penalty if those violations had not occurred nor precisely what effect they had on [the lawyer's] representation of Mickens."

Justice Stevens added that "justice must satisfy the appearance of justice. Setting aside Mickens's conviction is the only remedy that can maintain public confidence in the fairness of the procedures employed in capital cases... A rule that allows the State to foist a murder victim's lawyer onto his accused is not only capricious; it poisons the integrity of our adversary system of justice".

**BACKGROUND INFORMATION**

The International Covenant on Civil and Political Rights (ICCPR), which the USA ratified in 1992, guarantees defendants the right to be represented by a lawyer of their choosing (Article 14.3.d). The state must provide a lawyer for those who cannot afford to pay for one. This particular provision does not expressly guarantee an absolute right of choice. However, the UN Human

Rights Committee, which is the body established by the ICCPR to monitor the treaty's implementation, has said that "legal assistance to the accused in a capital case must be provided in ways that adequately and effectively ensure justice". In that decision, involving a death penalty case in which the defendant had a well-founded reason not to want the appointed lawyer to continue to represent him, the Committee said that the accused should have been allowed to choose another lawyer, even if it required adjournment of proceedings (*Pinto v Trinidad*, 1990).

Walter Mickens should have been informed that his lawyer had represented the murder victim, and thereby been given the opportunity to insist upon different representation if he so chose. In effect, Walter Mickens was discriminated against on the grounds of his economic status. Because he could not afford his own counsel, the state appointed one. It did so without ensuring that the lawyer it appointed was not labouring under a conflict of interest, or ensuring that Mickens knew of any such potential conflict. Such discrimination violated Walter Mickens's right to be "equal before the courts and tribunals", as well as undermining his right to defence, both protected under Article 14 of the ICCPR.

Article 6 of the ICCPR covers the right to life. While recognizing that some countries still retain the death penalty, it imposes strict safeguards on its use, including that: "No one shall be arbitrarily deprived of his life" (Article 6.1). The Human Rights Committee holds that "as article 6 of the Covenant is non-derogable in its entirety, any trial leading to the imposition of the death penalty [even] during a state of emergency must conform to the provisions of the Covenant, including all the requirements of articles 14...". The carrying out of a death sentence which was the result of an unfair trial amounts to an arbitrary deprivation of life in violation of article 6(1).

Every state bar in the USA has an ethical rule prohibiting a lawyer from undertaking a representation that involves a conflict of interest unless the client has waived the conflict. Walter Mickens's lawyer's failure to reveal his representation of Timothy Hall clearly breached professional ethics and contravened the UN Basic Principles on the Role of Lawyers, which states that "in protecting the rights of their clients and promoting the cause of justice" they shall "at all times act...in accordance with the law and recognized standards and ethics of the legal profession".

The USA has executed 779 prisoners since resuming judicial killing in 1977. Eighty-five of these executions occurred in Virginia, second only to Texas.

**RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:**

- expressing sympathy for the family of Timothy Hall, and explaining that you do not seek to condone his murder or the suffering it will have caused;
- expressing deep concern that Walter Mickens was not informed that his court-appointed lawyer had represented Hall, a clear violation of ethics;
- noting that this failure breached international fair trial rights, and that his execution will therefore violate international law;
- noting that a failure to stop this execution can only damage public confidence in the US criminal justice system;
- calling on the governor to stop Walter Mickens's execution.

**APPEALS TO:**

Governor Mark R. Warner  
State Capitol, 3rd Floor  
Richmond, Virginia 23219, USA

**Fax: + 1 804 371 6351**

**E-mail (via website): [www.governor.state.va.us/Contact/email\\_form.html](http://www.governor.state.va.us/Contact/email_form.html)**

**Salutation:Dear Governor**

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

You may write a brief letter (not more than 250 words) to Letters to the Editor, *Richmond Times-Dispatch*, Box 85333, Richmond, Virginia 23293, USA. **Fax: +1 804 819 1216. E-mail: [letters@timesdispatch.com](mailto:letters@timesdispatch.com)**

**PLEASE SEND APPEALS IMMEDIATELY.**