

URGENT ACTION

ARIZONA SET TO KILL MAN FAILED BY TRIAL LAWYER

Jeffrey Landrigan, a 50-year-old Native American man, is due to be executed in Arizona, USA, at 10am on 26 October. Thirteen federal judges have argued that he should have had a hearing into his claim that he was inadequately represented at his 1990 trial. In 2007, the trial judge said that she would not have passed a death sentence if she had heard the mitigating evidence.

Chester Dyer was found dead in his flat in Phoenix on 15 December 1989. **Jeffrey Landrigan** was charged with the murder. He could not afford a lawyer, so the court appointed one to represent him – an attorney who had never worked on a death penalty case before. Jeffrey Landrigan rejected the prosecutor's offer of a 20-year prison term in return for a guilty plea to second-degree murder. The jury convicted him of first-degree murder. For the sentencing phase of the 1990 trial, the defence lawyer had prepared only two witnesses to testify. One was Jeffrey Landrigan's biological mother (who had abandoned him when he was six months old) and one was his former wife. However, Jeffrey Landrigan refused to allow either to testify. The judge sentenced him to death, although she found that he had not acted with premeditation.

The lawyer had not presented, or sought to present, any expert testimony on Jeffrey Landrigan's background. In 1998, a neuropsychologist concluded that a combination of inherited factors, prenatal exposure to drugs and alcohol, early parental rejection and troubled relationships with his adoptive family had "severely impaired" Jeffrey Landrigan's ability to function in society. In 1999, a federal District Court judge refused to hold an evidentiary hearing into the claim that the trial lawyer had been constitutionally ineffective by failing to investigate and present mitigating evidence of Jeffrey Landrigan's background of deprivation and abuse. In 2005, by nine votes to two, the US Court of Appeals for the Ninth Circuit concluded that the District Judge had abused her discretion by denying such a hearing. The majority concluded there was a reasonable probability that if the trial judge had heard the mitigating evidence that had been presented on appeal she would not have passed a death sentence (which the trial judge has herself since said). Even the two judges who voted against ordering the District Court to hold an evidentiary hearing agreed that the trial lawyer's preparation for the sentencing "fell below" professional standards.

In 2007, by five votes to four, the US Supreme Court overturned the Ninth Circuit's ruling, on the grounds that Jeffrey Landrigan would not have allowed his lawyer to present any mitigating evidence that he might have uncovered. The four dissenting Justices accused their colleagues of "pure guesswork".

PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:

- Acknowledging the seriousness of the crime for which Jeffrey Landrigan was sentenced to death;
- Expressing concern at the failure of Jeffrey Landrigan's trial lawyer to investigate available mitigating evidence;
- Noting that since 2005, 13 federal judges have argued that there should be a federal evidentiary hearing into the claim that his legal representation was constitutionally deficient and that this had altered the outcome of the trial;
- Noting that the trial judge herself has said she would not have passed a death sentence if she had heard the mitigating evidence that has been presented on appeal;
- Calling on the governor to grant clemency and commute Jeffrey Landrigan's death sentence.

PLEASE SEND APPEALS BEFORE 26 OCTOBER 2010 TO:

The Honorable Jan Brewer, Governor of
Arizona, 1700 West Washington,
Phoenix, Arizona 85007, USA
Fax: +1 602 542 1381
Email: azgov@azgov.com
Salutation: Dear Governor

Also send copies to diplomatic
representatives of the USA accredited
to your country. Please check with your
section office if sending appeals after
the above date.

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ADDITIONAL INFORMATION

According to the evidence raised on appeal, Jeffrey Landrigan's biological parents abused drugs and alcohol, and his teenage mother did so when pregnant with him. She abandoned him when he was six months old. His father was imprisoned around this time, and by the time of Jeffrey Landrigan's trial, he was on death row in Arkansas. The child was later adopted. His adoptive mother was also an alcoholic, and subjected him to emotional and physical abuse, including on one occasion hitting him so hard with a frying pan that it dented it. The boy began abusing drugs and alcohol from an early age. In 1998, a neuropsychologist concluded that a combination of inherited, prenatal, and early developmental factors had severely impaired Jeffrey Landrigan's ability to "function in a society that expects individuals to operate in an organized and adaptive manner, taking into account actions and consequences of their behaviour and their impact on society and its individual members". In the 2007 Supreme Court ruling, the four dissenting Justices noted, among other things, the trial lawyer's failure to complete a mental health evaluation of his client, "which we now know would have uncovered a serious organic brain disorder" and his failure to "consult an expert to explore the effects of [Landrigan's] birth mother's drinking and drug use during pregnancy". Also in 2007, the now retired trial judge concluded that had she heard the mitigating evidence, "especially the evidence of Mr Landrigan's organic brain damage, the impact of fetal alcohol syndrome on his behaviour, his genetic predispositions and the apparent abandonment by his birth mother", she would not have passed a death sentence. She emphasised that the neuropsychologist's 1998 report would have left her with "no choice" but to find that the mitigating circumstances were "sufficient to call for leniency".

At the trial, the state argued that Jeffrey Landrigan and Chester Dyer had engaged in a violent struggle after having sex. The prosecution argued that these were the only two people present in the apartment on the night of the murder. DNA testing since the trial has revealed that semen and blood from the crime scene were from two people, but excluded Jeffrey Landrigan as the source of either of the two DNA profiles. This would suggest that the state's theory of the crime presented to the jury was wrong.

Like most other US death penalty states, Arizona uses three drugs for executions by lethal injection – pancuronium bromide, potassium chloride, and sodium thiopental. There is currently a nationwide shortage of sodium thiopental, resulting in delays in executions in at least two states, Kentucky and Oklahoma. The pharmaceutical company Hospira is the sole manufacturer and distributor of sodium thiopental in the USA and it will reportedly not be able to make more of the drug available until March 2011 (in March 2010, Hospira wrote to the Ohio authorities to state its position that the company's products are meant to "improve or save lives" and that it does "not support the use of any of our products in capital punishment procedures").

Authorities in California recently revealed that they had obtained the drug with an expiry date of 2014, indicating that it cannot be a product of Hospira, whose last batch of sodium thiopental had expiry dates of 2011. On 8 October 2010, the Director of the Arizona Department of Corrections (ADC) informed a state court that "the Department has lawfully obtained the necessary chemicals under its current written protocol – sodium thiopental, pancuronium bromide, and potassium chloride – in sufficient quantity for an execution". Citing the recent developments in California among other things, Jeffrey Landrigan's lawyers are seeking to have the state reveal the source of the sodium thiopental, including ensuring that it has not unknowingly obtained "counterfeit or non-viable" drugs, from inside or outside the USA, which could result in an unconstitutional execution. The state has responded that "individuals or entities providing the necessary chemicals to ADC are performing ancillary functions in the execution procedure", and this information is "confidential". The litigation is continuing.

Amnesty International opposes the death penalty unconditionally in all cases. The USA has carried out 1,230 executions since it resumed judicial killing in 1977, 42 of them this year (see also <http://www.amnesty.org/en/library/info/AMR51/095/2010/en>).

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