

PUBLIC

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EXTRA 31/03

Death penalty

04 June 2003

USA (Indiana)

Joseph L. Trueblood (m), white, aged 46

Joseph Trueblood is scheduled to be executed in Indiana on 13 June 2003. He was sentenced to death in 1990 for the August 1988 murders of his former girlfriend Susan Bowsher and her two young children, Ashlyn Bowsher, aged 2, and one-year-old William Bowsher. All three were shot dead.

Joseph Trueblood initially pleaded guilty to shooting Susan Bowsher, and not guilty to the murder of the children. Even before this, Trueblood's then lawyer indicated to the judge that he believed his client should plead guilty and that he planned to "loosen [Trueblood] up" by taking him to the site where the bodies had been buried and by showing him videos of the exhumations. Sentencing for the murder of Susan Bowsher was deferred until after the trial for the children's murders. On the second day of this trial in February 1990, the prosecution introduced gruesome photographs of the children's dead bodies, and Joseph Trueblood's twin brother testified for the state that Joseph had confessed to all three killings. At the end of that day, the defence attorneys, with the assistance of their client's mother, convinced Joseph Trueblood to withdraw his not guilty plea and to plead guilty to the murder of the children. The absence of a plea arrangement suggests that the lawyers believed that if he pled guilty, the judge would not sentence him to death.

The trial judge ordered a pre-sentencing report by a probation officer. The latter interviewed Joseph Trueblood. In that interview, at which his lawyer was not present, Trueblood denied killing the children, but said that he had pleaded guilty because he believed a jury would sentence him to death. Based on this statement, Trueblood's trial attorneys sought to have Trueblood withdraw the guilty plea, and to themselves be allowed to withdraw from the case. Their motions were denied. Joseph Trueblood testified in court that he had not killed the children, and that he had only changed his plea because he believed that a jury would wrongly convict him. The judge told Trueblood that his testimony was "counterfeit". After a sentencing hearing in April 1990, the judge sentenced Joseph Trueblood to death.

The Indiana Supreme Court upheld the death sentence. However, in July 2001 a federal judge ruled that the Indiana court's finding that Trueblood's plea of guilty to the murder of Susan Bowsher had been "knowing and voluntary" had been unreasonable. This, he said, was because Trueblood had not been advised that his guilty plea was also an admission of an "aggravating circumstance", i.e. an additional factor making him eligible for the death penalty if he was later convicted of killing one or both of the children. The federal judge said that he "cannot imagine a greater consequence" in a capital case than this.

The federal judge also found that the Indiana Supreme Court had unreasonably applied US Supreme Court precedent when it found that Joseph Trueblood's lawyer had acted competently when he advised his client to plead guilty to the murder of Susan Bowsher. He wrote that the defence lawyer's "failure to understand the full consequences of the plea and failure to explain those consequences to Trueblood cannot be considered adequate representation." However, the state appealed against the federal judge's finding that Joseph Trueblood should receive a new trial, and in August 2002 the US Court of Appeals for the Seventh Circuit reinstated the death sentence.

Like many on death row in the USA, Joseph Trueblood comes from a background of abuse, and is mentally impaired. In post-conviction investigations, a mental health expert concluded that Joseph Trueblood suffered from post-traumatic stress disorder as a result of his abusive childhood. Prior to the 1990 trial, a clinical neuropsychologist found that Joseph Trueblood had brain damage and sub-average intellectual functioning. This testimony was not presented to the trial judge, because the trial lawyers thought it would suggest that Joseph Trueblood was not amenable to rehabilitation, and that the neuropsychologist's testimony would therefore conflict with that of another expert whom the defence presented on the issue of

the defendant's rehabilitative potential. However, the trial lawyers never asked the two experts for their view of this potential conflict, and in post-conviction proceedings both experts testified that, in their view, Joseph Trueblood would adapt well to the structured life of prison and that there would have been no conflict between their testimonies.

At a clemency hearing before the Indiana Parole Board on 27 May 2003, evidence was presented of Joseph Trueblood's exemplary prison record. The Board was also asked to consider the fact that he had once saved a woman's life who had been trapped in a burning building, and that he had also saved his cousin from drowning. The state presented its case against clemency. A friend of Susan Bowsher's urged the Board to allow the execution to go forward. She was quoted as saying: "We will be taking the life of a man who has admitted his guilt for the killing of two innocent children and their mother. I only wish Joe Trueblood could die three times over for the killing of three people". On 28 May, the Board voted to recommend that the Governor deny clemency. The case is now before the Governor.

Amnesty International opposes the death penalty unconditionally. Every death sentence is an affront to human dignity and every execution is a symptom of a culture of violence rather than a solution to it. The death penalty extends the suffering of one family, that of the murder victim, to another, the loved ones of the prisoner. Today, 112 countries are abolitionist in law or practice. The USA has put 855 men and women to death since resuming executions in 1977. Indiana accounts for 10 of these killings.

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

- expressing sympathy for the family and friends of Susan Bowsher and explaining that you are not seeking to condone the manner of her or her children's deaths or to minimize the suffering caused;
- opposing the execution of Joseph Trueblood;
- noting that the trial court did not hear evidence of Joseph Trueblood's brain damage, or of his possible post-traumatic stress disorder as a result of his abusive childhood;
- noting the federal court's finding that Joseph Trueblood should have been granted a new trial because he had not been advised of the consequences of his guilty plea;
- noting Joseph Trueblood's model record in prison and his saving of two lives, mitigating evidence not considered by any court;
- urging the Governor to commute Joseph Trueblood's death sentence.

APPEALS TO:

Governor Frank O'Bannon

Office of the Governor

State House Room 206

Indianapolis, IN 46204-2797, USA

Telegram: Governor Frank O'Bannon, Indianapolis, USA

Fax: +1 317 232 3443

Email: fobannon@state.in.us

Salutation: Dear Governor

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

You may also send brief letters (not more than 250 words) to:

Letters to the Editor, *Indianapolis Star*, PO Box 145, Indianapolis, IN 46206-0145, USA

Fax: +1 317 444 6800.

Email via website: <http://www.indystar.com/help/contact/letters.html>

PLEASE SEND APPEALS IMMEDIATELY.