

1 March 2001

Further information on EXTRA 04/01 (AMR 51/009/2001, 16 January 2001) and follow-up (AMR 51/019/2001, 5 February) - Death penalty / Legal concern

USA (Tennessee) Philip Ray WORKMAN, white, aged 45

On 26 February 2001, the US Supreme Court denied Philip Workman's appeal requesting a hearing into evidence that has emerged since his conviction. Two days later, the Tennessee Supreme Court set a new execution date of 30 March. Amnesty International is shocked at the refusal of the state and federal courts to grant a hearing into the evidence, which severely undermines confidence in the original verdict.

Philip Workman was convicted of the murder of a police officer, Lieutenant Ronald Oliver, during a robbery of a Memphis restaurant in 1981. Lt Oliver and two other officers were first to arrive at the scene. As Workman - who has never denied the robbery - fled, shots were fired and Lt Oliver was killed by a single bullet. At the trial, the two police officers testified that they had not fired, but admitted that they had not seen Workman shoot Oliver. An alleged eyewitness, Harold Davis, said that he had seen Workman shoot the officer. The defence lawyer conducted no forensic or ballistics analysis and did not investigate Harold Davis.

Since the trial, however, Harold Davis has retracted his testimony, saying he lied under police coercion. An eyewitness has come forward to say that at least one of the other officers fired his gun. Ballistics experts have stated that the fatal bullet could not have come from Workman's weapon, raising the possibility that Lt Oliver was killed by a shot fired by one of the other officers.

Five jurors from the original trial have signed affidavits that they would not have voted for a first-degree murder conviction, let alone the death sentence, if they had been presented with this evidence. Two state Supreme Court judges have suggested that clemency is merited in Workman's case.

In September 2000, the federal US Court of Appeals for the Sixth Circuit split 7-7 on whether to grant a hearing into the new evidence. Workman had needed one more vote.

When the Tennessee Supreme Court set the new execution date on 28 February 2001, one of the Justices dissented. Justice Birch believes that the Court should make a formal recommendation to Governor Sundquist that Workman's sentence be commuted because of two "extenuating circumstances". Firstly, he believes that Philip Workman's death sentence is disproportionate and excessive: "Oliver's death...was not brought about by any abnormally torturous or violent means compared to typical homicides. The record reflects that the jury did not find that the murder was premeditated. In addition, Workman's criminal record as disclosed at trial does not include any prior violent crimes... In my view, when the facts and circumstances of this case are considered, they are far less egregious than the circumstances of most cases in which the Tennessee Supreme Court has affirmed the sentence of death... Indeed, the facts of this case are less egregious than the facts of many cases the Court has reviewed in which a life sentence was imposed."

Secondly, Justice Birch wrote of the new evidence in the Workman case: "[I]t would not be improper to observe the uncontroverted fact that seven judges of the United States Court of Appeals for the Sixth Circuit, including the Chief Judge, have concluded that Workman's claims are sufficient to justify a formal hearing to more fully explore the merits of his claims. Moreover, it would not be improper to observe that, if true, Workman's allegations would be particularly serious because the evidence he offers undermines the theory pursued by the prosecution at trial, and furthermore the evidence allegedly was beyond Workman's reach at the time of his trial because of the actions of the prosecution [Workman's appeal lawyers claim that the prosecution withheld X-ray evidence supportive of the contention that Lt Oliver was not killed by a bullet from Workman's gun]... That Workman may be executed without ever having been afforded an opportunity to prove his claims in an evidentiary hearing before any court should be deemed an extenuating circumstance which, in my view, justifies issuance of the certificate of commutation."

The United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty state: "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts." This is clearly a case where execution would violate this standard.

In 2000, Lt Oliver's daughter and the daughter of Philip Workman united at a press conference to appeal for the execution not to go ahead.

FURTHER RECOMMENDED ACTION: Please send e-mail/telegrams/faxes/express/airmail letters IN YOUR OWN WORDS, in English or your own language, using the following guide:

- expressing sympathy for the family, friends and colleagues of Lieutenant Ronald Oliver, and stating that you do not condone violent crime;
- expressing deep concern that Philip Ray Workman is facing execution on the basis of perjured testimony from the only alleged eyewitness to the shooting;
- noting that ballistics experts have stated that the fatal bullet could not have come from Philip Workman's gun;
- noting that five jurors have said that they would not have voted to convict Philip Workman of first-degree murder, let alone vote for a death sentence, if they had known then what they know now;
- noting that seven federal judges voted for an evidentiary hearing, and noting the opinion of Justice Birch of the Tennessee Supreme Court;
- noting that the power of executive clemency exists to compensate for the rigidities of the courts;
- calling on the Governor to commute Philip Workman's death sentence.

APPEALS TO:

The Honourable Don Sundquist
 Office of the Governor
 State Capitol, Nashville, TN 37243-0001, USA
Fax: +1 615 532 9711
Tel:+1 615 741 2001
E-mail: dsundquist@mail.state.tn.us
Telegrams: Governor Sundquist, Nashville, TN, USA
Salutation:Dear Governor

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

You may write letters (no more than 250 words) to one of the following:

Letters to the Editor, *The Tennessean*, 1100 Broadway, Nashville, TN 37203, USA. **Fax: +1 615 259 8093. E-mail: jgibson@tennessean.com**

Letters to the Editor, *The Commercial Appeal*, Box 334, Memphis, TN 38101, USA. **Fax: +1 901 529 6445. E-mail: letters@gomemphis.com**

Letters to the Editor, *Knoxville News-Sentinel*, PO Box 59038, Knoxville, TN 37950-9038, USA. **Fax: +1 865 342 6404. E-mail: letters@knews.com**

Letters to the Editor, *Chattanooga Free Press*, PO Box 1447, Chattanooga, TN 37401, USA. **Fax: +1 423 757 6383. E-mail: ksponce@timesfreepress.com**

PLEASE SEND APPEALS IMMEDIATELY.