

EXTRA 91/99

Death pen**USA (Alabama)Victor Kennedy, aged 37, black**

---

Victor Kennedy is scheduled to die in Alabama's electric chair on 6 August 1999. He was sentenced to death in 1982 for the murder, during a burglary, of an 86-year-old white woman, Annie Laura Orr, at her home in the early hours of 24 December 1980.

At the time of the crime, Kennedy and his co-defendant, Darrell Grayson, also black, had been drinking heavily. They decided to burgle Annie Orr, who had occasionally hired Grayson to mow her lawn and carry out repairs in her home in the small town of Montevallo. Ms Orr was raped during the crime, and later died from suffocation as a result of having a pillowcase taped tightly around her head during the assault.

Victor Kennedy turned himself in on 24 December after he heard that the police were looking for him. He gave three statements to the police. In the first he said that he had waited outside the house for Grayson to come out. His second and third statements said that he had gone into the house, but had not taken part in the assault on Ms Orr. Unlike with Grayson, there was no forensic evidence positively identifying Kennedy as having raped Ms Orr.

Kennedy was 18 years old, of limited intelligence and education (see below), and suffering the after-effects of alcohol at the time of his interrogation. Despite this he was allowed to waive his rights to remain silent, to have a lawyer appointed as he was indigent, and to have that lawyer present during interrogation. The police officer who questioned him made little attempt to ensure that Kennedy genuinely understood these rights (known as "Miranda rights"). The officer testified at the trial that Kennedy had responded "yes" to his questions about whether he understood his rights, but that he had indicated no further understanding of them. The officer reportedly testified that Kennedy had "pretended to read [his Miranda rights] and did sign the waiver". The police neglected to tell Kennedy that he could be facing the death penalty. The three statements formed the main evidence against him at his subsequent trial. The rest of the evidence against him was circumstantial.

The federal courts have rejected Kennedy's claims that his Miranda rights were violated, ruling that he had missed his opportunity to raise this claim earlier in the appeals process. However, a District Court granted Kennedy a new trial and sentencing on two other grounds. Firstly, it ruled that he had received ineffective defence representation at the sentencing phase of the trial, because his lawyer had failed to investigate or present evidence of his low intelligence, traumatic childhood or possible lesser role in the crime, evidence which could have mitigated against a death sentence. The court also found that the prosecution had acted improperly, by failing to provide the defence with Grayson's statements, which included evidence that Kennedy may have had a lesser role in the killing.

However, the state appealed and in 1995 the US Court of Appeals for the 11<sup>th</sup> Circuit overturned the District Court's ruling. The higher court decided that Kennedy would not have benefited from Grayson's statements even if they had been made available, and that his claim of ineffective representation was barred on technical grounds, because he had not raised it earlier in the appeals process.

Between the ages of six and 11, Victor Kennedy lived in Missouri with his mother and her husband. The latter, who was not Victor's natural father, drank heavily and used heroin intravenously in the young boy's presence, as well as subjecting Ms Kennedy to severe beatings. On one occasion he stabbed her, and she had to wait until he was asleep before she could leave the house to seek medical attention. The beatings continued until Victor was about 14, as the husband would continue to come to the Kennedy home even after Ms Kennedy had left him. At 16, Victor Kennedy dropped out of school, where he had reportedly been put into special education classes because of his low ability, including in reading, writing, maths and science. At school his IQ was measured as from the mid-70s to mid-80s (a person of average intelligence would score 100).

Darrell Grayson, who was tried after Victor Kennedy, is now on death row. He does not have an execution date at present.

#### **BACKGROUND INFORMATION**

More than 400 prisoners have been executed in the USA in the past seven years, including 58 in 1999. Many on US death rows were too poor to afford a competent trial lawyer. Race continues to play a prominent role in who lives and who dies, with a death sentence the more likely outcome when the defendant is black, and/or the victim white. The most recent execution in Alabama, that of Brian Baldwin on 18 June 1999, went ahead despite widespread concern that his sentence was infected by racism and prosecutorial and police misconduct (see EXTRA 71/99, AMR 51/96/99, 15 June). He, too, was 18 at the time of his crime, black, indigent and convicted of killing a white person.

Amnesty International opposes the death penalty in all cases. Any death sentence is an affront to human dignity; any execution serves only to deepen a culture of violence in society.

#### **RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language:**

- acknowledging the appalling crime for which Victor Kennedy was sentenced to die, and expressing sympathy for the relatives of Annie Laura Orr;
- noting that a District Court found that Victor Kennedy's defence lawyer had been constitutionally ineffective;
- expressing concern that Victor Kennedy was sentenced to die by a jury who were not in a position to weigh up in mitigation his abusive childhood or his limited education and below average intelligence;
- expressing concern that the police took statements from Victor Kennedy without making adequate efforts to ensure that this learning disabled teenager genuinely understood his Miranda rights;
- urging the governor to grant clemency and commute Victor Kennedy's death sentence to a humane alternative.

#### **APPEALS TO:**

The Honourable Don Siegelman  
 Governor of Alabama  
 Alabama State Capitol  
 600 Dexter Avenue  
 Room N-104, Montgomery, Alabama 36130, USA  
**Faxes: + 1 334 242 0937 or 242 2335**  
**Telegrams: Governor Siegelman, Montgomery, Alabama, USA**  
**Telephone: + 1 334 242 7100**

**Salutation: Dear Governor**

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

**PLEASE SEND APPEALS IMMEDIATELY.**