

URGENT ACTION

MAN WITH SERIOUS BRAIN INJURY FACES EXECUTION

Cecil Clayton, a 74-year-old man, is due to be executed in Missouri on 17 March. He was sentenced to death for the murder of a police officer in November 1996. He has been diagnosed with dementia and a psychotic disorder stemming from a serious brain injury.

On 26 November 1996, Deputy Christopher Castetter was fatally shot in his patrol car as he arrived at the home of **Cecil Clayton's** girlfriend's mother in Purdy, Missouri. He had responded to a call that Cecil Clayton was trespassing on the property. Cecil Clayton was arrested, charged and convicted of first degree murder and sentenced to death at a jury trial.

Cecil Clayton had suffered a serious head injury in 1972 at the sawmill where he worked, when a piece of wood penetrated his skull and entered the right frontal lobe of his brain. The accident and subsequent surgery resulted in the loss of 20 per cent of his frontal lobe, and without timely rehabilitation treatment it led to changed behaviour and psychiatric problems. Cecil Clayton has been diagnosed with organic brain syndrome, dementia and a psychotic disorder, with his impairments having profound effects on his intellect, his judgment, and competency.

A forensic psychologist testified at a hearing in 2000 that in his opinion, Cecil Clayton had been unable to deliberate his actions at the time of the crime due to his mental defect, and that he had not been competent to assist his lawyers at the time of the trial. A psychiatrist who was appointed to assess Cecil Clayton's competence for execution in early 2014 at the request of the Director of the Department of Corrections found that he suffers from dementia, major depression, and a psychotic disorder. He noted the prisoner's history of visual and auditory hallucinations as well as his "delusional symptoms". He further noted another expert's opinion that Cecil Clayton's "religious preoccupation with a delusional intensity" rendered him incompetent for execution. However, he himself concluded that Cecil Clayton's belief that he would be saved by divine intervention did not preclude him from understanding the reason for and reality of his punishment. The psychiatrist stated that "the future mental status of an individual who is 74 years old, who suffers from traumatic brain injury, and who is chronically challenged with a number of medical problems, cannot be predicted with certainty". Two doctors who evaluated Cecil Clayton in January 2015 concluded that he is incompetent for execution. One of them said: "He is not simply incompetent legally, he would be unable to care for himself or manage basic self-care, were he not in a structured environment that takes care of him. He can shower, groom, eat, walk; it is his comprehension, judgment, memory, limited intelligence and social deficits that plague him".

Please write immediately in English or your own language:

- Calling for clemency for Cecil Clayton;
- Noting Cecil Clayton's serious brain injury and its contribution to his diagnosed dementia and psychotic disorder, which raises serious questions about his competence for execution in US law;
- Explaining that you are not seeking to downplay the seriousness of the crime or the suffering caused.

PLEASE SEND APPEALS BEFORE 17 MARCH 2015 TO:

Office of Governor Jay Nixon

P.O. Box 720, Jefferson City, MO 65102, USA

Fax: +1 573 751 1495

Email: via website <http://governor.mo.gov/contact/>

Salutation: Dear Governor

And copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date.

**AMNESTY
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ADDITIONAL INFORMATION

Cecil Clayton retained a lawyer for his trial who was inexperienced in capital cases. The lawyer sought the assistance of an experienced capital lawyer, but then proceeded to ignore this lawyer's advice that he should pursue a "diminished capacity" defence, based on Cecil Clayton's extensive history of brain damage, mental impairment and psychiatric disabilities. The trial lawyer decided instead to pursue a "reasonable doubt" strategy, despite the strength of the state's case. The trial lawyer later wrote to the consultant, "It was not until the trial had been completed and some days had passed before I fully realized how inadequate and inept I was in attempting to spare Cecil from the death penalty. As you pointed out to me, but I was unwilling to listen, our chances of succeeding in the first phase were minimal".

The jury did not hear the extent of Cecil Clayton's mental health problems that he experienced during the late 1970s and early 1980s after his traumatic brain injury, or that he had had other serious head injuries before that accident. Furthermore, the expert mental health evidence that was presented at the trial was denigrated by the prosecutor, who described it as "voodoo", "preposterous", and "an excuse". The jury voted to convict and the trial moved into the sentencing phase, at which the prosecutor rebutted the defence argument that the penalty should "fit the criminal as well as the crime" as being "nowhere in our law", asserting that the punishment need only fit the crime, even though, as a federal judge pointed out in the case in 2008, "capital cases not only permit, but *mandate*, that the punishment fit the criminal", that is, that there must be individualized sentencing. The prosecutor also described the proceedings as "legal niceties" that the defendant received but the victim had not because Cecil Clayton had elected to "play God". The jury voted for death.

The forensic psychologist who evaluated Cecil Clayton after the trial testified at the 2000 appeal hearing about the importance of rehabilitation therapy in such a case of brain damage and how it is necessary that such therapy begin within a year of the injury and that once two years have passed there is unlikely to be any significant amelioration in the person's condition. Cecil Clayton received no such therapy within this timeframe, and his mental health deteriorated over time. Also on appeal, his lawyers raised the claim that he was incompetent to proceed because his mental impairment affected his ability to communicate with them. He was placed in the US Medical Center for Federal Prisoners where a psychologist issued an extensive report, finding among other things that his IQ was 71, his memory was impaired, he had a psychotic disorder with hallucinations, moderate to severe cognitive impairment, and "severe executive dysfunction", and concluded that he was "likely not competent to proceed" with his appeals. The US District Court refused to stay the proceedings, however, and upheld his death sentence in 2006. The US Court of Appeals for the Eighth Circuit affirmed the District Court decision in 2008.

The psychiatrist who assessed Cecil Clayton in March for the prison authorities found that in addition to the dementia caused by the traumatic brain injury, a small stroke and possible "age related decline", Cecil Clayton had a psychotic disorder caused by the injury. The psychiatrist noted that "visual and auditory hallucinations have been reported and treated since his inpatient psychiatric treatment in Nevada State hospital in 1974-1975. Delusional symptoms are found throughout the records. Religious preoccupation with a delusional intensity are not uncommon in people who have psychotic disorders".

There have been 1,402 executions in the USA since judicial killing resumed there in 1977. Missouri accounts for 81 of these executions. There have been eight executions so far in the USA this year, one in Missouri. Amnesty International opposes the death penalty in all cases, unconditionally. There are 140 countries which are abolitionist in law or practice.

Name: Cecil Clayton
Gender m/f: m