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Death penalty / Legal concern

USA (California)

Donald Jay Beardslee (m), white, aged 61

Donald Beardslee is scheduled to be executed in California on 19 January 2005. He was sentenced to death in 1984 for the murder in 1981 of Paula Geddling. A recent examination has revealed that he suffers from severe brain damage, which the jurors who sentenced him to death did not know.

Paula Geddling and Stacy Benjamin were killed on 24 April 1981. According to the evidence presented at trial, William Forrester had given Stacy Benjamin money for drugs, but she had not delivered them. Forrester, Paula Geddling's estranged husband Ed Geddling, Ricarda Soria and Frank Rutherford planned to lure Stacy Benjamin to Donald Beardslee's apartment and force her to return the money. Donald Beardslee was not involved in the initial planning and had only known the others for a few weeks. Stacy Benjamin arrived at the apartment together with Paula Geddling, whom Frank Rutherford then shot in the shoulder. Geddling was subsequently put in a van and told she was being taken to hospital. However, she was instead shot, first by William Forrester and then by Donald Beardslee. The evidence as to who fired the fatal shot was inconclusive. Beardslee, Rutherford and Soria then drove off with Stacy Benjamin, and she was killed.

Paula Geddling's body was discovered on 25 April 1981, and Donald Beardslee's phone number was found in her pocket. The following day he provided the police with a detailed account and led them to Stacy Benjamin's body. He was charged with both murders on 3 May 1981. He was convicted by a jury on 18 October 1983. On 23 January 1984, he was sentenced to death by a second jury for the murder of Paula Geddling and to life in prison for the murder of Stacy Benjamin. The jury evidently struggled with its decision, deliberating for almost 23 hours over four days.

Donald Beardslee's clemency lawyers have revealed evidence of his mental impairment. An expert recently conducted an assessment of Beardslee and concluded that he suffers from severe brain damage, and that the right hemisphere of his brain is virtually non-functioning. The expert has concluded that in all likelihood he has suffered from this impairment since birth and it was exacerbated by serious head injuries he sustained when a teenager and in his early 20s. The expert has stated: "The profound, likely lifelong damage to the right hemisphere of Mr. Beardslee's brain made him unable to correctly process and contextualize information. The impairment produced confusion and then paranoia under most unfamiliar circumstances, particularly those that involved social interaction with a number of different individuals... These deficits and resultant behaviours were observed by Ricarda Soria at the time of the crimes... As the confusion and emotional tension increased, Mr. Beardslee was described as becoming strangely silent, and moving aimlessly from room to room, in a subdued and automatic fashion. Later, his actions were described as frankly unconscious."

The expert said that the severity of Donald Beardslee's mental impairment would likely have left jurors interpreting his flat demeanour as indicating a callous individual. Studies have shown that a perceived lack of remorse in a defendant is a highly aggravating factor in the minds of capital jurors. The prosecutor repeatedly depicted Beardslee as a remorseless killer, and told the jury that they could evaluate him from his demeanour in the courtroom. The jury was not presented with the evidence of brain damage, allowing the prosecutor to argue that the defendant was "not suffering from any mental disorder". In repeated resolutions in recent years, the United Nations Commission on Human Rights has called for an end to the execution of people with any form of mental disorder.

Donald Beardslee's lawyers have raised serious questions about his culpability, compared to the others involved in the crime, because of his mental impairment, his relative lack of involvement in the planning of

the crime, and his cooperation with the police. After his arrest, he had told the police that he was on parole for a second-degree murder conviction in Missouri. The prosecutor later used this conviction for the 1970 murder extensively in arguing for death. Yet there are serious questions around the reliability of that conviction, including an illegal police interrogation of Beardslee. In 1991, two California Supreme Court judges argued that Donald Beardslee's death sentence should be overturned because of the erroneous admission of this evidence, which was tainted by "egregious police conduct" and which could have tipped the jury towards a death sentence. The two judges were in the minority, however, and the death sentence was upheld.

At the trial, the jury sought information about the sentences imposed on Donald Beardslee's co-defendants. However, the request was denied. The co-defendants had been tried first. Ricarda Soria pleaded guilty to second-degree murder and received a 15-year to life prison sentence. William Forrester was acquitted. Frank Rutherford was convicted of the first-degree murder of Stacy Benjamin and is serving life imprisonment. Ed Geddlings was not charged. One of the two dissenting Supreme Court judges mentioned above wrote: "Defendant, Rutherford, Forrester, Soria, and Ed Geddlings were all engaged in the common criminal enterprise that culminated in the two murders. Nevertheless, only defendant was condemned to death. I recognize that "intracase" disproportionality may be found only if the capital punishment system has operated in an arbitrary and capricious manner. Plainly, the system operated in such a manner here... Put simply, it is altogether irrational to take the life of defendant in punishment for the killings and to spare the lives of all the others."

At the trial, the prosecutor argued that Donald Beardslee was "an extremely dangerous and merciless individual. He is, in short, a cold-blooded killer without compassion who may kill again for the slightest provocation. The death penalty will certainly deter him from ever killing again." The prosecutor stressed that Donald Beardslee would be dangerous even in prison. Donald Beardslee has proved the prosecutor wrong. He has had an exemplary disciplinary record in prison, without a single rules violation. He is said to present no danger to the staff or inmates, to have worked diligently and competently for various correctional officers, and contributed to the overall safety of prison staff.

Amnesty International opposes the death penalty in all cases. Today, 118 countries are abolitionist in law or practice. The USA has carried out 945 executions since 1977, including 59 in 2004 and one in 2005. California has carried out 10 executions since 1977, the last one in January 2002.

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

- expressing sympathy for the families of Stacy Benjamin and Paula Geddlings, explaining that you are not seeking to condone the manner of their deaths, or to minimize the suffering caused;
- expressing concern that the jurors who sentenced Donald Beardslee to death for the murder of Paula Geddlings were unaware of his serious mental impairment, noting that even without this evidence they struggled to reach a verdict;
- expressing concern at the evidence of disproportionality of sentencing in this case;
- noting that Donald Beardslee has been a model prisoner, showing the prosecutor's predictions of his future dangerousness in prison to have been wrong;
- urging the Governor to grant clemency and to commute Donald Beardslee's death sentence.

APPEALS TO:

Governor Arnold Schwarzenegger, State Capitol Building, Sacramento, CA 95814, USA

Fax: +1 916-445-4633

Email via: <http://www.govmail.ca.gov>

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.