

URGENT ACTION

EXECUTION SET FOR MAN DEFENDED BY LAW CLERK

Michael Brawner is due to be executed in Mississippi on 12 June for a quadruple murder in 2001. His pre-trial representation was mostly conducted by a "law clerk" who had failed his state bar exam, and only became a practising lawyer on the first day of the trial.

On 25 April 2001, 24-year-old **Michael Brawner** shot dead Barbara Brawner, from whom he had been divorced the previous month, her parents, Jane and Carl Craft, and his four-year-old daughter, Candice Paige Brawner, at the Craft home in rural northern Mississippi. He was arrested the following day at his fiancée's apartment.

The trial judge appointed a lawyer for the indigent Michael Brawner, and appointed a "law clerk" to assist. This individual was a law school graduate who had failed his state bar exam. He managed to pass the exam in early 2002, and was admitted to the practice of law on 8 April 2002, the first day of the Brawner trial. The judge appointed him as co-counsel on the defence, and noted that he was "in court today for the first time as a lawyer". According to Brawner's current lawyers, it was the clerk who had handled the bulk of the pre-trial defence work. For example, he, not the lawyer, discussed with Michael Brawner the prosecution's offer of a life-without-parole sentence in return for a guilty plea, which Brawner rejected, and advised Brawner on whether he should plead not guilty by reason of insanity (which was the plea eventually submitted). The only defence witness presented at the guilt phase was the defendant, with no expert evidence to support the insanity plea. After a three-day guilt phase, the jury deliberated for half an hour before finding Brawner guilty of four counts of capital murder.

The lead lawyer delegated the preparation of mitigating evidence to the clerk, but the latter's time sheets indicate that he did no investigation to this end. Towards the end of the guilt phase of the trial, the lead lawyer asked the defendant (outside the jury's presence): "Mr Brawner, do you wish me to try and get you 'life' or 'life without parole', if you are, in fact, found guilty of any of these counts by the jury? In other words, it's what the lawyers call 'put on a mitigation case'..." The lawyer said that a psychologist was available to present mitigating evidence. However, she had been retained only to evaluate whether Brawner was competent to stand trial and sane at the time of the crime. In an affidavit in 2011 she said that she had never met or spoken to the lead lawyer, only to the clerk, and that the lawyer's suggestion that she had been ready and willing to present mitigation was "simply not true".

Michael Brawner responded that he did not want mitigation, saying, "I don't feel that I deserve life to live". This was surely not an informed decision if his lawyer was unaware of the range of mitigation evidence available and unable to advise him fully of his options. Evidence that could have been introduced at the sentencing included details of a childhood of severe abuse, parental alcohol and drug abuse, and a diagnosis of post-traumatic stress disorder.

Please write immediately, in English or your own language:

- Explain that you are not seeking to excuse these murders or to downplay the suffering caused;
- Express concern that Michael Brawner was in effect represented before his trial by a law clerk, not a lawyer;
- Note that his jury did not hear mitigating evidence of his severe childhood abuse and mental health problems;
- Opposing the execution of Michael Brawner and calling on the governor to grant him clemency.

PLEASE SEND APPEALS BEFORE 12 JUNE 2012 TO:

Governor of Mississippi, Phil Bryant, PO Box 139, Jackson, MS 39205, USA

Fax: +1 601 359 3741

Email: go to <http://www.new.ms.gov/Pages/PortalHome.aspx> and click on "Meet the Governor"

Salutation: **Dear Governor**

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

**AMNESTY
INTERNATIONAL**



URGENT ACTION

EXECUTION SET FOR MAN DEFENDED BY LAW CLERK

ADDITIONAL INFORMATION

The sentencing phase of Michael Brawner's trial began and ended on the afternoon of 11 April 2002 and after a little over an hour of deliberation the jury returned four death sentences. In 2011, Dr Marsha Little-Hendren signed an affidavit about her involvement in the case. She was the psychologist retained before the trial to evaluate Michael Brawner's competence to stand trial and his sanity at the time of the crime (she found him competent and sane). In her affidavit, Dr Little-Hendren asserted that she had been contacted by the defence only shortly before the trial, leaving her about a week to make an evaluation report. She said that she had been provided with "virtually no background on Michael's mental health history, family life, physical injury or traumatic events that he had endured". Her limited contact with Michael Brawner, she said, revealed to her that he might have depression and post-traumatic stress disorder (PTSD) and possible brain injury from a serious car accident in 2000.

A psychosocial assessment of Michael Brawner conducted since the trial described his childhood as "full of chaos, turmoil, rejection and parental abuse and irresponsibility." It said that Brawner "experienced sexual abuse, physical abuse, emotional abuse, domestic violence between his parents, alcohol and drug abuse by his parents and incarceration of his father". It said that he had "demonstrated increasing problems as he grew up", but that "these problems were not taken seriously and only got worse as he matured." When Michael Brawner was eight he witnessed the rape of his seven-year-old sister by his father, something that went on for the next five years. According to Brawner's current lawyers, "in order to silence him, Michael's father beat him harder and more frequently... The abuse became so regular and so severe that Michael constantly had to miss school in order to recover from the beatings." Eventually, when Michael was 14, his father was charged with rape, pled guilty to sexual battery of his own daughter, and was sentenced to 20 years in prison, eventually serving seven. Around this time in 1991, the 14-year-old Michael Brawner was hospitalized for two months and diagnosed with polysubstance dependency and PTSD.

In an evaluation of Michael Brawner conducted in 2009, a psychologist/neuro-psychologist reported that Michael Brawner had told him that "mitigation was not even mentioned to him until the trial was underway". His report referred to Brawner's "horrific" childhood, and provided a diagnosis of bipolar disorder and PTSD, and noted that "issues related to his "background, childhood experiences and mental and emotional disturbance" had not been presented in mitigation.

The 1984 US Supreme Court ruling *Strickland v. Washington* places a substantial obstacle to a successful claim of inadequate assistance of counsel. "Judicial scrutiny of counsel's performance", wrote the Court, "must be highly deferential" and the reviewing court "must indulge a strong presumption that counsel's conduct" was reasonable. If the performance was unreasonable, the prisoner still has to show that, "but for counsel's unprofessional errors, the result of the proceeding would have been different." In 2004, applying such standards, the Mississippi Supreme Court rejected the claim that Michael Brawner had been denied his right to effective assistance of counsel, saying that he had "made an informed and voluntary decision not to present mitigating evidence". The Court noted that Dr Little-Hendren had been ready to present mitigation – apparently taking as accurate the lead lawyer's assertion to this effect. She has since said that this was "simply not true" and that she had not even been retained to develop a mitigation case. Under the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996, federal judicial review of state court decisions must be highly deferential. The federal courts have upheld the death sentences.

Amnesty International opposes the death penalty in all cases, unconditionally. There have been 1,295 executions in the USA since 1977, 18 of them in Mississippi. There have been 18 executions in the USA in 2012, three of them in Mississippi.

Name: Michael Brawner
Gender m/f: m

UA: 155/12 Index: AMR 51/040/2012 Issue Date: 1 June 2012