

**USA (Nevada) Thomas NEVIUS, black, aged 44**

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A clemency hearing will be held for Nevada death row prisoner Thomas Nevius on 11 April 2001, four days before his 45<sup>th</sup> birthday. He has been on death row for nearly two decades, having been sentenced to death in 1982 for the murder of David Kinnamon. If clemency is denied, the state will move to set an execution date.

David Kinnamon was killed in Las Vegas in July 1980 as he returned from work to find burglars in his apartment. As the four intruders fled through a window, one of them fired a gun and David Kinnamon was shot dead. His wife, Rochelle Kinnamon, was subjected to an attempted sexual assault during the crime.

Two of the four intruders pleaded guilty to first-degree murder and were sentenced to life imprisonment. A third, Thomas Nevius's younger half-brother, pleaded guilty to voluntary manslaughter and received probation in return for testifying against Thomas Nevius.

Thomas Nevius's trial lawyer, who had never handled a capital case before, has stated in an affidavit that his inexperience meant that Nevius did not receive the quality of representation that a capital case demands. For example, the jury was left unaware of the defendant's mental disability. Thomas Nevius, whose childhood was marked by appalling poverty and deprivation, was in special education at school, and his IQ was measured as low as 64 at the time (an IQ of under 70 is an indicator of retardation). In 2000, an expert concluded that Nevius has mental retardation, with an IQ of 68. A second expert, a neuropsychologist, reached the same conclusion, adding that Thomas Nevius has brain damage. Six of the jurors from the original trial have signed affidavits that they would not have voted for execution if they had known this.

During jury selection, the Clark County prosecutor removed all four black and both Hispanic jurors. He thereby ensured that Thomas Nevius, who is African American, would be tried in front of an all-white jury for the murder of a white man and the attempted sexual assault of a white woman. A former prosecutor in the Clark County District Attorney's office has said that it was the practice at the time "to attempt to remove all African-American jurors in cases in which the defendant was African-American". Other lawyers have signed affidavits making the same claim.

Thomas Nevius's trial lawyer later alleged that the prosecutor said to him in a conversation after the trial: "You don't think I wanted all those niggers on my jury, did you?", and, in reference to the removal of jurors, "I did a good job of that, didn't I?" Without holding an evidentiary hearing, the Nevada Supreme Court ruled that the lawyer's allegations were not credible because he had taken too long to raise them. In so doing, the court implied that the lawyer, now an administrative law judge, committed perjury in making the claims. The prosecutor has not unequivocally denied making the comments, but has stated that if he did, it was in response to the defence lawyer's own use of the term "niggers" in their conversation.

An expert in eyewitness testimony has reviewed the case and concluded that the state's key witness, Rochelle Kinnamon, may have mistakenly identified Thomas Nevius as the gunman. Eyewitness identification is notoriously unreliable, particularly cross-racial identifications made under traumatic,

life-threatening conditions, as was the case here. While Thomas Nevius's claim is not one of actual innocence - his involvement in the burglary that led to the murder was enough to sustain a verdict of first-degree murder under Nevada law - the fact that he is the only defendant who received a death sentence, coupled with his mental disability, raises profound questions of fairness.

For more information on this case, see *Nevada's planned killing of Thomas Nevius* (AMR 51/001/2001, March 2001), which UA participants may wish to consult before sending their appeals (it is available on [www.amnesty.org](http://www.amnesty.org)).

#### **BACKGROUND INFORMATION**

A bill will shortly be introduced into Nevada's legislature proposing to ban the death penalty for people with mental retardation. Thirteen of the 38 US death penalty states have such legislation in place. International standards oppose the use of the death penalty against people with mental retardation, and also require that capital defendants must be provided with "adequate assistance of counsel at every stage of the proceedings, above and beyond the protection afforded in non-capital cases". The state has violated both safeguards in this case.

The Nevada Board of Pardons consists of the state's Governor, Attorney General and the seven justices of the state Supreme Court. A majority of the Board must vote for clemency before the death sentence can be commuted, and the Governor must be among that majority.

#### **RECOMMENDED ACTION: Please send faxes/express/airmail letters in English, IN YOUR OWN WORDS, or your own language, using the following guide:**

- expressing sympathy for the relatives and friends of David Kinnamon, and explaining that you are not seeking to condone the manner of his death;
- noting that six jurors have stated that they would not have voted for execution if they had known of Thomas Nevius's mental retardation;
- noting that the Nevada legislature will soon consider legislation to outlaw the use of the death penalty against defendants with mental retardation, as 13 other US states have already done;
- expressing deep concern at the allegations of racial discrimination;
- noting that doubts exist about whether Thomas Nevius, the only one of the four co-defendants to receive a death sentence, was the person who actually shot David Kinnamon;
- urging the Board to uphold standards of decency, fairness and justice recognized around the world, and to grant clemency to Thomas Nevius.

#### **APPEALS TO:**

Susan McCurdy  
Executive Secretary  
Nevada Board of Pardons  
1445 Hot Springs Road, #108-B  
Carson City, Nevada 89711, USA

**Fax: + 1 775 687 6736**

**Salutation: Dear Board Members**

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

If possible, please send copies of your appeal to:  
Law Offices of the Federal Public Defender,

330 South Third Street, Suite 700, Las Vegas, NV 89101, USA  
**Fax: + 1 702 388 6261**

You may also send brief letters of concern (not more than 250 words) to:

Letters to the Editor, *Las Vegas Review Journal*, PO Box 70, Las Vegas, NV 89125, USA. **Fax: +1 702 383 4676, E-mail: [letters@lvrj.com](mailto:letters@lvrj.com)** (do not send letters as attachments to e-mails, but as straight e-mails).

Letters to the Editor, *Las Vegas Sun*, 2275 Corporate Circle Drive, Suite 300, Henderson, NV 89014-7720, USA. **Fax: +1 702 383 7264. E-mail: via website: <http://www.lasvegassun.com/opinion/debate/>**

**PLEASE SEND APPEALS IMMEDIATELY.**