

PUBLIC

AI Index: AMR 51/072/2003

EXTRA 28/03

Death penalty / Legal concern

12 May 2003

**USA (Tennessee)
52**

Abu-Ali Abdur'Rahman (m), black, aged

Abu-Ali Abdur'Rahman is scheduled to be executed in Tennessee on 18 June 2003. He was convicted in 1987 of the murder of Patrick Daniels, who was stabbed to death in 1986.

International safeguards require that capital defendants receive adequate representation at all stages of proceedings. The quality of Abu-Ali Abdur'Rahman's representation at the guilt/innocence stage of his trial has been called into question, and at the sentencing phase - when his lawyers were supposed to defend him from the death penalty - it patently failed to meet this standard.

At the sentencing phase, the defence presented none of the abundant mitigating evidence available. As a child, Abdur'Rahman had suffered appalling abuse at the hands of his father, a military policeman. This included being stripped, tied up, and locked in a cupboard; being struck on the penis with a baseball bat; and being made to eat a pack of cigarettes as punishment for smoking, and when he vomited, forced to eat the vomit. The jurors were also left unaware that Abdur'Rahman had a history of serious mental health problems, or that he had manifested symptoms of mental illness following his arrest two days after the crime. He has been diagnosed with Post-Traumatic Stress Disorder (PTSD).

In 1998, a US District Judge overturned the death sentence, writing that Abdur'Rahman had been "seriously prejudiced by utterly ineffective assistance of counsel at his sentencing hearing". He is the only judge to have heard live testimony from the numerous witnesses who were not called at the trial. He said the "overwhelming" nature of their and other evidence "compels" the conclusion that the death sentence "cannot stand". In Tennessee, only a unanimous jury can pass a death sentence. If the trial lawyers had presented the mitigating evidence, the judge wrote, "there is more than a reasonable probability that at least one juror would have voted for a life sentence rather than the death penalty".

It would seem that he was right. Eight of the nine jurors contacted by the appeal lawyers now say that they might or would not have voted for death if they had heard the evidence in question. In his affidavit, for example, the jury foreman states: "It is my belief and opinion that this evidence would have made a significant difference in the sentencing phase of the trial. Further, given the nature of the evidence I would further offer for consideration that the death penalty be overturned in this case".

The death sentence has nevertheless survived the appeal process, with the state successfully relying on legal technicalities to keep the appeal courts from reviewing the case in its entirety. In 2000, a three-judge panel of the Sixth Circuit Court of Appeals overturned the District Judge's 1998 ruling and reinstated the death sentence. One of the three judges issued a strong dissent, citing the "constitutionally inadequate" defence Abdur'Rahman had received at the sentencing phase.

In January 2002, a Tennessee Supreme Court Justice noted that even the two Sixth Circuit judges who voted to reinstate the death sentence "did not seriously challenge the finding that Abdur'Rahman had received deficient representation". He continued: "[I]t certainly seems inconsistent with visceral notions of fairness and justice that this state should impose the ultimate and irreversible penalty of death upon a man whose opportunity to defend himself in court was compromised by the proven ineptitude of his attorneys." The state Supreme Court Justice concluded that the Governor should commute the death sentence.

In addition, doubts persist as to whether Abu-Ali Abdur'Rahman was the person who actually stabbed Patrick Daniels. The Davidson County prosecutor mainly relied on the testimony of Abdur'Rahman's co-defendant,

Devalle Miller, to persuade the jury that Abdur'Rahman had wielded the knife. Miller avoided the death penalty in exchange for his testimony and a guilty plea to second degree murder, for which he was paroled after six years in prison. The unreliability of such testimony is reflected in rules since adopted by the Davidson County prosecutor's office: "The death penalty will not be sought in cases where the evidence consists of the uncorroborated testimony of a single eyewitness or of a cooperating co-defendant or accomplice". Under these rules, it is unlikely that the prosecutor could have sought the death penalty for Abu-Ali Abdur'Rahman in the first place.

Abdur'Rahman himself does not deny that he was involved in the crime, but has consistently claimed that he cannot remember the stabbing itself, a possible sign of a PTSD blackout. Forensic testing found no blood on a long wool coat he was wearing, despite the bloodiness of the crime scene. In an internal memorandum before the trial, the prosecutor noted this forensic report and wrote that "if the defendant did wear his coat the entire time he obviously was not present when the stabbing occurred". However, he did not make Abu-Ali Abdur'Rahman's trial lawyers aware of the report. In their affidavits, several of the jurors expressed concern that they did not know about the forensic report's findings. Studies have shown that residual doubt about a capital defendant's guilt is the most powerful mitigating factor against a death sentence in the minds of capital jurors. The prosecutor's failure to tell the defence about the forensic report is one of a number of instances of prosecutorial misconduct attributed to this official in this and other cases. It has also been claimed that the prosecution unfairly dismissed prospective black jurors during jury selection (see page 47, *USA: Death by discrimination – The continuing role of race in capital cases*, AMR 51/046/2003, April 2003).

In April 2002, the US Supreme Court issued a stay of execution about 36 hours before Abu-Ali Abdur'Rahman was due to be put to death. In December, however, it announced that its decision to look at the case had been "improvidently granted", and dismissed the appeal.

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 family and friends of Patrick Daniels;
- expressing concern that the jury never heard compelling mitigating evidence because of the failure of Abu-Ali Abdur'Rahman's trial lawyers, and noting that eight of the jurors now say they might or would not have voted for death if they had heard such evidence;
- expressing concern at residual doubts about Abu-Ali Abdur'Rahman's guilt, that the jurors were unaware that no blood had been found on his coat, and that several of them have raised this issue in their affidavits;
- arguing that the jury's sentencing decision cannot, in good conscience, be relied upon to carry out this execution;
- arguing that the power of executive clemency exists to compensate for the rigidities of the courts and to prevent irrevocable errors in convictions or sentencing;
- calling on the governor to commute this death sentence in the name of fairness and decency, as well as the reputation of his state.

APPEALS TO:

Governor Phil Bredesen,
Governor's Office,
Tennessee Capitol State,
Nashville, TN 37243-0001, USA.

Telegrams: Governor Phil Bredesen, Nashville, Tennessee, USA

Fax: +1 615 532 9711.

Email: Phil.Bredesen@state.tn.us

Salutation: Dear Governor

COPIES TO: Diplomatic representatives of USA accredited to your country.

You may also copy your appeals or send brief letters of concern (not more than 300 words) to:

Letters to the Editor, *The Tennessean*, 1100 Broadway, Nashville, TN 37203, USA.

Email: letters@tennessean.com . Fax: +1 615 259 8093.

PLEASE SEND APPEALS IMMEDIATELY.