

EXTRA 57/01

Death pen

USA (Ohio) John Byrd, white, aged 37 (m)

John Byrd is scheduled to be executed in Ohio on 12 September. He was sentenced to death in August 1983 for the murder of Monte Tewkesbury in Cincinnati in April of that year. Byrd, who was 19 at the time, admits that he was present at the crime, but maintains that he did not kill Tewkesbury.

Monte Tewkesbury, 40, was wounded during a robbery of the store where he worked. He was stabbed once, lived long enough to describe the robbers as two masked men, and died two hours later. At about that time, police stopped a van with John Byrd, John Brewer and William Woodall inside. All three were charged with murder, with Byrd charged as the actual killer, making him alone liable to the death penalty. Brewer and Woodall, who was the getaway driver, were tried separately and received prison terms.

Since the convictions, John Brewer has claimed that it was he who stabbed Tewkesbury. He signed affidavits to this effect in 1989 and 2001, and other inmates have stated that he confessed to them as far back as 1985. Byrd's clemency petition states that other evidence also points to Brewer as the killer: for example, a shoeprint on the counter in the store matched Brewer's shoes - Tewkesbury was behind the counter when he was stabbed.

The evidence that it was Byrd who stabbed Tewkesbury came from a jailhouse informant, Ronald Armstead, who claimed that Byrd confessed to the killing in jail. When a three-judge panel of the Sixth Circuit Court of Appeals upheld Byrd's death sentence in 2000 by two votes to one, the majority noted: "All agree that Armstead's testimony was vitally important to the jury's determination". The third judge added that his testimony "provided the only meaningful distinction between Byrd and co-defendant John Brewer". The jury was told that Armstead had no cases pending against him, and therefore it had no reason to believe that he had anything to gain from his testimony. This was not true. At the time of Byrd's trial, Armstead had a pending parole violation hearing at which he faced up to 15 years in prison. In the event, Armstead was paroled two months after Byrd's trial, with the support of the prosecutor's office. Prior to the trial, the same office had vigorously opposed parole for Armstead; during the trial, the prosecutors went out of their way to vouch for Armstead, describing him as one of "our people" and "real genuine", believed by the state and therefore to be believed by the jury. Since the trial, several jail inmates from the time have signed affidavits claiming that Armstead's testimony was false.

The dissenting Sixth Circuit Judge wrote: "the stark and chilly choice here is between due process or death... It is clear that the cumulative effect of the numerous prosecutorial improprieties in this case denied Byrd a constitutionally fair trial... In these circumstances, judicial neglect transforms the justice system into an accomplice to constitutional transgression". The Sixth Circuit later refused, by seven votes to six, to have the full court reconsider the appeal.

The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty states: "Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts". This execution would contravene this international safeguard.

BACKGROUND INFORMATION

US capital justice is marked by discrimination, arbitrariness and error. Since 1973, 96 prisoners have been released from death row after evidence of their innocence emerged. Others have gone to their deaths despite serious doubts about their guilt. In 2000, the Illinois governor imposed a moratorium on executions in his state because of its "shameful" record of wrongful convictions. An earlier investigation by the *Chicago Tribune* found that "capital punishment in Illinois is a system so riddled with faulty evidence, unscrupulous trial tactics and legal incompetence that justice has been forsaken". Among its findings was that "in at least 46 cases where a defendant was sentenced to die, the prosecution's evidence included a jailhouse informant - a form of evidence so historically unreliable that some states have begun warning jurors to treat it with special scepticism."

Since the USA resumed executions in 1977, 727 prisoners have been put to death, two in Ohio. John Byrd has chosen electrocution rather than lethal injection in protest at what he says will be the execution of the wrong man. Ohio's head of prisons recently called for the state's electric chair to be retired because of its traumatic effect on witnesses and the risk of "something going wrong". John Byrd was hours from electrocution in 1994, his head already shaved, when his execution was blocked by the courts.

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 Monte Tewkesbury;
- expressing concern that the jurors were unaware that Ronald Armstead stood to gain early parole as a result of his testimony against John Byrd;
- noting that John Brewer has repeatedly confessed to the murder;
- noting that other inmates have signed affidavits bolstering Brewer's confession and undermining Armstead's testimony, and that their claims should be afforded at least as much credence as the state gave to Armstead;
- arguing that even death penalty supporters should be concerned at an execution based on the disputed testimony of a jailhouse informant, noting that such testimony is notoriously unreliable;
- calling for commutation of the death sentence, in line with international safeguards relating to capital punishment.

APPEALS TO:

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

You may also write (not more than 250 words) to "Letters to the Editor" at:

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PLEASE SEND APPEALS IMMEDIATELY.