

Edward Jerome ("E.J.") Harbison is due to be executed in Tennessee on 26 September. He was sentenced to death in 1985 for the murder of Edith Russell in 1983. He has been on death row for more than 20 years.

Edith Russell, a 62-year-old white woman, was murdered in her home in Chattanooga on the afternoon of 15 January 1983. She had apparently returned home to discover burglars in her apartment, had been bludgeoned with a heavy object and died from multiple skull fractures. After police located items that had been stolen from her home, David Schreane was arrested and led police to a marble vase that had been taken in the burglary. E.J. Harbison was arrested and confessed to killing Edith Russell, stating that he had hit her with the vase when she had unexpectedly returned home as he and Schreane were leaving.

At his trial, E. J. Harbison, who had no prior criminal record, pleaded not guilty, stating that his confession had been coerced by the police who had told him what to say. The jury was told that it could convict Harbison of first-degree murder if it found that he had premeditated the killing. Such premeditation would be difficult to prove, given that the burglars had entered the home when it was empty, and there was no evidence that Harbison had taken a weapon to the crime. However, the jury was instructed that such premeditation could be "formed in an instant". The Tennessee Supreme Court later prohibited this instruction because it removed the distinction between first and second-degree murder, but its ruling came seven years after Harbison's trial. The jury convicted him of first-degree murder, making him eligible for the death penalty. The trial moved into a sentencing phase at which the jury would decide whether he should be executed. The defence lawyers presented one witness, E.J. Harbison's mother, whose brief testimony amounted to fewer than 200 words and consisted of her recollection that the defendant had been "a very good son", that he had had "several jobs", and that at school he "went to about the eleventh grade [age 16-17], if I remember correctly". The jury sentenced E. J. Harbison to death.

The defence lawyer's failure to investigate their client meant that the jury heard nothing about E. J. Harbison's background of poverty, deprivation and abuse. According to information received by Amnesty International, both of Harbison's parents were alcoholics. His mother drank when she was pregnant with him, and there is evidence that he suffered from Fetal Alcohol Syndrome. A frequent lack of food in the house led the children to drink alcohol for nourishment, and mix water and flour as a substitute for milk. His mother would sometimes keep E.J. and his siblings home from school and make them steal for her. E. J. Harbison was regularly beaten as a child, and he was witness to violence between his parents. He was reportedly once injured when he intervened as his father attacked his mother with a power drill. On another occasion, the father fired a gun at the mother, missing and hitting E.J. instead. In addition, E. J. Harbison is said to have been profoundly traumatized by what happened to his sister Deborah. She was regularly subjected to beatings by their father, particularly after she was pregnant. She had two children. After the father threatened to take the children away, Deborah locked herself with them in a room and shot them (the children were 16 months old and 26 days old). She was committed to a mental institution, where she later hanged herself.

A psychologist has testified on appeal that E.J. Harbison "suffers from a number of interrelated cognitive, emotional and psychological impairments. Children like him who experience abuse and witness interfamilial violence have substantial problems in all areas of life. Such children have problems as adults in interpersonal relations, making decisions, and in understanding the consequences of behaviour. As adults these individuals appear their chronological age but experience the world at the emotional and intellectual equivalent of an adolescent . . . It is my opinion within a reasonable degree of psychological certainty that Harbison suffered from psychological deficits reflected in extreme mental or emotional disturbance at the time of the offense, as he has throughout most of his life. In addition, the trauma he experienced as a child and other mental health and life history-related mitigating circumstances were available and could have been presented to the jury".

The trial lawyers' failure to investigate their client's background was repeated by his first appeal lawyer. He too assumed that there was no mitigating evidence. His failure in effect meant that the matter was defaulted as grounds for appeal. This appeal lawyer also failed to inform either Harbison or the courts that he had a conflict of interest, namely that he had previously represented another man, Ray Harrison, when he was one of the suspects in the burglary and murder of Edith Russell. It had reportedly been this lawyer who had advised Ray Harrison not to take a lie detector test during the period he was a suspect in the Russell murder.

When the US Court of Appeals for the Sixth Circuit upheld E.J. Harbison's conviction and death sentence in 2005, one of the three judges dissented. Judge Clay held that the failure of the prosecution to hand over police files favourable to the defence had violated Harbison's right to a fair trial. Judge Clay pointed out that the police files provided evidence that Ray Harrison had a motive to rob and/or murder Edith Russell, that he and David Schreane were together on the day of the crime and "in close proximity to the Russell residence", that Ray Harrison's wife "placed Harrison at the scene of the crime", that a witness had told police that Harrison was "scared to death" that the police would search his house, and that "Schreane falsely implicated Harbison in Russell's murder." The non-disclosure of this information, argued Judge Cole, "undermines confidence in Harbison's guilty verdict".

David Schreane pleaded guilty to second-degree murder and burglary, was sentenced to 20 years, and freed after serving six years. Ray Harrison was neither charged nor prosecuted.

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases. There have been 1,097 executions in the USA since judicial killing resumed there in 1977, four of them in Tennessee. The US death penalty is marked by arbitrariness, discrimination and error. Among the main contributors to errors in capital cases have been prosecutorial misconduct and inadequate defence representation. A recent study conducted under the auspices of the American Bar Association, which takes no position on the death penalty *per se*, found that "Tennessee's death penalty is plagued with serious problems" and recommended a moratorium on executions while the system was subjected to review. On 14 September 2007, Governor Bredesen commuted the death sentence of Michael Joe Boyd to life imprisonment on the basis that he had received "grossly inadequate" post-conviction legal representation. Boyd had been convicted of murder committed during a burglary in 1988 and was facing execution in October.

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

- explaining that you are not seeking to condone the manner of Edith Russell's death or to downplay the suffering caused;
- noting that if Edward Jerome Harbison was tried today it is unlikely that he would be convicted of first-degree murder, let alone be sentenced to death, because of the apparent absence of premeditation;
- expressing concern that the jury never heard compelling mitigating evidence about E. J. Harbison's background, and that defence counsel's failure to investigate such evidence was repeated and compounded by Harbison's first appeal lawyer, who also failed to disclose a substantial conflict of interest;
- noting Circuit Judge Eric Clay's strong dissent arguing that Harbison was denied the right to fair trial because of non-disclosure of exculpatory evidence to the defence;
- welcoming Governor Bredesen's commutation of the death sentence of Michael Boyd;
- urging the Governor to commute Edward Jerome Harbison's death sentence.

APPEALS TO:

Governor Phil Bredesen, Office of the Governor, State Capitol, Nashville, TN 37243-0001, 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.

PLEASE SEND APPEALS IMMEDIATELY. *****