

PUBLIC

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Further information on UA 356/00 (AMR 51/178/00, 21 November 2000) - Death penalty / Legal concern

USA (Oklahoma) Robert William Clayton, Native American, aged 39

Missing evidence related to the murder conviction of Robert Clayton was discovered in the Tulsa County District Attorney's Office on 3 January, 24 hours before Clayton was due to be executed. He was granted a 30-day reprieve in order to allow for DNA testing and other scientific analysis of the evidence.

The items of physical evidence used against Clayton at this trial - overalls and a sock which purportedly had the victim's blood on them, and a knife - were apparently discovered in a locker in the prosecutor's evidence warehouse. Lawyers for Clayton had been trying to locate these items for five years, in order to conduct DNA and other scientific tests on them. It is reported that the evidence could be tested by the end of this week. If the analysis fails to exonerate Clayton, the state will probably move to set a new execution date.

The decision to grant Clayton a reprieve was taken by Lieutenant Governor Mary Fallin, as Governor Keating was out of state at the time.

Robert Clayton was sentenced to death for the 1985 murder of Rhonda Kay Timmons. The state Pardon and Parole Board unanimously rejected clemency on 30 November 2000. Clayton maintains his innocence.

BACKGROUND INFORMATION

Since the Governor of Illinois stopped executions in his state, on 31 January 2000, because of its "shameful" record of wrongful convictions, the US death penalty has come under increasing scrutiny. The debate within the USA has focused mainly on the risk of executing the innocent, and on the potential for modern DNA testing techniques to exonerate or incriminate.

DNA testing is undoubtedly an important forensic tool, but it provides no guarantee that fatal errors will be eliminated in death penalty cases. Like any forensic evidence, DNA testing is vulnerable to human fallibility or misconduct. Samples may become contaminated by poor collecting or storage techniques, or may be planted at a crime scene by unscrupulous investigators. The potential also exists for laboratories to make mistakes or falsify test results.

A recent US case illustrates the limitations of DNA testing as an absolute indicator of guilt or innocence. Odell Barnes was executed in Texas on 1 March 2000, still proclaiming his innocence. Among the most incriminating evidence against him was small blood spots found on his clothing, later identified by DNA testing as coming from the victim. Post-conviction investigation by defense experts found that the bloodstains contained a preservative used in the storing of blood. An expert concluded from the level of preservative in the stain that the blood did not come directly from the victim, but was introduced on the clothing after the crime.

Furthermore, only a relatively small number of murder cases produce any DNA evidence. On 22 June 2000, Gary Graham was executed in Texas despite serious doubts over his guilt. He had been convicted on the basis of the testimony

of a single eyewitness, without any physical evidence linking him to the crime. As in many other death penalty cases, there was no DNA evidence available that could possibly resolve the lingering question of Graham's guilt or innocence.

Amnesty International opposes the death penalty regardless of the alleged guilt or innocence of the individual facing execution. While the organization supports the re-examination of any potentially exonerating evidence, the fact remains that no conceivable safeguards can address the inevitable risk of fatal error. The US death penalty remains a lethal lottery: who lives and who dies depends as much on factors such as race, geography and social status as it does on the severity of the crime itself.

At the time of his alleged confession to the murder, which he later retracted (see original UA), Robert Clayton was a mentally impaired 24-year-old. A psychologist, who testified at the trial, assessed that he had an IQ of 68 (indicating possible mental retardation), a tendency to be dependent and submissive, and was emotionally immature. The son of alcoholic parents, Robert Clayton had dropped out of school when he was about 12 years old.

International standards oppose the use of the death penalty against people "suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution".

FURTHER RECOMMENDED ACTION: Please send faxes/express/airmail letters in English or your own language, in your own words, using the following guide:

- expressing sympathy for relatives and friends of Rhonda Timmons, and explaining that you are not seeking to excuse her murder;
- expressing concern that evidence which was missing for five years came to light less than 24 hours before Robert Clayton was due to be executed;
- noting that such low standards of care over evidence in a capital case is reason enough to commute Robert Clayton's death sentence;
- noting the widespread national concern about the fairness of the death penalty, especially in light of the large numbers of wrongful convictions;
- noting that international standards oppose the use of the death penalty against those who suffer from mental impairments at either the time of the trial or the time of execution;
- appealing to the governor to do all in his power and influence to ensure that Robert Clayton is not executed, regardless of the results of the DNA testing.

APPEALS TO:

Governor Frank Keating, Capitol Building, Oklahoma City, OK 73105, USA

Fax: + 1 405 521 3353

E-mail: governor@gov.state.ok.us

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.