

**Further information on UA 225/07 (AMR 51/137/2007, 30 August 2007) - Death penalty / Legal concern  
USA (Alabama) Thomas Douglas Arthur (m), white, aged 65**

Thomas Arthur received a 45-day stay of execution from Governor Bob Riley of Alabama on 27 September, the day he was scheduled to be executed. The state is moving to set a new date "as soon as possible".

Thomas Arthur was sentenced to death in 1982 for the murder of a man, Troy Wicker, whose wife had been convicted of his murder. He has been on death row for almost a quarter of a century. He maintains his innocence and was seeking a stay of execution so that modern DNA testing of the evidence could be carried out. However, Governor Riley granted the stay of execution over concerns that lethal injection may cause pain, and so amount to cruel and unusual punishment, contrary to the constitution. Challenges have been lodged against the constitutionality of Alabama's execution protocol; similar challenges have been lodged in several other states. In early October, a federal court is due to hear arguments on whether Alabama's lethal injection procedures allow the inmate to remain conscious during the execution and suffer pain as a result.

On 19 September 2007, a federal judge barred the state of Tennessee from executing death row inmate Edward Harbison under its three-drug execution protocol. Like Alabama, Tennessee's protocol requires the administration of three drugs, sodium thiopental, pancuronium bromide and potassium chloride in lethal injection executions. Sodium thiopental, a rapid-acting barbiturate commonly used in anaesthesia, is injected to render the inmate unconscious. The inmate is then injected with pancuronium bromide, which paralyzes the diaphragm, making breathing impossible. The third and final drug, potassium chloride, causes cardiac arrest. The federal judge noted that "It is undisputed that, without proper anaesthesia, the administration of pancuronium bromide and potassium chloride, either separately or in combination, would result in a terrifying, excruciating death." She concluded that, because the staff involved had not been adequately trained, and other failings, Tennessee's lethal injection protocol posed a "substantial risk" that the prisoner would not be unconscious when the second and third drugs were administered. In addition, "Because there is no check for consciousness, such a mistake may never be discovered." She concluded that to execute Harbison in this way would violate the constitutional ban on "cruel and unusual" punishment (see Further information on UA 246/07 (AMR 51/143/2007, 17 September 2007, <http://web.amnesty.org/library/Index/ENGAMR511482007>).

On 25 September, the US Supreme Court agreed to consider a challenge brought against Kentucky's lethal injection protocol, which is the same as Tennessee's. That case will be heard in early 2008 and a decision issued before the end of June 2008. The decision has the potential to affect all states that use lethal injection.

On 27 September Governor Bob Riley released a statement announcing that he decided to issue Thomas Arthur a 45-day stay of execution and that he had met with Commissioner Richard Allen of the state Department of Corrections that morning. The Governor's statement continued: "The evidence is overwhelming that Thomas Arthur is guilty and he will be executed for his crime. The decision to grant a brief stay is being made only because the state is changing its lethal injection protocol, and this will allow sufficient time for the Department of Corrections to make that change. It is my desire that, as soon as the stay has expired, justice will be administered to Thomas Arthur. I have encouraged the Attorney General to make a motion with the Alabama Supreme Court for a new date of execution as soon as possible." The Attorney General has indicated that he will file the request for a new execution date on 28 September.

According to his spokesman, Governor Riley decided that the protocol should be amended to provide additional safeguards to ensure that the prisoner who is being executed is unconscious before the second and third drugs are administered. The spokesman was quoted as stating that "This is being done even though we believe the current protocol is constitutional." However he also said that a review of the protocol had been sparked by the federal judge's ruling finding Tennessee's lethal injection protocol unconstitutional.

It is not clear what impact the US Supreme Court's review of the Kentucky case will have on executions scheduled to be carried out before it is completed. It did not prevent the execution of Michael Richard by lethal injection in Texas on the evening of 25 September. However, on the evening of 27 September, the Supreme Court blocked the execution of Carlton Turner in Texas after his lawyers appealed on the basis of a challenge to the Texas lethal injection protocol, which also uses the same three-drug combination. The Supreme Court's stay of execution came less than two hours before midnight, when the warrant for Turner's execution would have expired, and the state would have had to obtain a new warrant.

Thomas Arthur is seeking to have modern DNA testing conducted on various pieces of evidence related to the murder of Troy Wicker. Such testing, it is argued, could establish that someone other than him was at the crime scene, thereby discrediting the prosecution's main witness's testimony against him.

The Innocence Project, which represents inmates seeking DNA testing to prove their innocence, has called on Governor Riley to use the 45-day stay he has granted to allow DNA testing in Thomas Arthur's case. In a statement, the Project said, "As we have said before, we do not have a position on whether Thomas Arthur is guilty or innocent. Our concern is that biological evidence

may exist that could be subjected to DNA testing and prove whether or not he is guilty. The victim's wife in this case was convicted of murdering her husband and then changed her story; DNA testing could show that she changed her story only to get out of prison sooner, and that in fact someone other than Thomas Arthur committed this crime."

Amnesty International opposes the death penalty in all cases, regardless of the crime, issues of guilt or innocence, or the method used to kill the condemned prisoner. Today, 133 countries are abolitionist in law or practice. In contrast, the USA has carried out 1,099 executions since judicial killing resumed there in 1977. More than 100 wrongful convictions in capital cases in the USA have been uncovered since 1977. DNA testing has played a substantial role in more than a dozen cases.

**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 Troy Wicker's death;
- noting that Thomas Arthur was convicted on the basis of circumstantial evidence and the testimony of Judy Wicker, who has committed perjury and was providing testimony in return for assistance with her parole bid;
- expressing concern that Thomas Arthur has not had a judicial hearing on evidence of his innocence, and that the State of Alabama is resisting modern DNA testing of evidence from the crime;
- noting that the Governor's decision to stay the execution to allow for a change in the lethal injection protocol provides the opportunity for the state to allow such testing to take place, noting the number of errors that have been uncovered in capital cases throughout the USA, many as a result of DNA testing;
- opposing the execution of Thomas Arthur, and noting that while he has been sentenced to death, Judy Wicker served 10 years in prison having been convicted of the murder, and that two other people implicated in the murder were apparently not even investigated.

**APPEALS TO:**

Governor Bob Riley, State Capitol, 600 Dexter Avenue, Montgomery, AL 36130, USA

**Fax:** +1 334 353 0004

**Email, via Governor's website at:**

[http://www.alabamainteractive.org/alabamainteractive\\_shell/Welcome.do?url=http://governor.alabama.gov](http://www.alabamainteractive.org/alabamainteractive_shell/Welcome.do?url=http://governor.alabama.gov)

**Salutation:** Dear Governor

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

**PLEASE SEND APPEALS IMMEDIATELY.\*\*\*\*\***