

# URGENT ACTION

## FORMER JURORS OPPOSE OKLAHOMA EXECUTION

**Richard Smith, a 47-year-old man, is due to be executed in the US state of Oklahoma on 8 April. He was convicted of murder in 1987. He has been on death row for more than half of his life. A number of jurors from his trial now oppose his execution, as does a brother of the victim.**

**Richard Smith** was convicted of the murder of John Cederlund. According to the evidence at his trial, on the night of 21 July 1986, 23-year-old Richard Smith and two women, Pamela Rutledge and Rita Cagle, drove to two houses in Oklahoma City to acquire methamphetamine ("crank"). Some time after midnight, the three left the second house with John Cederlund, a known drug dealer, and drove into rural Canadian County. Based primarily on the testimony of Pamela Rutledge and Rita Cagle, who were never charged, the prosecution's case was that Richard Smith decided to rob John Cederlund of drugs and money, but after Cederlund said he had no money, Smith had shot him.

Before the trial, the prosecution offered Richard Smith a life prison sentence in return for a guilty plea, but he rejected the offer. At his trial in March 1987, the jury convicted him of first-degree murder. At the sentencing phase of the trial, the defence lawyer presented almost no evidence, and no expert testimony, in seeking to persuade the jury not to sentence his client to death. The evidence presented by the lawyer at the sentencing was described in 2005 by a federal District Court judge as "shocking in its brevity, its failure to humanize [Smith] or to explain his actions". The defence evidence amounted to less than three pages of the trial transcript, consisting of confirmation from the defendant's mother that her son had been treated by "psychiatrist physicians" in California about 10 years earlier, but she did not recall any details. The only other witness presented by the defence was Richard Smith's sister whose brief appearance consisted of her asking the jury to give her brother "a chance".

In 1992, a psychologist and a neuro-pharmacologist hired for the appeals process revealed that Richard Smith had had a childhood and adolescence marked by systematic neglect and abuse, and that he suffered serious mental impairments. In 2008, the 10<sup>th</sup> Circuit Court of Appeals noted that the lawyer's investigation for the sentencing phase had begun "a mere seven to ten days before trial", and "with 20-20 hindsight, there is much more that might have been presented, including [Smith's] abuse as a child, addiction problems, and psychological problems, brain injury and borderline intelligence". However, like the District Court, the 10<sup>th</sup> Circuit upheld the death sentence.

Less than eight months after Richard Smith's trial, Oklahoma adopted life imprisonment without parole (LWOP) as a sentencing option in the state. Six jurors from the trial have signed statements either that they would not have voted for execution if they had had the option of LWOP or that they do not oppose commutation of his death sentence now to LWOP. A brother of the victim is also supporting clemency.

### **PLEASE WRITE IMMEDIATELY in English or your own language, in your own words:**

- Explaining that you are not seeking to excuse the killing of John Cederlund;
- Expressing concern that the jury who sentenced Richard Smith to death had no information about the background of neglect, abuse and mental impairment of the young defendant whose fate was in their hands;
- Noting that six of the trial jurors have signed affidavits indicating their support for clemency;
- Opposing the execution of Richard Smith and calling for his death sentence to be commuted.

### **PLEASE SEND APPEALS BEFORE 08 APRIL 2010 TO:**

**Up to 24 March:** Oklahoma Pardon and Parole Board, First National Center, 120 N. Robinson Ave., Suite 900W, Oklahoma City, OK 73102, USA

**Fax:** +1 405 602-6437  
**Email:** ronnie.ladd@ppb.state.ok.us  
**Salutation:** Dear Board Members

**Before and after 24 March:** Governor Brad Henry State Capitol Building, 2300 N. Lincoln Blvd., Room 212 Oklahoma City, OK 73105, USA

**Fax:** +1 405 521 3353  
**US Emails, via:** <http://www.gov.ok.gov/message.php>  
**Salutation:** Dear Governor

Also send copies to diplomatic representatives of the USA accredited to your country.

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### ADDITIONAL INFORMATION

Donald Cederlund, a younger brother of John Cederlund, has signed a declaration supporting clemency for Richard Smith. He said that after reviewing the trial transcript: "I believe Mr Smith should not be executed; and his sentence should be changed to life...This was a crime fuelled by drugs, and Mr Smith had no intent to take my brother's life". Since the trial, Rita Cagle has said that on the night of the crime, "there was a struggle for the gun between [Smith and John Cederlund], and during the struggle the gun went off and [Cederlund] was shot. I cannot say for sure whether [Smith] shot [Cederlund] on purpose or not."

According to the reports of the psychologist and neuro-pharmacologist hired during Smith's appeals, Richard Smith's father was in prison for the first eight years of his son's life, and after his release used to engage in physical fights with the boy, as well as teaching him to shoplift, steal cars and burgle houses. His mother remarried, but her husband was physically violent towards his stepson. At the age of 11 or 12, Richard Smith ran away from home, was apprehended by the authorities and sent to a juvenile facility, where he attempted suicide rather than be sent home. Upon being returned home, he was beaten by his stepfather and for two weeks was handcuffed and locked in a cupboard each night at bedtime. At the age of 12, Richard Smith went to live with his father, and took to alcohol and substance abuse, and witnessed his father intravenously injecting amphetamines. In subsequent years, he was shuttled between his mother, father and other relatives, living in five states and attending over a dozen schools. Richard Smith began using marijuana at the age of eight, and later took to "huffing" glue and gasoline. By 14 or 15, he was injecting methamphetamine four times a day, smoking marijuana, and taking injections of cocaine mixed with methamphetamine twice a week, as well as drinking whisky. At 17, he began to inject heroin together with either methamphetamine or cocaine. He also took to using LSD, injecting it intravenously.

As part of the post-conviction assessment, Richard Smith was diagnosed with chronic schizophrenia, and ascertained to have suffered multiple head injuries. According to the psychologist, Richard Smith did not receive adequate treatment during his youth, and his mental illness was exacerbated by his drug and alcohol use, and probable brain damage. She concluded that at the time of the crime, his ability to conform his conduct to the law was likely very impaired. In the US District Court ruling on the case in 2005, the judge ruled that, "by today's standards", the failure by Richard Smith's trial lawyer "to request funds for or the appointment of a psychiatrist to assist him at the penalty phase of the trial was not objectively reasonable". However, the judge upheld the death sentence, saying that under the state of the law in 1987 he could not rule that the lawyer's failure was "professionally unreasonable" at that time.

Three jurors from the trial have said that if LWOP had been an option at the trial, they would have voted for it, not for death. A fourth has stated that he believes LWOP is the "appropriate sentence" in this case. Two others have said that they would not oppose his death sentence being commuted to LWOP. Two of these jurors recalled that they had been "unimpressed" by the defence lawyer's performance at the trial, with one referring to the "meaningless case" he presented at the sentencing. Another recalled his feeling that the state's two key witnesses – Pamela Rutledge and Rita Cagle – were accomplices in the crime and that "it was not an open and shut case, where Richard Smith's guilt was clear". Another noted "all the news lately about wrongful convictions" and that she now had "serious concerns about the State executing Mr Smith", who was not among "the worst of the worst" offenders or responsible for the "worst of the worst" crimes for which the US death penalty is supposed to be reserved.

Amnesty International unconditionally opposes the death penalty, in all cases and in all countries. The USA has carried out 1,198 executions since resuming judicial killing in 1977. Oklahoma accounts for 92 of these executions. Per head of population, Oklahoma has the highest execution rate in the USA. There have been 10 executions in the USA this year.

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