

EXTRA 07/01

Death pen**USA (Missouri) Stanley Dewaine Lingar, white, aged 39**

Stanley Lingar is scheduled to be executed in Missouri on 7 February 2001. He was sentenced to death for the 1985 murder of Thomas Scott Allen at a three-day trial in 1986.

Stanley Lingar's lawyer had never handled a first-degree murder or capital case before. His trial strategy was to persuade the jury that, because Lingar was drunk at the time of the crime, he could not have formed the level of intent necessary for first-degree murder. However, whereas the state presented 16 witnesses at the trial's guilt stage, Lingar's lawyer presented only a single teenage witness. Moreover, voluntary intoxication as a legal defence to murder had been repealed in Missouri in 1983.

The state based its theory that Stanley Lingar was the murderer on the testimony of his co-defendant, David Smith, the only other person present at the crime. Both Smith and Lingar were initially charged with first-degree murder, but in exchange for testimony against Lingar, the state dropped the charge against Smith. He subsequently pleaded guilty to second-degree murder and was sentenced to 10 years in prison. He has since been released. Smith is reported to have greater mental abilities than Lingar, who has borderline mental retardation.

On the day of the crime, Smith and Lingar, who had been drinking and driving around together, gave 16-year-old Thomas Allen a lift after his car ran out of petrol. Smith testified that Lingar later shot Allen, beat him with a tyre lever and deliberately ran over him as he drove from the scene. At a post-conviction hearing, a pathologist testified that Smith's version of events was inconsistent with the medical evidence, thereby casting doubt on the reliability of his entire testimony.

At the sentencing phase of a US capital trial, the prosecution presents aggravating evidence to support execution, and the defence submits mitigating evidence in favour of leniency. The only additional evidence introduced by the state during this phase of Lingar's trial was that he was involved in a homosexual relationship with Smith, and that a letter he had sent him before the trial allegedly displayed his lack of remorse.

Over a defence objection, the judge allowed the state to introduce the sexual orientation evidence. The prosecutor argued that it was relevant to the question of Lingar's motive, and would help the jury make sense of the crime "in our heterosexual society". However, the state had not introduced the sexual orientation issue during the guilt phase, which is when evidence of motive is relevant. Furthermore, in the guilt phase the prosecutor had argued that motive was irrelevant in this case and did not need to be proved in order for the jury to convict. Under these circumstances, it is difficult to draw any other conclusion than that the prosecutor aimed to stir homophobia among the jurors, who were drawn from the conservative rural area of southeastern Missouri where the trial took place. Nevertheless, the federal Eight Circuit Court of Appeals upheld the death sentence in 1999, ruling that even if the admission of the homosexuality evidence was unconstitutional, it had not prejudiced the defendant. Amnesty International believes that the court's confidence is misplaced.

For his part, the defence lawyer called Lingar's parents and sister, who testified that he had never been in trouble before, and that he was a good son and brother. Because the lawyer had misunderstood the law and believed that the jury could only consider a narrow range of mitigating factors, he failed to present important mitigating evidence, including of Lingar's background and mental impairment.

When the Eighth Circuit Court of Appeals upheld Stanley Lingar's death sentence, one of the three judges strongly dissented: "The jury could and should have been given the opportunity to consider all mitigating factors, including a history of sexual abuse, substance abuse, and blackouts; a mental evaluation revealing borderline mental retardation, acute paranoid and depressive disorders; expression of remorse; and indications that Lingar was a good candidate for rehabilitation. Lingar was clearly prejudiced by his counsel's failure to develop and present this evidence. There is no reasonable probability that a jury advised of these circumstances would have imposed the death sentence on this mentally retarded and mentally disturbed young man."

BACKGROUND INFORMATION

The US death penalty is a lethal lottery; who is sentenced to death can depend on a wide range of factors beyond the heinousness of the crime, including the quality of legal representation afforded to the defendant. One of the primary sources of arbitrariness is the prosecutor's discretion in choosing in which cases and against which defendants to pursue a death sentence. Time and time again in crimes involving two defendants, one is offered a plea bargain in return for testimony against the other. There have frequently been serious questions about whether the relative culpability of the defendants was reflected in the eventual outcome.

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

- expressing sympathy for the family and friends of Thomas Scott Allen, and explaining that you are not seeking to condone the manner of his death;
- expressing concern that Stanley Lingar is facing execution, and calling on the Governor to commute his death sentence;
- expressing concern that the state based its case on the testimony of a co-defendant who was granted leniency in return for testimony, and whose version of events was inconsistent with the medical evidence;
- expressing concern that due to the inexperience of Lingar's trial attorney, the jurors who sentenced him to death never heard important mitigating evidence, including of his abusive background, his mental impairment, his remorse, and his potential for rehabilitation;
- expressing concern about the prosecutor's introduction of irrelevant and potentially inflammatory evidence of Stanley Lingar's sexual orientation;
- noting the widespread national concern about the fairness and reliability of the US death penalty.

APPEALS TO:

The Honourable Bob Holden
 Governor of Missouri,
 Missouri Capitol Building, Room 216
 P.O. Box 720, Jefferson City, MO 65102-0720, USA
Tel: + 1 573 751 3222
Fax: + 1 573 751-1495

Salutation: Dear Governor

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

You may also send brief letters (not more than 250 words) to:

- Letters to the Editor, *St. Louis Post-Dispatch*, 900 North Tucker Blvd., St. Louis, MO 63101, USA. **E-mail: letters@postnet.com**

- Letters to the Editor, *Jefferson City News Tribune*, 210 Monroe St., Jefferson City, MO 65101, USA. **E-mail: editor@newstribune.com**

PLEASE SEND APPEALS IMMEDIATELY.