

PUBLIC

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EXTRA 08/03

Death penalty / Legal concern

07 February 2003

USA (Oklahoma)

Bobby Joe Fields (m), black, aged 39

Bobby Fields is scheduled to be executed in Oklahoma on 13 February 2003. He was sentenced to death in 1994 for the murder of Louise Schem, white, in 1993. The Oklahoma Pardon and Parole Board has recommended that the Governor grant Bobby Fields clemency. Governor Brad Henry, who took office on 13 January 2003, has not yet announced his decision. This is the first clemency case to come before Governor Henry.

On 2 March 1993, Bobby Fields went to burgle the house of 77-year-old Louise Schem, believing that she was not there. He was confronted by Louise Schem who had a handgun. A struggle ensued, culminating in the elderly woman being shot dead. Bobby Fields was arrested on 4 March. He told police that he had jumped at Louise Schem in self-defence when she approached with the gun, and that the weapon had gone off accidentally during the ensuing struggle. He said that Louise Schem had told him she had been victimized in the past, that she was not going to let it happen again, and that she was going to kill him.

Charged with capital murder, Bobby Fields was assigned an inexperienced lawyer who had never handled a death penalty case before. Despite the lawyer's repeated requests, she was not provided with co-counsel. She admitted to being intimidated by the fact that the lead prosecutor in the case was Robert (Bob) Macy, the Oklahoma County District Attorney known for pursuing death sentences aggressively and who has regularly been reprimanded by appeal courts for misconduct in capital cases (see pages 47-59 of *Old Habits Die Hard*, cited below). The defence lawyer wanted Bobby Fields to forgo a jury trial and instead to enter a blind plea of guilty (that is a guilty plea with no deal as to what sentence would ensue). She did so believing that the judge, from comments he had made to her, would not pass a death sentence in this case. Bobby Fields did not want to plead guilty, believing that a jury would be persuaded that the shooting was accidental. But the defence lawyer continued to insist, and even enlisted the services of Bobby Fields's sisters and young son to persuade him to plead guilty. He finally agreed.

The judge sentenced Bobby Fields to death, and the sentence has survived the appeals process intact. In 2002, the US Court of Appeals for the Tenth Circuit noted that "Bobby Joe Fields is a drug addict who, in order to feed his addiction, tried to steal a television from a house he arguably thought was empty. At the time of the attempted theft, he was drunk and probably high and was not carrying a weapon... Although in many ways this looks like just a burglary gone bad, Bob Macy, the prosecutor, chose to pursue the death penalty."

A clemency hearing before the state Pardon and Parole Board was held on 6 January 2003. The original trial lawyer testified to her inexperience in capital cases at that time and her inadequate representation of Bobby Fields. Another lawyer who had tried unsuccessfully to have the blind guilty plea withdrawn testified that the system had failed Bobby Fields by appointing a "young, terrified lawyer" to his case and not providing that lawyer with adequate assistance. The Pardon and Parole Board were also presented with testimony from an expert in ballistics and crime scene reconstruction in support of Bobby Fields's claim that the gun had gone off accidentally. Bobby Fields himself appeared at the hearing, and expressed his remorse for the death of Louise Schem.

On 6 January, the Board voted, three to one, to recommend that the death sentence be commuted to life imprisonment without the possibility of parole. At that time, Bobby Fields was scheduled to be executed on 14 January. On 7 January, Governor Frank Keating issued a one-month stay of execution, saying that he did not have enough time before leaving office to consider the case.

BACKGROUND INFORMATION

Oklahoma has become one of the country's main executing states. Since executions resumed in the USA in 1977, there have been 830 executions nationwide, of which 56 have been carried out in Oklahoma. In 2001, Amnesty International published a major report on the its concerns relating to Oklahoma's death penalty which the organization provided to the state's legislature and executive authorities (see *Old Habits Die Hard: The death penalty in Oklahoma*, AMR 51/055/2001, April 2001).

Clemency in Oklahoma's capital cases is a rare phenomenon. During a period which has seen 56 executions, only one condemned inmate has been granted executive clemency. Governor Keating commuted Phillip DeWitt Smith's death sentence to life imprisonment without parole in April 2001, because of evidence that he might be innocent of the crime for which he was sentenced to die (see further information on EXTRA 10/01, AMR 51/057/2001, 10 April 2001). In Oklahoma, the Governor cannot commute a death sentence unless the Pardon and Parole Board make such a recommendation. The Governor can reject a recommendation for clemency.

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

- expressing sympathy for the family of Louise Schem;
- noting the Pardon and Parole Board's recommendation for clemency;
- noting that the Board heard evidence about Bobby Fields's representation by a very inexperienced lawyer, and expert evidence supporting his claim that the shooting was accidental;
- urging the Governor to accept the Board's recommendation and to commute Bobby Fields's death sentence.

APPEALS TO:

Governor Brad Henry
Office of the Governor
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Oklahoma City, OK 73105, USA
Fax: +1 405 521-3353
Email: governor@gov.state.ok.us
Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.