

**PUBLIC**

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**EXTRA 23/03**

**Death penalty**

**01 May 2003**

**USA (Missouri)**

**John Clayton Smith (m), aged 41, white**

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John Clayton Smith is scheduled to be executed in Missouri on 14 May 2003. He was sentenced to death in 1999 for the murder of his former girlfriend Brandie Kearnes and her stepfather, Wayne Hoewing, in 1997.

In December 2000, the Missouri Supreme Court upheld John Smith's death sentence, by five votes to two. The two dissenting judges argued that he should receive a new trial because the prosecutor in the case had previously represented Smith and should have withdrawn from the case. The dissent wrote: "In a fundamental way, the [majority] opinion damages the integrity of the legal profession. There is no dispute that the prosecutor in this case had represented Smith in two previous criminal cases as his defence attorney. Moreover, the prosecutor – Smith's erstwhile defender – used one of those convictions in persuading the jury to impose the death penalty on his former client. The fact is that he had a confidential relationship with Smith in which Smith was encouraged to disclose to the attorney the darkest secrets of his life. This fact, along with the fact that the death penalty was sought, makes such a dual representation unacceptable. As the principal opinion acknowledges, a defendant's previous criminal and antisocial conduct, along with the defendant's background, come into play in the prosecutor's decision as to whether to seek the death penalty. The prosecutor's failure to disqualify himself from representing the state against his former client poses a serious question, in a death penalty case, as to the integrity of the system under which Smith was tried".

John Smith could pursue this and other legal claims in the state and federal courts, but has chosen to drop any further appeals against his conviction and death sentence. In March 2003, the Missouri Supreme Court ruled that he was competent to do so.

John Smith has been diagnosed with mental illness, specifically bipolar disorder with psychotic features, and is on medication in prison. According to his attorneys, he has previously made a suicide attempt while on death row. In repeated resolutions since 1997, the United Nations Commission on Human Rights has called on all retentionist countries not to impose or carry out the death penalty on anyone suffering from any form of mental disorder.

## **BACKGROUND INFORMATION**

About 100 men and women have been executed in the USA since 1977 after giving up their appeals at some stage in the process (for a list of about 90 of these individuals see *USA: The illusion of control: "Consensual executions, the impending death of Timothy McVeigh, and the brutalizing futility of capital punishment*, AMR 51/053/2001, April 2001). While such executions are sometimes characterized as a form of state-assisted suicide, "prisoner-assisted homicide" might be a more accurate label. For if a death row inmate seeks to commit actual suicide, as more than 50 condemned prisoners have successfully done since 1977, the state will make every effort to prevent it.

The cases show that there may be any number of factors contributing to a prisoner's decision not to pursue appeals against his or her death sentence, including mental disorder, physical illness, remorse, bravado, religious belief, the severity of conditions of confinement including prolonged isolation and lack of physical contact visits, the bleak alternative of life imprisonment without the possibility of parole, pessimism about appeal prospects, a quest for notoriety, or simply as a way for the prisoner to gain a semblance of control over a situation in which they are otherwise helpless.

Amnesty International considers that a decision taken by someone who is under threat of death at the hands of others cannot be consensual. What is more, it cannot disguise the fact that the state is involved in a premeditated killing, a human rights violation that is a symptom of a culture of violence, not a solution to it. Whether or not a prisoner who “asks” to be executed is deluding himself or herself about the level of control they have gained over their fate – after all, they are merely assisting their government in what it has set out to do anyway – the state is guilty of a far greater deception. It is peddling its own illusion of control: that, by killing a selection of those it convicts of murder, it can offer a constructive contribution to efforts to defeat violent crime. In reality, the state is taking to refined, calculated heights what it seeks to condemn – the deliberate taking of human life.

The phenomenon of prisoners “volunteering” for execution is one more factor contributing to arbitrariness in the death penalty. To put it another way, given the rate of reversible error found in capital cases, if the 100 individuals who have been executed after waiving their appeals had pursued their full legal options, there is a significant probability that a number of them would have had their death sentences overturned to prison terms by the appeal courts.

Amnesty International opposes the death penalty in all cases, unconditionally. Today, 112 countries have abolished the death penalty in law or practice. The USA, which frequently promotes itself as a champion of human rights, continues to resort to judicial killing, and has put more than 840 men and women to death since resuming executions in January 1977 (with the killing of Gary Gilmore who had refused to appeal against his conviction and sentence). Missouri accounts for 60 of the 849 executions carried out in the USA between January 1977 and 1 May 2003.

**RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words using any of the above information as you see fit:**

- expressing sympathy for the family and friends of Brandie Kearnes and Wayne Hoewing, and explaining that you are not seeking to excuse the manner of their deaths or minimize the suffering this crime will have caused;
- opposing the execution of John Clayton Smith, and calling on the governor to intervene to stop it;
- noting that John Clayton Smith has been diagnosed with bipolar disorder, and referring to the resolutions passed by the United Nations Commission on Human Rights urging that the death penalty not be used against anyone suffering from mental illness.

**APPEALS TO:**

Governor Bob Holden  
Missouri Capitol Building, Room 216  
PO Box 720  
Jefferson City, MO 65102-0720, USA  
**Telegram: Governor Bob Holden, Jefferson City, Missouri, USA**  
**Fax: +1 573 751-1495**  
**Email: mogov@mail.state.us**  
**Salutation: Dear Governor**

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

You may also write brief letters of concern (not more than 250 words) to:  
*The News Tribune*, Letters to the Editor, 210 Monroe St., Jefferson City, MO 65101, USA.  
**Fax: +1 573 761 0235.**  
**E-mail: editor@newstribune.com**

**PLEASE SEND APPEALS IMMEDIATELY.**