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Death penalty / Legal concern

27 April 2007

USA (Tennessee)

Philip Workman (m), white, aged 53

Philip Workman is scheduled to be executed in Tennessee on 9 May despite compelling evidence that a key state witness lied at the trial and that the police officer Workman was convicted of killing may have been accidentally shot by a fellow officer. If so, Philip Workman would be innocent of capital murder and ineligible for the death penalty under US law. He has been on death row for 25 years. He has been scheduled for execution a number of times, and in 2001 was less than an hour from execution when a court issued a stay.

Philip Workman was convicted of the murder of Lieutenant Ronald Oliver in the course of robbing a Memphis restaurant on 5 August 1981. Lt Oliver and two other officers were first to arrive at the scene. Philip Workman testified at his 1982 trial that as he ran from the police, he fell, attempted to surrender, and was struck on the head by an officer. Gunfire erupted, and Lt Oliver was killed by a single bullet. At the trial, the two surviving police officers testified that they had not fired their weapons, but admitted that they had not seen Workman shoot Oliver. An alleged eyewitness, Harold Davis, said that he was standing 10 feet (three metres) away and saw Workman shoot the officer. The defence lawyers conducted no forensic or ballistics analysis and did not investigate Harold Davis. At the sentencing, they presented no mitigating evidence.

Philip Workman has never denied responsibility for the robbery that led to Lt Oliver being killed, and has not denied firing his gun. Since the trial, however, evidence has emerged which seriously undermines confidence in the jury's verdict. The prosecution's key eyewitness, Harold Davis, has retracted his testimony. The results of a polygraph test reportedly support his recantation. So does other evidence. No one, including police officers or civilians, saw Davis at the scene and his car was not where he claimed to have parked it. An eyewitness has come forward to say that at least one of the other officers fired his gun. This is corroborated by the first police reports, which stated that "officers" had fired their weapons.

A nationally renowned forensic pathologist, Dr Cyril Wecht, has concluded that the bullet that killed Lt Oliver did not come from Philip Workman's gun. He bases this conclusion on the fact that the bullets in Workman's gun were of a type that expand when they strike a body, and therefore tend not to exit the body. The bullet that killed Lt Oliver exited his body, leaving an exit wound smaller than the entrance wound. Dr Wecht's testimony in 2001 has not been refuted by evidence presented by the prosecution in any court.

At the trial, the prosecution presented the bullet that it said killed Lt Oliver. An employee from a nearby car parts dealer, Terry Willis, testified that on the day after the shooting, he found the bullet in the car park (in the middle of the crime scene that had been searched the night before). He testified that he had thought it was a ballbearing and put it in a toolbox, before considering that it might have something to do with shooting and calling the police. However, at a 2001 clemency hearing, a former police lieutenant said that he, not Willis, had found the bullet that supposedly killed Lt Oliver. Workman's appeal lawyers also claim that a digitally enhanced crime scene photo shows an evidence cup turned upside down on the car park between the restaurant and the car parts dealer. However, neither the evidence cup nor the item it marked appear in the crime scene diagram, raising questions about whether another bullet was found that was not revealed at trial.

In 2000, the US Court of Appeals for the Sixth Circuit voted on whether to grant Philip Workman a hearing on the new evidence. Workman required a majority vote to prevail; the hearing was denied after the vote was tied at seven votes to seven. In 2004, a judge on the Tennessee Supreme Court stated that Workman had raised "valid legal issues" concerning whether the death of Lt Oliver was the "result of 'friendly fire' and not his own unlawful acts". Specifically, proof that the 'eyewitness' did not see Workman shoot the officer and proof that the wound which caused the officer's death is inconsistent with the type of wound which would

have been caused by a bullet from Workman's gun dramatically affect the evidence in this case and, in my opinion, may affect his eligibility for the death penalty". Several jurors from the original trial have stated that they would not have voted for a first-degree murder conviction or a death sentence if they had been presented with the evidence that has emerged since the trial. In 2000, with Philip Workman's execution looming, the daughters of both Lt Oliver and Philip Workman united at a press conference to appeal for clemency. The former District Attorney of Shelby County, the office which prosecuted Philip Workman, came forward in 2000 to oppose the execution because of the post-conviction evidence.

A newly published study, conducted under the auspices of the American Bar Association (ABA), which takes no position for or against the death penalty per se, has found that "Tennessee's death penalty is plagued with serious problems". Among these problems, the study found, were inadequate procedures to address innocence claims, inadequate qualification and performance standards for defence counsel, lack of transparency in the clemency process, and racial and geographic disparities in capital sentencing.

Across the USA, legal challenges to the constitutionality of lethal injection procedures continue amidst evidence that they do not guarantee the "humane" and painless death that the proponents of lethal injection claim. On 1 February 2007, Tennessee's Governor, Phil Bredesen, issued a statement noting that the state authorities had "identified deficiencies with our written procedures that raise concerns that they are not adequate to preclude mistakes". In order "to ensure that no cloud hangs over the state's actions in the future", he said, he issued an executive order suspending executions while the Department of Correction conducted a "comprehensive review" of Tennessee's execution procedures. The Commissioner of Correction is due to report back to the governor by 2 May, only days before Philip Workman is due to be put to death.

In any event, "a cloud hangs over" Tennessee's use of the death penalty, as shown in the new ABA report, and as illustrated in Philip Workman's case. The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty prohibit execution in cases where there is a lack of "clear and convincing evidence" of the inmate's guilt "leaving no room for an alternative explanation of the facts." This is clearly a case where execution would contravene this standard.

Amnesty International opposes the death penalty unconditionally. The USA has executed 1,072 men and women since resuming judicial killing in 1977. Tennessee accounts for two of these executions.

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, friends and colleagues of Lieutenant Ronald Oliver;
- expressing deep concern that Philip Ray Workman is facing execution on the basis of apparently perjured testimony from the only alleged eyewitness to the shooting;
- noting expert forensic evidence that the fatal wound was not caused by Philip Workman's bullet;
- noting that several jurors have said that they would not have voted to convict Philip Workman of first-degree murder, let alone vote for a death sentence, if they had been presented with the evidence that has emerged since the trial;
- noting that seven federal judges voted that there should be a federal evidentiary hearing in this case, and noting that a Tennessee Supreme Court judge has questioned Workman's eligibility for the death penalty;
- noting the findings of the study conducted under the auspices of the American Bar Association, including Tennessee's inadequate procedures for addressing claims of innocence;
- calling for Philip Workman's death sentence to be commuted;
- appealing to Governor Bredesen to extend his moratorium on executions, at least to allow full review of the Department of Correction's findings on the state's execution protocols.

APPEALS TO:

Governor Phil Bredesen, Office of the Governor, State Capitol, Nashville, TN 37243-0001, USA.

Fax: +1 615 532 9711

Email: Phil.Bredesen@state.tn.us

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.