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Texas – In a world of its own as 300th execution looms

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“The justice system in the state of Texas is basically for Texans. I understand people from other places in the country and the world are always critical of Texas. But the justice system that’s put in place in Texas is made for and voted upon by Texans, overseen by the United States Constitution.” Texas Governor Rick Perry, June 2002¹

“In Texas, public debate over the death penalty is muted, and there is little official soul-searching. Tropical storms, rising insurance premiums, mould-ridden houses and college football generate far more media attention and solemn public discourse than all but a handful of executions in Texas.” Washington Post, September 2002²

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On 12 September 1930, a 21-year-old African American man called Jesse Washington was killed in the electric chair in Texas. In the next 34 years, Texas carried out a further 299 electrocutions, the last of which occurred on 30 July 1964. On that day, Joseph Johnson became the last person to be put to death in Texas before the US Supreme Court overturned the country’s capital statutes in *Furman v Georgia* in 1972. The Court did so because of the arbitrary way in which the death penalty was being handed out in the USA.

Not willing to contemplate abolition, Texas was one of the states which immediately set about rewriting its death penalty laws to take account of the *Furman* ruling. On 2 July 1976, its new statute was ruled constitutional by the Supreme Court, opening the way for executions to resume in the state.<sup>3</sup> On 7 December 1982, Charlie Brooks was led to the lethal injection chamber and became the first person to be put to death in Texas in its “modern” era of judicial killing.

In the next few weeks, Texas will carry out its 300<sup>th</sup> execution since that day in 1982. It will have taken the state 20 years to do in the modern era of its death penalty what it took three and a half decades to achieve in the pre-*Furman* years.

Where Texas is speeding up – half of its 300 executions will have been carried out in the past five years alone – much of the rest of the world is stopping altogether. More than 50

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<sup>1</sup> *Perry rebuts attack on justice in Texas – Governor defends system court cited.* Houston Chronicle, 22 June 2002.

<sup>2</sup> *Texas shrugs off debate on executions.* Washington Post, 22 September 2002.

<sup>3</sup> *Jurek v Texas*, 428 U.S. 262 (1976)

countries have abolished the death penalty in law since 1982. Today, as some 450 men and women await lethal injection in Texas, 111 countries are abolitionist in law or practice. In 2002, a year which saw three more countries abolish the death penalty in law, Texas executed 33 people, and sentenced another 36 people to death. On 15 January 2003, Turkey signed Protocol No 6 to the European Convention on Human Rights, prohibiting the death penalty in peacetime. On the same day, Texas carried out its second execution of the new year.

While the State of Texas accounts for less than 10 per cent of the USA's population, it has been responsible for more than a third of the national judicial death toll since 1976. As concern about the fairness and reliability of the capital justice system has given some jurisdictions pause for thought – and lay behind the outgoing Illinois Governor's recent decision to commute all the death sentences in his state – last year saw Texas increase its share of the national execution toll to almost a half – 33 out of 71.

Continuing resort to the death penalty in an increasingly abolitionist world has potential consequences for the executing country. In 1998, for example, the Chairman of the European Parliament Delegation for Relations with the United States wrote to the Governor of Texas: “[W]e are concerned that the almost universal repugnance felt in Europe and elsewhere for the continued application of the death penalty in certain American states may also have economic consequences. Europe is the foremost foreign investor in Texas. Many companies, under pressure from shareholders and public opinion to apply ethical business practices, are beginning to consider the possibility of restricting investment in the U.S. to states that do not apply the death penalty.”<sup>4</sup>

Texas not only is contradicting world – and national – trends on the death penalty, but it also regularly undermines international human rights standards and resolutions in so doing. Each year since 1997, for example, the United Nations Commission for Human Rights has passed a resolution which, among other things, calls on retentionist countries not to impose or carry out the death penalty against anyone with any form of mental disorder. In 2000, Texas executed Larry Robison, who had a long history of schizophrenia and who had been denied adequate treatment before his crime.<sup>5</sup> James Colburn also has an extensive history of paranoid schizophrenia, and was displaying symptoms of his mental illness at the time of his the murder for which he was sentenced to death.<sup>6</sup> James Colburn's sister recently recalled to Amnesty International how the mental health system had failed her brother:

“When my parents' insurance wouldn't cover him after he was 18, he didn't have insurance coverage. But James himself tried to check himself in to Tri County (hospital) in Conroe. James begged for help. He had been in Galveston mental hospital, he had been at one here in Houston. He had been in a lot of different facilities, but when he turned 18 and the insurance was cut off, my mother, we begged for help, begged for help... My grandparents and my parents drained their finances pretty much trying to help him. He tried himself, he went to the Tri County, he himself wanted help, and they, you know, just pushed him out on the street, gave him his SSI (social security) check, and just pushed him out there, and he was scared in society. He likes being in confined places, because he feels like he can fight those voices off if he is by himself.”<sup>7</sup>

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<sup>4</sup> Letter to George W. Bush, Governor of Texas, 25 June 1998.

<sup>5</sup> See *USA: Time for humanitarian intervention: The imminent execution of Larry Robison* (AI Index: AMR 51107/99, July 1999).

<sup>6</sup> See *USA: James Colburn – mentally ill man scheduled for execution in Texas* (AI Index: AMR 51/158/2002, 16 October 2002).

<sup>7</sup> Tina Morris, interview with Amnesty International, Houston, 29 October 2002.

James Colburn was scheduled for execution on 6 November 2002. The *Houston Chronicle* asked: “What justice is there, really, in carrying out a capital punishment sentence for a person who suffers from voices and hallucinations caused by a disabling major mental illness? Adequate mental health services may have spared Colburn years of suffering and might have spared his victim’s life. It is no secret that Texas has inadequate resources for helping the mentally ill lead normal lives. Looked at another way, it would be better for all and a service to justice if such serious mental health issues were addressed before there is any need to deal with them within the criminal justice system and on death row.”<sup>8</sup> The US Supreme Court stopped James Colburn’s execution shortly before it was due to be carried out on 6 November. However, on 21 January 2003 it announced that it was refusing to take Colburn’s appeal, which had raised questions of his current competency to be executed. At the time of writing, the Montgomery County prosecutor was seeking a 26 March execution date.

Texas does not easily give up in its quest for death sentences. John Paul Penry was sentenced to death in 1980 for a murder committed in 1979. In 1988, 13 hours from execution, the US Supreme Court issued him a reprieve to consider the constitutionality of executing people with mental retardation – Penry’s IQ had been assessed at 53 to 60, well within the retardation range. The Court decided that such executions were permissible, but that juries must be allowed to consider mental retardation as mitigating evidence.<sup>9</sup> The court sent Penry’s case back to the trial court because his original trial jury had not been able to give mitigating effect to the evidence of his disability. In 1990, the State of Texas retried John Penry and obtained another death sentence. A decade later, on 16 November 2000, the US Supreme Court again stopped the execution, this time less than four hours before it was due to be carried out. Again it found fault with the trial proceedings, and sent the case back to Texas. In July 2002, a jury sentenced Penry to death for a third time, now 23 years after the crime. This third death sentence came only a matter of days after the US Supreme Court had reversed its 1989 *Penry* opinion by ruling, in *Atkins v Virginia*, that standards of decency had evolved in the USA to the extent that the execution of people with mental retardation was now unconstitutional.<sup>10</sup> The jury which sentenced John Penry to death for this third time decided that he did not have mental retardation. Governor Rick Perry stated that Texas “will abide by the court’s ruling” in *Atkins*, but added that his state already offered adequate protection to the category of prisoner covered by the decision.<sup>11</sup> Examples where Texas appeared not to provide such protection occurred in 1995, 1997 and 2000 respectively, when Mario Marquez, Terry Washington and Oliver Cruz were put to death in Texas despite substantial claims of retardation.<sup>12</sup> John Penry remains on death row.

If the Penry case has gained Texas international notoriety and betrayed something of the state’s unremitting attachment to judicial killing, so too has the “sleeping lawyer” case. In 1999, after the Texas courts had upheld Calvin Burdine’s conviction and sentence for more than a decade, a federal judge granted him a retrial because his lawyer had slept during substantial portions of the 1984 trial.<sup>13</sup> Texas appealed the federal judge’s decision and in October 2000, a three-judge panel of the Fifth Circuit Court of Appeals overruled the District

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<sup>8</sup> *Genuine justice calls for sparing severely mentally ill*. *Houston Chronicle*, 6 November 2002.

<sup>9</sup> *Penry v Lynaugh*, 492 U.S. 302 (1989).

<sup>10</sup> *Atkins v Virginia*, 000 U.S. 00-8452 (2002).

<sup>11</sup> Governor’s Office press release, 20 June 2002.

<sup>12</sup> In 1989 the United Nations Economic and Social Council (ECOSOC) recommended the elimination of the death penalty “for persons suffering from mental retardation or extremely limited competence, whether at the stage of sentence or execution”. ECOSOC Resolution 1989/64, adopted on 24 May 1989.

<sup>13</sup> The same lawyer was reported to have fallen asleep during the trial of another capital defendant, Carl Johnson, but Johnson obtained no relief on appeal and was executed in Texas in 1995.

Judge's decision. A dissenting judge described the case as one which "shocks the conscience". Calvin Burdine was granted a rehearing by the full Fifth Circuit, only the second time in a decade that the Fifth Circuit had done so in a capital case. In August 2001, by a vote of 9-5, the court granted Calvin Burdine a new trial, saying that the state had failed to address "the fundamental unfairness in Burdine's capital murder trial created by the consistent unconsciousness of his counsel".<sup>14</sup> Apparently impervious to national and international outrage, the State of Texas still did not give up, and appealed for the decision to be overturned by the US Supreme Court and for the state to be allowed to execute Burdine. In June 2002, the Supreme Court refused to take the case, leaving the Fifth Circuit decision intact. As in the case of John Penry, the state is seeking another death sentence against Calvin Burdine at his retrial two decades after the crime.

However, public concern over the "sleeping lawyer" case did contribute to the Texas legislature passing the Fair Defense Act in an effort to improve indigent defence in the state.<sup>15</sup> The Act did not cover state-appointed appeal representation, however. Condemned prisoners continue to go to their deaths without proper judicial scrutiny of issues which such lawyers have failed to raise.

After a defendant is sentenced to death in Texas, their direct appeal and *habeas corpus* review are conducted simultaneously. Only issues in the trial record – such as rulings made by the trial judge – can be raised on direct appeal. Matters outside the record – such as the withholding of evidence by the prosecutor or the failure of the defence lawyer to present particular evidence – are to be presented via the *habeas corpus* appeal. The latter therefore requires that the defence conduct a thorough investigation of the inmate's case. Generally, the prisoner gets one chance. If the *habeas* appeal lawyer fails to raise issues, they will forever be forfeited from judicial review.

The non-profit Texas Defender Service (TDS) reviewed 251 *habeas corpus* applications filed between September 1995 and the end of 2001, and found that "an alarmingly large proportion" of them were "perfunctory".<sup>16</sup> While a *habeas* appeal filed by a properly funded, experienced, competent lawyer might be expected to run to 150 pages, the TDS report found that:

"Of the 251 *habeas* applications reviewed, 76 (30%) were 30 pages or less. Of those, 37 applications (15%) were 15 pages or less. Twenty-two applications (9%) were 10 pages or less – quite a feat, because the procedural requirements for *habeas* petitions usually consume five pages alone. It is no surprise that many of the shortest petitions contained only record-based, direct-appeal-type claims presenting nothing for review, thereby forfeiting future review by the federal courts."

The study found that some longer petitions also contained the wrong type of claims for state *habeas* review, and it suggested that these "long, seemingly well-investigated and well-prepared petitions serve to perpetuate the myth that Texas's death row inmates are being afforded meaningful appellate review". The TDS continued:

"Regardless of a petition's length, content is a more telling barometer of the quality of representation...Like an automobile without an engine, a state *habeas* petition without extra-record claims will go nowhere. It is certain to be denied. Despite the crucial importance of a thorough investigation of the case, in 97 cases (39%), no extra-record materials reflecting that investigation were filed... In 39% of cases we reviewed, the inmates' right to post-conviction review effectively ended when the

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<sup>14</sup> *Burdine v Johnson*, No. 99-21034. US Court of Appeals for the Fifth Circuit, 13 August 2001.

<sup>15</sup> Texas Fair Defense Act, 2001 Tex. Gen. Laws 906 (14 June 2001).

<sup>16</sup> *Lethal indifference*. Texas Defender Service, 2002. [www.texasdefender.org](http://www.texasdefender.org)

petition was filed. In each, there was absolutely nothing for the courts to consider. These petitions were *habeas* applications in name only”.

Johnny Joe Martinez was executed in Texas on 22 May 2002. His state-appointed *habeas* lawyer had never before handled such an appeal, and repeatedly asked to be allowed to withdraw from the case because he was out of his depth. He eventually filed a five and a half page petition. Two of the four claims comprised 17 lines of text with three inches of margin, with no cases cited. Leonardo Rojas’s *habeas* lawyer, on disciplinary probation at the time of his appointment and disciplined again by the State Bar two weeks later, filed a 15-page *habeas* petition, raising 13 claims, which were all based on the trial record. Twelve had been procedurally defaulted for not having been raised on direct appeal. Leonardo Rojas was executed on 4 December 2002.

After his 1995 trial, Henry Dunn was appointed a lawyer for his direct appeal who had never handled an appeal in a death penalty or any other case. The lawyer even filed a motion asking for more time so that he could attend a seminar to find out how to write such an appeal brief. The motion was denied. The appeal the lawyer filed for Henry Dunn was rejected with several of the issues he raised dismissed on the grounds that they were inadequately written up in the appeal brief. Henry Dunn was appointed two lawyers for his *habeas corpus* appeals. They had also never handled any death penalty cases, and raised issues described as frivolous by the federal district court. They also failed to file a timely notice of intent to appeal, thus forfeiting Henry Dunn’s right to further challenge his conviction and sentence. He is scheduled to be executed on 6 February 2003.

Until 1995, the State of Texas had not appointed lawyers to conduct the state *habeas corpus* appeals of indigent death row prisoners. Those too poor to afford their own lawyer had to find someone to represent them for free. Then in 1995, the state legislature passed a law, codified as Article 11.071 of the Texas Code of Criminal Procedure, which mandated the trial courts, under rules adopted by the Texas Court of Criminal Appeals (TCCA), to “appoint competent counsel” for prisoners who are found to be indigent and who do not choose to represent themselves in their *habeas* proceedings.

The TCCA maintains a list of attorneys who are “approved” for appointment to represent indigent death row inmates for their state *habeas* appeals. A former TCCA judge has been quoted as saying that the result of the Court’s failure to set minimum standards for *habeas* lawyers was that: “We appointed some absolutely terrible lawyers. I mean lawyers that nobody should have, much less somebody on death row on his last appeal.”<sup>17</sup> According to a civil lawsuit filed in May 2002 on behalf of three death row inmates then facing imminent execution, on the TCCA’s list of approved lawyers at that time were: “at least three prosecutors, one employee of the Texas Department of Criminal Justice, one lawyer whose licence has been suspended, one lawyer who is no longer an active member of the bar, at least four lawyers who have been disciplined by the bar, and one lawyer who is dead.”<sup>18</sup> All three inmates on whose behalf the lawsuit was brought have since been executed.

So what is meant by “competent” under Article 11.071 requiring appointment of “competent counsel” for the *habeas corpus* appeals of Texas death row inmates? On 2 January 2002, the Court of Criminal Appeals gave its answer. By 6 votes to 3 it found that the phrase “competent counsel” concerned “the initial appointment of counsel and continuity of representation rather than the final product of representation”.<sup>19</sup> In other words, the lawyer had to be competent on paper, but not in actual performance. Three judges dissented.

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<sup>17</sup> *Defense called lacking for death row’s poor*. Dallas Morning News, 10 September 2000.

<sup>18</sup> *Martinez, Etheridge and Beazley v the Texas Court of Criminal Appeals*. In the US District Court for the Southern District of Texas.

<sup>19</sup> *Ex parte Charles Anthony Graves*, Texas Court of Criminal Appeals, 2 January 2002.

One suggested that “competent counsel” ought to require “more than a human being with a law license and a pulse”. Another pointed to the fact that several other states had determined that “a right to *habeas* counsel necessarily entails that such counsel be effective”. The third wrote that the “guarantee of ‘competent counsel’ would be a cruel joke if it did not comprehend the right to the effective assistance of counsel. The Legislature could not have intended a cruel joke”.

While the above decision and cases indicate that Texas is failing to abide by international standards which require that capital defendants be adequately represented “at all stages of the proceedings”<sup>20</sup>, it is clear that Texas is also prepared to violate international treaty law in its pursuit of the ultimate punishment. In the past five years, there have been 17 known executions worldwide of child offenders, those convicted of crimes committed when they were younger than 18 years old.<sup>21</sup> Twelve of these internationally illegal executions were in the USA. Eight – nearly half of the world total – were carried out in Texas.

In June 2001, nine senior former US diplomats filed an *amicus curiae* (friend of the court) brief with the US Supreme Court which argued that the USA’s use of the death penalty against people with mental retardation “has become manifestly inconsistent with evolving international standards of decency”. Continuing to execute such defendants, the brief asserted, “will strain diplomatic relations with close American allies, provide ammunition to countries with demonstrably worse human rights records, increase US diplomatic isolation, and impair the United States foreign policy interests”.<sup>22</sup> If this is true of the execution of people with mental disabilities, it can be no less true in relation to the execution of child offenders, a practice expressly prohibited under international law and now virtually unknown outside of the United States. As the leading perpetrator of this violation, Texas is disproportionately responsible for the resulting damage being done to the USA’s reputation abroad.

In between executing the only three child offenders known to have been put to death anywhere in the world in 2002, Texas executed Javier Suárez Medina, a Mexican national denied his consular rights after arrest. It was the sixth time Texas had carried out such an execution in the past decade. The execution of Javier Suárez led the President of Mexico to cancel a trip to Texas in protest, and on 9 January 2003, his government instituted proceedings against the USA in the International Court of Justice accusing its northern neighbour of systematically violating its international obligations, under the Vienna Convention on Consular Relations, with respect to the 51 Mexican nationals on death row in nine US states.<sup>23</sup> Thirty one per cent (16) of these 51 people are on death row in Texas. In

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<sup>20</sup> UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, 1984.

<sup>21</sup> The Geneva Conventions, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the American Convention on Human Rights and the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, all have provisions exempting this age group from execution. On 22 October 2002, the Inter-American Commission on Human Rights found that “a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18 at the time of their crime.” The Commission went on to state that “this rule has been recognized as being of a sufficiently indelible nature to now constitute a norm of *jus cogens*... The acceptance of this norm crosses political and ideological boundaries and efforts to detract from this standard have been vigorously condemned by members of the international community... As a *jus cogens* norm, this proscription binds the community of States, including the United States”. Report No. 62/02. Case 12.285, Michael Domingues, United States.

<sup>22</sup> *Ernest Paul McCarver v State of North Carolina*. Brief of *Amici Curiae*. Diplomats Morton Abramowitz, Stephen W. Bosworth, Stuart E. Eizenstat, John C. Kornblum, Phyllis E. Oakley, Thomas R. Pickering, Felix G. Rohatyn, J. Stapleton Roy, and Frank G. Wisner in support of petitioner.

<sup>23</sup> There were 54 Mexican nationals on death row in 10 states, but three Mexican nationals (as well as a national of Belize and a national of Poland) were among those granted clemency by the Illinois Governor.

his speech on 11 January 2003 announcing that he was commuting all the death sentences in Illinois, the outgoing state governor there, George Ryan, pointed out that among the prisoners to be spared were five foreign nationals denied their consular rights. Governor Ryan added: “If we do not uphold international law here, we cannot expect our citizens to be protected outside the United States”.

If Texas is the death penalty capital of the USA, Harris County, home to about 15 per cent of the state’s population, is its main supplier of condemned inmates. Thirty-five per cent of the 450 men and women on death row in Texas were sent there by Harris County juries. Only seven of the 38 death penalty *states* in the USA – Alabama, California, Florida, North Carolina, Ohio, Pennsylvania, and the rest of Texas – currently have more people on death row than Harris County. Nearly a quarter of the 291 prisoners executed in Texas between December 1982 and December 2002 were sentenced to death in this county. If Harris County were a state, it would rank third behind Texas and Virginia in the number of executions carried out. A recent *Houston Chronicle* series on the Harris County death machine suggested that “one of the cruellest anomalies of the modern system of capital punishment” is that “geography means everything”.<sup>24</sup> In other words, where the crime is committed, rather than the facts of the crime itself, determines whether a death sentence will be the result. The paper noted that, in the past five years, Harris County had sent 55 defendants to death row, while Dallas County had sent 23. In each of those five years, the paper asserted, Dallas had had a higher murder rate. In his commutation speech on 11 January 2003, Illinois Governor George Ryan asked: “Should geography be a factor in determining who gets the death sentence” as has been the case in Illinois? He responded that it should not.

Over the past decade, the murder rate in the USA has dropped as the number of executions has increased. Rather than focussing on possible reasons such as an aging population and an improved economy, some have argued that this is a sign of a deterrent effect of the death penalty. However, during this period states without the death penalty saw a larger drop in the murder rate than those with the death penalty. Murders now appear to be on the rise again. In 2001, the year after Texas executed more prisoners – 40 – than in any year in the previous eight decades, the murder rate in Houston went up by 16.1 per cent and the number of murders across the state increased by 7.6 per cent. Preliminary figures from Harris County indicated that there were two dozen more murders in Harris County in 2002 than in 2001 (338 compared to 314).<sup>25</sup> In San Antonio in 2002, there were reported to have been over 100 homicides for the first time in five years.<sup>26</sup> Such statistics do not prove anything in themselves, but it is worth recalling what former US Attorney General Janet Reno said in 2000: “I have inquired for most of my adult life about studies that might show that the death penalty is a deterrent. And I have not seen any research that would substantiate that point.”<sup>27</sup> A 1999 study found no evidence that the Texas death penalty had a deterrent effect.<sup>28</sup>

On 11 January 2003, Governor Ryan of Illinois emptied his state’s death row with one of his last decisions in office. Having the day before pardoned four condemned prisoners whom he believed had been tortured into confessing to crimes they did not commit, he commuted the death sentences of 167 others to prison terms. George Ryan’s decision came three years after he had declared a moratorium on executions in Illinois because of its

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<sup>24</sup> *A deadly distinction*. *Houston Chronicle*, 5 February 2001.

<sup>25</sup> *Homicides jump in Harris County*. *Houston Chronicle*, 1 January 2003.

<sup>26</sup> *100 slayings mark grim year*. *Houston Chronicle*, 3 January 2003.

<sup>27</sup> Weekly media briefing, US Justice Department, 20 January 2000.

<sup>28</sup> *Capital punishment and deterrence: Examining the effects of executions on murder in Texas*. Sorenson, J., Wrinkle, R., Brewer, V., Marquart, J. 45 *Crime and Delinquency* 481-93 (1999).

“shameful” record of wrongful convictions in capital cases. Soon after that decision, he appointed a Commission on Capital Punishment to study the capital justice system. After two years of research, it made some 85 recommendations for reforming the system, but also made clear that its 14 members were “unanimous in the belief that no system, given human nature and frailties, could ever be devised or constructed that would work perfectly and guarantee absolutely that no innocent person is ever again sentenced to death”.<sup>29</sup> That is one of the reasons why so many countries have turned their backs on the death penalty.

Texas has made its share of now known mistakes in capital cases, releasing seven death row inmates since 1987 after evidence of their innocence emerged. Between them they had spent 70 years between death sentence and exoneration. As Governor Ryan of Illinois said, “our capital justice system is haunted by the demon of error”.<sup>30</sup> It may yet be shown that Texas (or any other of the 31 states to have executed since 1976) is haunted by the execution of someone for a crime he did not commit. It may be Gary Graham, executed in 2000 on the disputed testimony of a single eyewitness, or Odell Barnes, put to death the same year despite evidence that showed the victim’s blood on his clothing may have been planted after the crime. Or one of several other people put to death despite serious lingering questions about their guilt, in contravention of international standards.<sup>31</sup> Governor Rick Perry does not yet support a moratorium on executions and is said to have no plans to create a commission to study the state’s death penalty system. According to his spokesperson, Governor Perry “thinks the system is operating well and fairly. Before he would agree [to a commission] there would have to be a credible indication that improvements could be made”.<sup>32</sup>

The issue of innocence in capital cases must lead one to ask more questions, as Texas state representative Harold Dutton did recently: “If we can’t answer the first and simplest question correctly, “Is this person guilty?”, how can we expect to answer the infinitely more difficult question correctly: “Is the death penalty the only appropriate punishment for this individual?”<sup>33</sup> Illinois Governor Ryan had asked the same question before concluding that he should commute all the death sentences in his state: “If the system was making so many errors in determining whether someone was guilty in the first place, how fairly and accurately was it determining which guilty defendants deserved to live and which deserved to die? What effect was race having? What effect was poverty having?”<sup>34</sup>

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote following his visit to the USA in 1997: “Race, ethnic origin and economic status appear to be key determinants in who will, and who will not, receive a sentence of death”.<sup>35</sup> In its report on the USA in 2001, the UN Committee on the Elimination of Racial Discrimination noted the “disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty, particularly in states like Alabama, Florida, Georgia, Louisiana, Mississippi and Texas.” The Committee urged the authorities “to ensure,

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<sup>29</sup> Report of the Governor’s Commission on Capital Punishment. Illinois. April 2002. p.207.

<sup>30</sup> George Ryan, speech at Northwestern University College of Law, 11 January 2003.

<sup>31</sup> “Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts”. UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, 1984.

<sup>32</sup> *Texas undeterred by Illinois’ ripple effect*. Houston Chronicle, 19 January 2003.

<sup>33</sup> Dallas Morning News, 13 January 2003. Rep. Dutton has introduced several bills into the 2003 state legislature, including one to abolish the death penalty, and one which would impose a moratorium on executions while a Capital Punishment Commission studied the death penalty, particularly “issues relating to the legal representation of inmates in capital cases, the certainty of the guilt of individuals convicted in capital cases, and the sufficiency of appellate review of convictions in capital cases”.

<sup>34</sup> Governor George Ryan, Northwestern University College of Law, 11 January 2003.

<sup>35</sup> E/CN.4/1998/68/Add.3.

possibly by imposing a moratorium, that no death penalty is imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers or as a result of the economically, socially and educationally disadvantaged position of the convicted persons.”<sup>36</sup> Studies have consistently shown that race, particularly race of the murder victim, plays a role in who is sentenced to death in the USA. The majority (around 80 per cent) of those executed in the USA were put to death for crimes involving white victims. Blacks and whites are the victims of murder in almost equal numbers in the USA. In Texas, of the 292 prisoners put to death between December 1982 and 23 January 2003, 231 (79 per cent) were executed for crimes involving white victims. In 64 cases (22 per cent), the defendant was an African American convicted of killing a white person. None of the 292 people executed have been whites convicted of killing blacks.

In 1980, a US Supreme Court Justice said: “The task of eliminating arbitrariness in the infliction of capital punishment is proving to be one which our criminal justice system - and perhaps any criminal justice system - is unable to perform.”<sup>37</sup> The Illinois Commission on Capital Punishment said much the same thing when it had concluded that “no system, given human nature and frailties, could ever be devised or constructed that would work perfectly”. In effect it is what a Harris County prosecutor admitted when she said in 2001: “A lot of times, there aren’t many differences between people who are prosecuted for the death penalty and those who are not”.<sup>38</sup>

It has been estimated that Governor Ryan’s decision to clear death row could save Illinois up to one million dollars a year in incarceration costs – because of the lower costs of housing prisoners in maximum security prisons rather than on death row – even before taking into account the higher legal costs of capital cases.<sup>39</sup> The costs of the death penalty surely cover more than just monetary matters, including the extension of grief and suffering to a whole new set of relatives, those of the condemned individual, often in the name of bringing emotional closure to the murder victim’s family. In any event, it is a cruel and brutalizing punishment, a penalty tainted by arbitrariness and discrimination, one that encourages simplistic responses to complex social problems, that damages the international reputation of the retentionist state in an increasingly abolitionist world, and a punishment which uniquely carries the risk of irrevocable error. To work against executions and for abolition must be the action of any responsible government.

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<sup>36</sup> A/56/18, para 396.

<sup>37</sup> *Godfrey v Georgia*, 446 U.S. 420 (1980), Justice Marshall concurring.

<sup>38</sup> *A deadly distinction*. Houston Chronicle, 5 February 2001.

<sup>39</sup> *Ryan’s death row moves could save \$1million*. Daily Herald, 13 January 2003.

## **ACTION AGAINST EXECUTIONS IN TEXAS**

Several prisoners are scheduled for execution in Texas in the next few weeks. At the time of writing, 292 prisoners had been put to death in the state since executions resumed there in 1982. Others might yet be added to this list for execution before the end of April. Some of those named below may yet be granted stays of execution by the courts. For an updated list at any time, see <http://www.tdcj.state.tx.us/stat/scheduledexecutions.htm>

|     |             |                                       |
|-----|-------------|---------------------------------------|
| 293 | 28 January  | Alva Curry (TDCJ No. 999080)          |
| 294 | 29 January  | Richard Dinkins (TDCJ No. 999022)     |
| 295 | 30 January  | Granville Riddle (TDCJ No. 965)       |
| 296 | 4 February  | John Elliot (TDCJ No. 861)            |
| 297 | 6 February  | Henry Dunn (TDCJ No. 999165)          |
| 298 | 18 February | Gregory Van Alstyne (TDCJ No. 999034) |
| 299 | 25 February | Richard Williams (TDCJ No. 999251)    |
| 300 | 26 February | Michael Johnson (TDCJ No. 999198)     |
| 301 | 11 March    | Bobby Cook (TDCJ No. 999094)          |
| 302 | 12 March    | Delma Banks (TDCJ No. 671)            |
| 303 | 20 March    | Keith Clay (TDCJ No. 999238)          |
| 304 | 15 April    | Kenneth Morris (TDCJ No. 999117)      |
| 305 | 22 April    | Juan Chavez (TDCJ No. 999186)         |
| 306 | 23 April    | Robert Ladd (TDCJ No. 999237)         |

You may appeal to the Texas **Board of Pardons and Paroles** to vote for clemency on any or all of these prisoners. When naming an inmate, please include the individual's prison number as listed above. You may also appeal to the Texas **Governor**, urging him to use his power of reprieve and his influence in general to oppose all executions and to support a moratorium on executions in Texas with a view to abolition. Please write in your own words, using any of the information contained in this document as you wish.

Texas Board of Pardons and Paroles, Executive Clemency Section

PO Box 13401, Capitol Station, Austin, Texas 78711, USA

**Fax: + 1 512 467 0945. Salutation: Dear Board Members**

Governor Rick Perry, Office of the Governor

PO Box 12428, Austin, Texas 78711-2428, USA

**Fax: + 1 512 463 1849 / 463 0039 / 463 1932. Salutation: Dear Governor**

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

You may also write brief letters of concern (under 250 words) to:

Letters to the Editor, *Dallas Morning News*, Box 655237, Dallas, Texas 75265, USA. Fax: +1 972 263 0456. E-mail: [letterstoeditor@dallasnews.com](mailto:letterstoeditor@dallasnews.com)

Viewpoints, *Houston Chronicle*, P.O. Box 4260, Houston, Texas 77210, USA. Fax: +1 713-220-3575. E-mail to [viewpoints@chron.com](mailto:viewpoints@chron.com)

Letters to the Editor, *Austin- American Statesman*, Letters to the Editor, P.O. Box 670, Austin, Texas 78767, USA. Email: <http://www.austin360.com/aas/feedback/letterssubmit.html>  
Fax: +1 512 912-5927.

### **Letter-writing to members of the Texas Legislature**

The Texas legislature meets in regular session every two years. The 78<sup>th</sup> Regular Session runs from January to June 2003. Several bills on the death penalty have been introduced into the session in both the Senate and the House of Representatives. Senator Rodney Ellis has introduced Senate Bill (SB 218) which would abolish the death penalty for those under 18 at the time of the crime; one (SB 163) to establish procedures to protect defendants with mental retardation from the death penalty; and one (SB 219) to require the Board of Pardons and Paroles to meet when deciding clemency in a capital case. Senator Eliot Shapleigh has introduced a proposed constitutional amendment allowing the Governor of Texas to impose a moratorium on executions (SJR 12). Representative Lon Burnham has introduced a bill to abolish the death penalty for under-18-year-olds (HB 127). Representative Harold Dutton has introduced a bill (HB 343) to abolish the death penalty; and one (HB 357) which would impose a moratorium on executions while a Capital Punishment Commission studied the death penalty, particularly “issues relating to the legal representation of inmates in capital cases, the certainty of the guilt of individuals convicted in capital cases, and the sufficiency of appellate review of convictions in capital cases”.

You may write to the following legislators welcoming and encouraging their legislative efforts against the death penalty in Texas:

Senator Rodney G. Ellis, P.O. Box 12068, Capitol Station, Austin, Texas 78711, USA

Senator Eliot Shapleigh, P.O. Box 12068, Capitol Station, Austin, Texas 78711, USA

Representative Harold Dutton, P.O. Box 2910, Austin, TX 78768, USA

Representative Lon Burnham, P.O. Box 2910, Austin, TX 78768, USA

You may also write to the following members of the Senate Committee on Criminal Justice urging them to support bills to restrict, suspend, or abolish the death penalty that come before them.

(Chair) Senator John Whitmire, P.O. Box 12068, Capitol Station, Austin, Texas 78711, USA

Senator John Carona, P.O. Box 12068, Capitol Station, Austin, Texas 78711, USA

Senator Bill Ratliff, P.O. Box 12068, Capitol Station, Austin, Texas 78711, USA

(No Representatives have yet been assigned to the House Committee on Criminal Jurisprudence).

**INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM**