

PUBLIC

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UA 07/07 Death penalty / Legal concern

USA (Texas) Johnathan Bryant Moore (m), white, aged 32

Johnathan Moore is scheduled to be executed on 17 January 2007 in Texas. He was sentenced to death in November 1996 for the murder of a police officer in San Antonio in January 1995.

San Antonio police officer Fabian Dominguez, aged 29, was shot dead in the early hours of 15 January 1995 outside a house where a burglary was in progress. Two days later, after a high-speed car chase, 20-year-old Johnathan Moore was arrested. He told police that he and two others had burgled the house in question and were about to drive away when their way was blocked by Officer Dominguez. Moore said that he shot the officer after the latter pointed his gun through the car window.

At the trial, Johnathan Moore pleaded not guilty by reason of insanity, a very difficult plea on which to prevail. The defence lawyers argued that, as a result of the defendant's mental illness, the symptoms of which had for some time included paranoid delusions that authority figures, particularly the police, were trying to kill him, Johnathan Moore had not realized his conduct was wrong at the time of the crime and had feared that Officer Dominguez was going to shoot him.

The court-appointed lawyers suspected that Moore might be incompetent to stand trial – that is, unable to assist them or have a rational understanding of the proceedings. The judge appointed a mental health expert, Dr Michael Arambula, to examine him. Dr Arambula and his colleague Dr Margot Zuelzer concluded that Moore was suffering from schizoaffective disorder, a serious mental illness combining symptoms of schizophrenia such as delusions or hallucinations with a mood disorder such as depression. They were not asked to report to the court on the question of Moore's competence to stand trial. They warned the defence lawyers that, while Moore might currently be competent to stand trial, his mental health could deteriorate into incompetence under the stress of a trial, particularly if he incorporated his lawyers into his delusional thinking. The trial began five months later.

Under Texas law, if evidence is brought to the attention of the trial judge raising a *bona fide* doubt about the defendant's competence to stand trial, the judge must suspend the proceedings and empanel a new jury to decide the issue. Although there were indications of Moore's mental health deteriorating during the trial – he became variously withdrawn or disruptive, and sought to represent himself – the lawyers did not ask for a competency hearing. According to a 2005 appeal brief, by the time of the trial, Moore had begun "to suspect that his own lawyers were part of the larger conspiracy to kill him, and eventually refused to cooperate with them at all. By the time of jury selection, he had effectively withdrawn his attention from the proceedings altogether, and spent most of his time in the courtroom leafing idly through books and magazines". At a post-conviction hearing, the lawyers would recall that they had suspected that Moore was mentally ill from the time they first met him and that it had become increasingly difficult during the trial to communicate with him. Outbursts by Moore during the trial included his interrupting of witnesses. For example, when one witness was asked whether they had seen the post-arrest photographs of Moore, Moore intervened: "Does Jesus Christ have a long hair and a beard? You've seen pictures of Him. What makes the difference between Jesus Christ and Charles Manson?" The Texas Court of Criminal Appeals would later dismiss claims that such outbursts were evidence of the need for a competency hearing, stating that they were "timely, topical, and logically related to the questions and answers offered during the examination of other witnesses".

The defence presented Drs Arambula and Zuelzer, who testified that in their opinion Moore had been suffering from serious mental illness at the time of the crime and that he had been legally insane as a result. The defence also presented lay witnesses, detailing Moore's difficult family life, his commitment to a mental

hospital and treatment with psychotropic medication during his adolescence, and his increasing paranoia as a young adult. In rebuttal, the prosecution presented two doctors who testified that in their opinion Johnathan Moore did not suffer from a serious mental illness and was legally sane at the time of the shooting. The jury rejected the insanity defence and convicted Moore of capital murder.

At the sentencing phase, Johnathan Moore again sought to discharge his lawyers, and represented himself for the first two days of proceedings. The defence lawyers sought a competency hearing, but without recalling the mental health experts, who therefore never testified at any stage on the question of Moore's competence to stand trial. The judge rejected the motion, the sentencing continued, and Johnathan Moore was sentenced to death after the jury found that he would pose a future risk to society if allowed to live (a prerequisite for a death sentence in Texas). Among the prosecutor's arguments for execution was that the jury could consider Moore's youth as a reason to hand down a death sentence.

Drs Arambula and Zuelzer later testified at an evidentiary hearing during the appeals process. Although they had had only limited opportunity to observe Johnathan Moore during the trial, after hearing the trial lawyers' testimony about his conduct, Dr Zuelzer concluded that Moore had become incompetent during the proceedings. According to a 2005 appeal brief, Dr Arambula testified that under a situation in which "Moore's paranoia and delusions caused him to become so suspicious of his attorneys that he refused to communicate with them, kept his head down, flipped through magazines and books during the trial, and eventually chose to represent himself, he [Arambula] could have testified that Moore was incompetent." The appeal courts have upheld the conviction and death sentence, rejecting the claim, among others, that the defence lawyers were ineffective for having not presented their experts in seeking a competency hearing.

Johnathan Moore's execution is scheduled to take place on the 30th anniversary of the resumption of executions in the USA. The "modern" era of judicial killing in the USA began on 17 January 1977 with the execution of Gary Gilmore in Utah. There have now been 1,057 executions, of which 379 (36 per cent) have been carried out in Texas. Texas has executed nearly four times as many people as the next leading death penalty state, Virginia. Although there is evidence of opinion turning against the death penalty in the USA (see *USA: New Year's resolution: End a cruel and outdated punishment*, 21 December 2006, <http://web.amnesty.org/library/Index/ENGAMR512052006>), the rate of judicial killing in Texas remains high. In 2006, Texas carried out 24 executions, five times as many as the next highest state total. Texas has frequently flouted international standards in its pursuit of the death penalty, including its use against the mentally impaired, and against those denied their right to adequate legal representation. Amnesty International opposes the death penalty unconditionally in all cases. The organization has raised concerns about the use of the death penalty against people with mental illness, including in Texas, and including people whose competence to stand trial was in doubt (see *USA: The execution of mentally ill offenders*, January 2006, [http://web.amnesty.org/library/pdf/AMR510032006ENGLISH/\\$File/AMR5100306.pdf](http://web.amnesty.org/library/pdf/AMR510032006ENGLISH/$File/AMR5100306.pdf)).

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language (please include Johnathan Moore's prisoner number, #999216, in your appeals):

- expressing sympathy for the family and friends of San Antonio police officer Fabian Dominguez, and explaining that you are not seeking to condone his murder or to downplay the suffering caused;
- expressing concern that the trial of Johnathan Moore went ahead without a competency hearing, despite evidence that he was not competent to stand trial as a result of mental illness;
- calling on the Governor to stop this execution and seek a clemency recommendation from the Board of Pardons and Paroles;
- urging the Governor to support a moratorium on executions in Texas, with a view to abolition.

APPEALS TO:

Governor Rick Perry, Office of the Governor, P.O. Box 12428, Austin, Texas 78711-2428, USA

Fax: +1 512 463 1849

Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 17 January 2007.