

EXTRA 67/00

Death pen**USA (Texas) Oliver David Cruz, Latino, aged 33**

Oliver Cruz is scheduled to be executed in Texas at 6pm local time on 9 August 2000. He was sentenced to death in 1988 for the rape and murder of 24-year-old Kelly Elizabeth Donovan, white.

Oliver Cruz is learning disabled, and was intoxicated by alcohol and drugs at the time of the crime. Cruz, who was 21, confessed to police. His co-defendant, Jerry Daren Kemplin, white, charged with the same crime, pleaded guilty and testified against Cruz. In return he avoided the death penalty and received a 65-year prison sentence with the possibility of parole.

At the trial, a psychologist testified that he had evaluated Cruz's IQ as 64 on one test and 76 on another (an IQ of 70 or below is considered within the mental retardation range). The psychologist found that Cruz was functionally illiterate, barely able to read or write. The defence argued that Cruz's mental impairment should mitigate against a death sentence.

The state did not dispute the findings. Instead, the prosecutor argued that the fact that Cruz "may not be very smart" made him more dangerous and therefore deserving of the death penalty. In Texas, the jury has to find that a defendant represents a future danger to society before they can pass a death sentence.

Oliver Cruz is one of two men scheduled to be executed in Texas, within about an hour of each other, on 9 August. The other is Brian Keith Roberson (see EXTRA 62/00, AMR 51/113/00, 24 July 2000).

BACKGROUND INFORMATION

In 1989, the same year that the international community adopted a UN safeguard opposing the use of the death penalty against people "suffering from mental retardation or extremely limited mental competence...", the US Supreme Court ruled that the execution of the mentally retarded did not violate the US Constitution. Today, 13 retentionist US states forbid such use of the death penalty. An attempt to introduce such legislation in Texas in 1999 failed. Governor George W Bush opposed it, and is reported to still be opposed to such legislative efforts. The American Association on Mental Retardation opposes such use of the death penalty.

Amnesty International opposes the death penalty unconditionally. Some 108 countries have abolished judicial killing in law or practice, a statistic that throws an ever-brighter spotlight on the USA's rising execution rate. Over 450 of the 654 US executions carried out since 1977 have occurred since 1993; 56 inmates have been executed this year, 26 of them in Texas.

The pace of execution in Texas is coming under intense scrutiny, especially since the Illinois governor suspended executions in his state because of its "shameful" record of wrongful convictions. The *Chicago Tribune*, the newspaper which had investigated the Illinois death penalty prior to the January moratorium and found it to be riddled with injustice, recently concluded that the same problems were plaguing Texas capital justice.

The Texas capital sentencing scheme, at which the jury is asked to predict future dangerousness, has long been criticized. As in many cases tried before

the state law was changed in 1991 to require judges to instruct juries to take account of mitigating factors, Oliver Cruz's mental impairment, particularly given the prosecutor's argument, is likely to have been interpreted as aggravating rather than mitigating evidence, as it may have led the jury to decide that such impairment would be likely to lead to future acts of violence.

RECOMMENDED ACTION: Please send telegrams/faxes/emails in English or your own language, in your own words, using the following guide:

- acknowledging the seriousness of the crime for which Oliver David Cruz is scheduled to be executed, and expressing sympathy for the relatives and friends of Kelly Elizabeth Donovan;
- stating that the execution of the mentally retarded violates international standards, noting that 13 US states forbid such use of the death penalty;
- expressing concern that Governor Bush opposes legislation to exempt the mentally retarded from the death penalty;
- noting that Oliver Cruz's co-defendant, charged with the same crime, received a plea bargain to testify against Cruz;
- noting that mental retardation is a mitigating factor in US constitutional law, and expressing concern that the prosecutor explicitly turned it into an aggravating factor to argue for death;
- noting that more than half the countries of the world have abolished the death penalty in law or practice, and that executions in Texas are increasingly damaging the USA's image internationally;
- calling for clemency on compassionate grounds for Oliver Cruz, and urging Governor Bush to support a moratorium on executions in Texas.

APPEALS TO:

The Honorable George W. Bush
Governor of Texas
PO Box 12428, Austin, TX 78711-2428, USA
Faxes: + 1 512 463 1849 or +1 512 637 8800
E-mail: <http://www.governor.state.tx.us/email.html>
Telegrams: Governor Bush, Austin, TX, USA
Salutation: Dear Governor

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

You may also send letters of concern (not more than 250 words) to:
Letters to the Editor, *Dallas Morning News*

Fax: + 1 972 263 0456
E-mail: letterstoeditor@dallasnews.com

PLEASE SEND APPEALS IMMEDIATELY.