

EXTERNAL

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EXTRA 05/96

Death Penalty / Legal concern

15 January 1996

USA (TEXAS) Emile Duhamel

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Emile Duhamel (white), sentenced to death for murder, is scheduled to be executed on 24 January 1996 in Texas despite reportedly being diagnosed as mentally ill with mental retardation.

According to information received, Emile Duhamel was a patient at a mental hospital during his childhood, and has been diagnosed as suffering from mental illness with mental retardation, including paranoid schizophrenia and major depression. He reportedly has an IQ of 56 (an average person's IQ score is 100), and suffers from organic brain dysfunction, seizures and dementia. Since his incarceration in July 1984, Duhamel's condition is said to have deteriorated so that he is sometimes delusional and reclusive and experiences auditory and visual hallucinations.

A physician appointed by the court in 1984 reportedly found Duhamel competent to stand trial, but, five months later, changed his evaluation because Duhamel's mental condition had deteriorated so much. The doctor stated at a hearing that Duhamel was "in no position to stand trial" since he did not understand the proceedings against him and could not assist his attorney in his defence. Duhamel reportedly denied his lawyer's presence and imagined that a non-existent lawyer was his attorney. The prosecution maintained that Duhamel was faking his illness. At the hearing the state reportedly failed to appoint a mental health expert, but presented only the testimony of jail guards who stated that Duhamel "seemed fine to them". Duhamel was found competent to stand trial.

Duhamel was not brought to trial until 1986, during which time he remained in jail and his condition reportedly deteriorated; despite this, he was untreated for his mental illness for at least a year while in jail. After being sentenced to death, Duhamel entered the psychiatric unit on death row and received medication for his condition.

According to information received, Duhamel was again examined for competency in 1988. Although one doctor found that his mental retardation "has and always will prevent him from understanding his crime and sentence", another doctor appointed by the court found him competent. The same doctor concluded in October 1995 that Duhamel is competent to be executed and that "he knows the facts of his impending execution, and knows the reason for it". At a hearing on his case in November 1995, Duhamel was again found competent to be executed.

Duhamel was reportedly unrepresented at the hearing, without defence counsel or any mental health expert to provide testimony on his behalf.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel or degrading punishment, as proclaimed in the Universal Declaration of Human Rights. Moreover, the organization is concerned that Emile Duhamel's execution may contravene United Nations Economic and Social Council (ECOSOC) resolution 1989/64, adopted in May 1989, which recommends "*eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence*".

**BACKGROUND INFORMATION**

Fifty-six prisoners were executed in the USA in 1995; 19 of these were carried out in Texas. In Texas the governor may commute a sentence of death only if he receives a favourable recommendation from the state Board of Pardons and Paroles. The Board consistently refuses to hold full clemency hearings in death penalty cases, and apart from a number of commutations granted in the 1980s as the result of two key court rulings, has never recommended clemency in any death penalty case in recent years.

As of 31 August 1995 there were 401 prisoners under sentence of death in Texas; the method of execution is lethal injection and the most recent person to be executed in the state was James Briddle, on 12 December 1995.

**RECOMMENDED ACTION: Please telephone or send telegrams/faxes, in English if possible:**

- expressing deep concern that Emile Duhamel is scheduled to be executed and urging the Board to recommend that Governor Bush grant him clemency;
- expressing concern at reports of Emile Duhamel's mental illness and mental retardation, and at reports that at a hearing on his case in November 1995, Duhamel was found competent to be executed without any legal representation or mental health expert to testify on his behalf; referring to the ECOSOC guidelines;
- urging the Board to hold a full and fair hearing into his case;
- expressing sympathy for the families and friends of the victims of violent crime, but stating opposition to the death penalty in all cases;

*Appeals from lawyers, doctors and mental health professionals would be useful.*

**APPEALS TO:**

Texas Board of Pardons and Paroles  
 Executive Clemency Unit  
 Texas Department of Criminal Justice  
 Pardons and Paroles Division  
 PO Box 13401  
 Austin, TX 78711, USA  
**Faxes: + 1 512 467 0945**  
**Telephone: +1 512 406 5852**  
**Telegrams: Pardons and Paroles Board, Austin, Texas**  
**Salutation: Dear Board Members**

**COPIES TO:**

The Honourable George W. Bush  
 Governor of Texas  
 Office of the Governor  
 PO Box 12428, Capitol Station  
 Austin, TX 78711, USA  
**Faxes: +1 512 463 1849**

The Letters Editor  
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 Austin, TX 78767, USA  
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and to diplomatic representatives of the USA accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.**