

EXTRA 22/98

Insane man due to be executed

27 March 1998

USA (CALIFORNIA) Horace KELLY, black

Despite overwhelming evidence that Horace Kelly is insane and does not understand that he could be about to die, his execution remains scheduled for 14 April 1998. If carried out, his execution would constitute a clear violation of both the US Constitution and international standards.

Horace Kelly was convicted in two trials in 1986 and 1988 of three murders committed in 1984. At the time of his arrest in 1984, when aged 25, he already had a well-documented history of mental illness. His mental health continued to deteriorate after he was put on death row in San Quentin prison in 1988. A prison psychiatrist reported in 1993 that Kelly did not *"express an adequate understanding of his death sentence"*. Later that year, Kelly was diagnosed as suffering from chronic schizophrenia.

A psychiatrist, appointed in 1995 by the US District Court to determine whether Kelly was competent to assist his attorneys with his federal appeal, found that he was *"suffering from a psychotic mental disorder of such severity that it precludes his ability to appreciate his current legal position and make rational choices with respect to the current court proceedings."* In September 1997 a US Court of Appeals granted a State motion to stop Kelly's federal appeals proceedings because they had exceeded the time limit imposed by the 1996 Anti-Terrorism and Effective Death Penalty Act.

In March 1998, Kelly was interviewed by Dr Michael Radelet, professor and chair of the Department of Sociology, University of Florida, and a scholar on the use of the death penalty against the mentally ill. Dr Radelet reported that Kelly's speech was so disorganized and unfocused as to be totally incomprehensible, and concluded that Kelly did not understand the nature or purpose of his execution. Kelly stated that he had been through several *"brochure executions"* and that he registered every month for *"certified executions"*. When asked about death, Kelly replied that *"some [people] come alive, some have false identities, some stay with different faces or changed applications"*.

Once Kelly's execution date had been scheduled, the Warden of San Quentin appointed three state prison psychiatrists to decide on the inmate's sanity. In March, two of the three reportedly determined that Kelly is unable to comprehend his impending execution or appreciate the reason for his punishment. One concluded that he does not demonstrate any *"capacity to understand the purpose"* of his execution. Another wrote that, when Kelly was asked what the term "execution" meant, he mentioned *"payroll"* and a *"new identity"*. The third psychiatrist expressed doubts about whether Kelly was sane or not.

Under California law, a prisoner must undergo a "sanity trial" if the Warden has good reason to believe that he or she is insane. A Marin County judge, after denying Kelly's attorneys' request for a stay of execution, ruled on 24 March that Kelly will undergo a sanity trial beginning on 6 April. A jury will then determine whether he is sane and therefore able to be executed.

Despite the severity of Kelly's illness, he has reportedly not caused any disciplinary problems while in prison and has consistently been described as soft spoken and passive. His fellow inmates have apparently begun recently to care for Kelly by helping him groom his hair and cut his nails.

BACKGROUND INFORMATION

The execution of the insane is widely held as unacceptable on the grounds that if the prisoner does not understand the nature and purpose of the punishment, it undermines any justification for it. The Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council (ECOSOC) in 1984, states that the death penalty shall not be carried out "*on persons who have become insane*". In 1986, the US Supreme Court held that the execution of an inmate who becomes insane after conviction violates the US Constitution (*Ford v. Wainwright*).

As of 1 January 1998 there were 477 people of death row in California, the biggest death row. The last person to be executed in California was Keith Williams, on 5 March 1996, - the fourth execution under the state's current death penalty laws. The Governor has sole authority to grant clemency. If executed, Horace Kelly will be the first African-American to be executed in California since 1967.

RECOMMENDED ACTION: Please send telegrams/faxes/express/airmail letters in English or your own language:

- expressing deep concern that Horace Kelly is scheduled for execution in California despite overwhelming evidence that he is insane;
- noting that the execution of the insane violates the US Constitution and international standards, quoting the ECOSOC safeguards;
- urging Governor Wilson to grant clemency to Horace Kelly and commute his sentence.
- expressing sympathy for the victims of violent crime and their families;

Please do not mention Amnesty International, or your opposition to the death penalty, in your appeals.

APPEALS TO:

The Honorable Pete Wilson

Governor of California, State Capitol, 1st Floor, Sacramento, CA 95814, USA

Telegrams: Governor Wilson, California, USA

Telephone: + 1 916 445 2841

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Salutation: Dear Governor

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and to diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.