

PUBLIC

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EXTRA 15/03

Death penalty / Legal concern

20 February 2003

USA (Texas)

Bobby Glen Cook (m), white, aged 42

Bobby Cook is scheduled to be executed in Texas on 11 March 2003. He was sentenced to death in 1994 for the murder of Edwin Earl Holder in 1993.

The body of Edwin Holder, a 42-year-old white man, was found on 8 February 1993 in the back of his pick-up truck which was partially submerged in a river. He had been shot in the head and robbed. Three men were charged in connection with the crime. Stephen Cockroft was sentenced to life imprisonment after being convicted of capital murder. Robin Jenkins received a 15-year prison sentence for robbery in exchange for testimony against Bobby Cook who was sentenced to death.

In Texas, a death sentence can only be imposed if the jury concludes that the defendant would probably commit acts of criminal violence that would constitute a future threat to society, the so-called "future dangerousness" question. Texas prosecutors seeking death sentences have frequently called upon "expert" witnesses to persuade the jury of the future dangerousness of the defendant in question. The most notorious of these "experts" has been Dr James Grigson, a Dallas forensic psychiatrist who has testified for the state in over 140 capital trials in Texas. Dubbed "Dr Death" for his conduct in such cases, he repeatedly told capital juries of his absolute certainty that the defendant would commit future acts of violence. In the vast majority of the cases, the jurors voted for death.

Dr Grigson testified at the sentencing phase of Bobby Cook's trial. He did not examine Cook, or make any diagnosis of any disorder, but testified that on the basis of the investigative files of the case, statements given by witnesses and the defendant's criminal history (none of Cook's prior convictions involved acts of violence against another person), Bobby Cook "most certainly represents a very dangerous threat to society and, in my opinion, he will commit future acts of violence". Bobby Cook's defence lawyer failed to challenge the credibility of Dr Grigson's testimony.

In 1983, the American Psychiatric Association (APA) filed an *amicus curiae* (friend of the court) brief with the US Supreme Court in a case involving Dr Grigson's testimony. The APA wrote that the "unreliability of psychiatric predictions of long-term future dangerousness is by now an established fact within the profession", and estimated that two-thirds of such predictions were wrong. Despite this, the US Supreme Court ruled in *Barefoot v Estelle* that such testimony in capital cases was not unconstitutional. Three Justices dissented, arguing that "when a person's life is at stake – no matter how heinous his offense – a requirement of greater reliability should prevail. In a capital case, the specious testimony of a psychiatrist, colored in the eyes of an impressionable jury by the inevitable untouchability of a medical specialist's words, equates with death itself." Twenty years on, Bobby Cook is facing imminent execution following a trial at which such unreliable testimony played a central part.

A 1988 report compiled for the Dallas County prosecutor's office indicated that Dr Grigson's predictions were highly unreliable, with their accuracy approaching zero per cent. In 1995, after repeated reprimands, Dr Grigson was expelled from the APA "for arriving at a psychiatric diagnosis without first having examined the individuals in question, and for indicating, while testifying in court as an expert witness, he could predict with 100% certainty that the individuals would engage in future violent acts". Indeed, in one case he had continued to maintain that his prediction at the trial – that the defendant was on the "severe end of the scale" of sociopathy and would continue to be a threat to society – had been correct even after the prisoner was released from death row because he was found to be innocent.

In 1978, Dr Grigson apparently acknowledged the unscientific nature of his testimony and the cloak of professional authority it carried, when he was quoted as saying: "I think you could do away with the psychiatrists in these cases. Just take any man off the street, show him what the guy's done, and most of these things are so clear-cut he would say the same things I do. But I think the jurors feel a little better when a psychiatrist says it – somebody that's supposed to know more than they know".

BACKGROUND INFORMATION

Amnesty International opposes the death penalty in all cases, unconditionally. The death penalty is a symptom of a culture of violence, not a solution to it. It has not been shown to have any special deterrent effect. It carries the risk of irrevocable error. It denies the possibility of rehabilitation and reconciliation. It extends the suffering endured by the family of the murder victim to the family of another, that of the condemned individual. Evidence continues to mount that death sentences in the USA are handed down by a capital justice system characterized by arbitrariness, discrimination and unreliability. Authorities in the USA have violated international standards in their pursuit of the ultimate punishment, including by imposing it on defendants who were under 18 at the time of the crime, the mentally impaired, those who were inadequately represented, those whose guilt was in doubt, and foreign nationals denied their consular rights.

Texas is the leading US death penalty state. There have been 12 executions in the USA so far this year, eight of them in Texas. Texas now accounts for 297 of the 832 executions carried out nationwide since the USA resumed judicial killing in 1977. At the time of writing, Bobby Cook was scheduled to become the 300th person to be executed in Texas since 1977. For more information see: *Texas: In a world of its own as 300th execution looms* (AMR 51/010/2003, 23 January 2003).

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing sympathy for the friends and family of Edwin Earl Holder, and explaining that you are not seeking to condone his murder, or to minimize the suffering it will have caused;
- expressing concern that Bobby Cook was sentenced to death by a jury who decided that he was a future danger to society after hearing the notoriously unreliable testimony of Dr James Grigson;
- noting that Dr Grigson was expelled from the American Psychiatric Association the year after he testified at Bobby Cook's trial;
- arguing that, even for death penalty supporters, capital cases surely demand a greater degree of reliability of evidence than the sort of testimony that has been widely held to be inaccurate in a majority of cases, including by the American Psychiatric Association;
- calling for clemency for Bobby Cook in the interests of justice and the international image of the State of Texas.

APPEALS TO: (*In your appeals, please quote Bobby Cook's death row number: 999094*)

Gerald Garrett, Chairperson, Texas Board of Pardons and Paroles
P.O. Box 13401, Austin, Texas 78711-3401, USA

Fax: + 1 512 463 8120
Salutation: Dear Mr Chairperson

The Honorable Rick Perry, Governor of Texas, State Capitol, PO Box 12428, Austin, TX 78711, USA

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

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

PLEASE SEND APPEALS IMMEDIATELY.