

PUBLIC

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Death penalty

19 February 2004

**USA (Texas) Marcus Bridger Cotton (m), black, aged 29
 Yokamon Laneal Hearn (m), black, aged 25**

Marcus Cotton and Yokamon Hearn are due to be executed in Texas on 3 and 4 March respectively.

Marcus Cotton was sentenced to death in November 1997 for the murder of a 27-year-old Texas county prosecutor, Assistant District Attorney Gil Epstein, who was shot during a robbery in September 1996. Marcus Cotton's first trial ended in a mistrial when the jurors could not reach a verdict after 21 hours of deliberation. He has professed his innocence. Yokamon Hearn was sentenced to death in December 1998 for the murder of Frank Meziere, a 23-year-old stockbroker, who was shot and robbed in March of that year.

Yokamon Hearn and Marcus Cotton were aged 19 and 22 respectively at the time of the crimes for which they were sent to death row. Like many on death row in the USA they came from backgrounds of poverty and deprivation. According to reports, Marcus Cotton's adoptive mother was a drug addict who routinely abused her children; he himself first took drugs when he was five, and at the age of 10 witnessed his mother shooting his father. Yokamon Hearn's childhood difficulties reportedly included having an absent father and a mother who used crack cocaine.

Texas accounts for less than eight per cent of the USA's population but 35 per cent of its executions. Since executions resumed in the USA 1977, 899 men and women have been killed in its death chambers. Of these, 320 were executed in Texas. As a state party to the International Covenant on Civil and Political Rights, the USA must provide all death row prisoners with a genuine opportunity to seek commutation of their death sentences. The final safeguard of executive clemency in Texas, however, appears to amount to an empty gesture. The Board of Pardons and Paroles (BPP) frequently votes unanimously or near unanimously against clemency, regardless of the issues presented. Texas governors have the power to stop executions and to request the BPP to reconsider. They have routinely failed to use their power of reprieve to this end. There have been 81 executions in Texas under the current governorship of Rick Perry, who took office on 21 December 2000. His predecessor, George W. Bush, oversaw 152 executions during his five-year term.

In Texas, 254 of the 320 executions (79 per cent) have been of people convicted of killing whites. Studies have consistently shown that race, particularly race of the murder victim, plays a role in who is sentenced to death in the USA. Blacks and whites are the victims of murder in almost equal numbers, but 81 per cent of the executions since 1977 have been of people convicted of crimes involving white victims, suggesting that the (overwhelmingly white) system places a higher value on white life. Most murders in the USA are intra-racial, that is the victim and perpetrator are of the same race. The most common murder is black-on-black. Yet only one in 10 executions (one in 12 in Texas) were for black-on-black crimes, whereas one in five executions are of African Americans convicted of killing whites. Marcus Cotton and Yokamon Hearn are set to become the 70th and 71st African Americans executed in Texas for killing white victims. In September 2003, Larry Hayes became the first and so far only white person to be executed in Texas for killing an African American. In addition to his black victim, he was also convicted of killing a white person, and he had refused to appeal against his death sentence.

All 320 executions carried out in Texas since have been by lethal injection. As in many other states, lethal injections are carried out using a combination of three chemicals: sodium thiopental, pancuronium bromide and potassium chloride. There is evidence that the pancuronium bromide, a derivative of curare which paralyses the muscles but does not affect the brain or nerves, may mask the condemned prisoner's suffering during the execution. A person injected with this chemical cannot move or speak. Lawyers continue to file claims that a "chemical veil" may be masking the reality of the lethal injection process.

The use of pancuronium bromide for animal euthanasia is unacceptable under American Veterinary Medical Association guidelines, and its use has been banned in several states. In September 2003, a new law came into force in Texas prohibiting its use in the euthanasia of cats and dogs. On 12 February 2004, dissenting against the refusal by his colleagues on the Texas Court of Criminal Appeals to stay an execution pending consideration of the constitutionality of the lethal injection process, a judge wrote: "Especially poignant is our own legislature's action in banning the chemical. Clearly, the State of Texas has acted to eliminate the cruel and inhumane euthanasia of animals by limiting the procedures and chemicals that can be used to euthanize. It stands to reason that what is cruel and inhumane for use in animals is also cruel and inhumane for use in human beings."

Amnesty International opposes the death penalty in all cases, regardless of the gravity of the crime, the guilt or innocence of the condemned, or the method used to kill the prisoner. The death penalty is an affront to human dignity and a symptom of a culture of violence, and consumes resources that could otherwise be used towards constructive strategies to combat violent crime and to offer assistance to its victims and their families. In addition, the capital justice system in the USA is marked by arbitrariness, discrimination and error. Since 1973, 113 people have been released from death row on the grounds of innocence. The latest case occurred on 18 February 2004 in North Carolina, the fourth such case in that state, where the legislature is considering a moratorium on executions. A moratorium has been in force in Illinois since 2000 because of the state's record of wrongful convictions in capital cases. Since 1987 seven Texas death row inmates have been released from death rows after evidence of their innocence emerged. It took on average 10 years between conviction and exoneration in their cases. Other prisoners have been put to death in Texas despite serious doubts about their guilt.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words, acknowledging the seriousness of these crimes and expressing sympathy for the victims' families, but opposing these executions and the continuing use of the death penalty in Texas. Call on the addressees to use their power and influence to do all they can to stop these executions and to lead Texas away from the death penalty in line with the global abolitionist trend.

APPEALS TO:

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

Telegram: **Honorable Rick Perry, Governor of Texas, State Capitol, Austin, Texas, USA**

Fax: **+1 512 463 1849 / 0039 / 1932**

Salutation: **Dear Governor**

The Honorable Greg Abbott, Attorney General, PO Box 12548, Austin, TX 78711-2548, USA

Telegram: **Honorable Greg Abbott, Attorney General, Austin, Texas, USA**

Email: **greg.abbott@oag.state.tx.us**

Fax: **+1 512 475 2994**

Salutation: **Dear Attorney General**

COPIES TO: Diplomatic representatives of USA accredited to your country.

You may also write brief letters (not more than 250 words) to: Letters to the Editor, *Austin-American Statesman*, P.O. Box 670, Austin, Texas 78767, USA. **Fax: +1 512 912 5927. Email: <http://www.statesman.com/search/content/standing/letters.html>**

PLEASE SEND APPEALS IMMEDIATELY. All appeals must arrive by 4 March 2004.