

27 July 2001

Further information on EXTRA 44/01 (AMR 51/104/2001, 16 July 2001) - Death penalty

USA (Texas) 250th Texas execution looms
Richard William Kutzner, white, aged 58
new name: Mack Oran Hill, white, aged 46

The execution of Richard Kutzner, scheduled to be the 250th in Texas since the state resumed judicial killing in 1982, has been stayed. Mack Oran Hill is now set to become the 250th prisoner put to death in Texas since 1982.

Late on 24 July, the Texas Court of Criminal Appeals blocked Kutzner's execution, due on 25 July, to allow consideration of his request to have DNA testing conducted on newly-discovered physical evidence. Richard Kutzner's lawyer claims that the evidence - hair and fingernail scrapings - was suppressed by the state at the 1997 trial. This is the first attempt by a Texas death row prisoner to use a new state law, which went into effect on 5 April 2001, allowing inmates state-paid DNA testing where such testing could affect the outcome of the case. Kutzner was convicted in 1997 of the 1996 murder of Kathryn Harrison on the basis of circumstantial evidence.

Mack Hill is due to be executed on 8 August for the 1987 murder of Donald Johnson, white. At the sentencing phase of the 1989 trial, psychiatric "expert" Dr James Grigson testified that Mack Hill would be a future danger to society - a prerequisite for a death sentence in Texas. Dr Grigson has testified for the state in over 140 capital trials, usually stating with 100 per cent certainty that the defendant would commit future acts of criminal violence if allowed to live. He was expelled from the American Psychiatric Association in 1995 for arriving at diagnoses "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".

Grigson's prediction of Hill's future dangerousness was not based on an examination of Hill, but - as in many cases - on the basis of hypothetical questions posed by the prosecutor: Dr Grigson was asked for his assessment of the likelihood that the individual described in the hypothetical would be a continuing threat to society, inside or outside prison.

In 1989, the year of Mack Hill's trial, a judge on the Court of Criminal Appeals wrote of the power of such "expert" testimony over impressionable jurors faced with the task of deciding between life and death: "After having read many records of capital murder cases in which Dr Grigson testified..., I have concluded that, as a general proposition, when Dr Grigson speaks to a lay jury, or an uninformed jury, about a person who he characterizes as a "severe" sociopath, which a defendant who has been convicted of a capital murder always is in the eyes of Dr Grigson, the defendant should stop what he is then doing and commence writing out his last will and testament - because he will in all probability soon be ordered by the trial judge to suffer a premature death".

A report compiled by an investigator for the Dallas County District Attorney's Office - the "Kinne Report", dated 29 July 1988 - showed that Dr Grigson's accuracy in predicting future violent behaviour by capital defendants approached zero percent. The report documented the conduct of 11 inmates whose

death sentences were either commuted to a life sentence or reduced to a term of imprisonment. Dr Grigson testified for the State in 10 of these 11 cases. Yet despite his near-identical predictions that each inmate would "beyond any doubt", "absolutely", and "without any question" commit acts of dangerousness in the future, the Kinne Report revealed that none of his predictions had been accurate.

Appeals to the courts that the state withheld the existence of the Kinne Report at Mack Hill's trial, and thereby denied the defence an opportunity to impeach Dr Grigson's testimony, have been unsuccessful. Claims that the state withheld evidence that two witnesses had been promised leniency by the prosecutor in return for their testimony, and that an audio tape of a conversation between the prosecutor and the lawyer of one of the witnesses had been altered, have also failed in the courts.

According to reports, Mack Hill has been a model inmate. In a clemency petition, his lawyer wrote: "Mr Hill has demonstrated through the past decade of his incarceration that he does not pose a future threat of violence within the prison system".

Texas accounts for more than a third of the 725 executions carried out in the USA since 2 July 1976, when the US Supreme Court lifted the moratorium on the death penalty which it had imposed four years earlier. A quarter of a century on, the US capital justice system is one marked by arbitrariness, discrimination and error, as well as the inevitable dehumanization that defines this punishment wherever it occurs. On 2 July 2001, US Supreme Court Justice Sandra Day O'Connor said: "After 20 years on the high court, I have to acknowledge that serious questions are being raised about whether the death penalty is being fairly administered in this country." Last week Texas Senior State District Judge C.C. Cooke said: "I think the mood is changing in this country and people are realizing there are deficiencies in the system... I think it has a lot of flaws". Three decades earlier, as a Texas legislator, he had helped craft Texas capital punishment laws.

FURTHER 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 victims of violent crime, but arguing that the death penalty is part of the culture of violence and one that diverts resources away from constructive responses to crime;
- expressing deep concern that Texas is set to carry out its 250th execution since resuming judicial killing in 1982;
- pointing out that the use of the death penalty is doing immense damage to the international reputation not only of Texas but of the USA as a whole;
- urging the governor to use his power and influence to stop the executions that come before him, to support a moratorium in Texas, and to begin to lead his state away from the death penalty.

APPEALS TO:

The Honourable Rick Perry
 State Capitol
 PO Box 12428, Austin, TX 78711, USA
Fax: +1 512 463 1849
Telegrams: Governor Perry, Austin, TX, USA
Salutation: Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.