

PUBLIC

AI Index: AMR 51/123/2003

EXTRA 42/03

Death penalty / Legal concern

18 September 2003

USA (North Carolina)

Edward Ernest Hartman (m), white, aged 39

Eddie Hartman is scheduled to be executed in North Carolina on 3 October. He was sentenced to death in October 1994 for the robbery and murder of Herman Smith, who was shot to death in the rural jurisdiction of Northampton County on 3 June 1993. Eddie Hartman was arrested and voluntarily confessed to the shooting. There is deep concern that the prosecution used Eddie Hartman's homosexuality against him at the trial as part of its successful bid to obtain a death sentence.

At the sentencing phase of a US capital trial, the prosecution argues for execution and the defence presents mitigating evidence in favour of a sentence less than death. At Eddie Hartman's sentencing, his mother appeared as a witness and testified to the jury about the sexual abuse that her son had suffered as a child at the hands of older male relatives. Cross-examining the mother about evidence that her brother had repeatedly sexually assaulted the boy over a six-month period when he was eight or nine years old, the Northampton County prosecutor asked "is not your son a homosexual?" in an apparent attempt to blunt the impact of this mitigating evidence.

Eddie Hartman's aunt was also called to testify about the sexual abuse. Cross-examining her about abuse the defendant suffered when he was 11 years old, the prosecutor said to the aunt: "Well, you knew that Mr Hartman is a homosexual. You've heard that". After the defence objected to this improper question, an objection which the judge sustained, the prosecutor persisted with his irrelevant and inflammatory line of questioning when he asked: "Did you know what sexual persuasion the defendant was?"

The jury sentenced Eddie Hartman to death. In post-conviction proceedings, asked about his line of questioning regarding Eddie Hartman's homosexuality and the abuse he had suffered as a young child, the prosecutor said that "it seems to me that if someone is a practicing homosexual, that that may in some way – it's a little bit different for someone being a practicing homosexual in his real life as opposed to someone who said he had been assaulted at some point in time."

The United Nations Guidelines on the Role of Prosecutors requires that prosecutors "perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights", and "carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination." The right to freedom from discrimination on the basis of sex, which includes sexual orientation, is recognized in international treaties, including the International Covenant on Civil and Political Rights, which the USA ratified in 1992.

Eddie Hartman's family background was abusive and dysfunctional. His mother, who gave birth to him when she was 17 years old, separated from Eddie's father when the boy was aged eight months, and he had no contact with his father until he was 18 years old. His mother married a total of six times. Eddie Hartman was beaten by three of the husbands. On one occasion, he was allegedly beaten with a club, leaving him unconscious, and in hospital for a week. He witnessed his mother being subjected to domestic violence, and also witnessed her attempt to commit suicide by taking an overdose and slashing her wrists. She and other relatives suffered from alcoholism, and Eddie Hartman began drinking around the age of 11 and subsequently became alcoholic himself.

According to his current lawyers, at the guilt/innocence phase of the trial, Eddie Hartman's court-appointed counsel did not present the jury with evidence of diminished culpability due to a head injury he sustained and his mental health and substance abuse problems. The North Carolina State Bar recently suspended the law licence of one of his trial lawyers. Last year, the Common Sense Foundation, a non-governmental body

which promotes progressive public policy in North Carolina, issued a study which found that one in six death row inmates in the state had been represented at trial by lawyers who have been disciplined by the State Bar Association, while less than one percent of all lawyers receive such disciplinary action.

The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty require that capital defendants receive "adequate legal assistance at all stages of the proceedings".

BACKGROUND INFORMATION

Amnesty International opposes the death penalty unconditionally. Every death sentence is an affront to human dignity, and every execution is a symptom of a culture of violence, not a solution to it. This is a punishment which extends the suffering of one family – that of the murder victim – to another, that of the condemned prisoner.

Today 112 countries are abolitionist in law or practice. In contrast, the USA has put 875 men and women to death since resuming executions in 1977. The vast majority of these executions have been carried out in the past decade. There have been 55 executions in the USA so far this year.

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 family and friends of Herman Smith, explaining that you are not seeking to condone the manner of his death or to minimize the suffering it will have caused;
- opposing the execution of Eddie Hartman;
- expressing deep concern at the attempt by the prosecutor to use the defendant's homosexuality against him at trial, and suggesting that it is impossible to know what effect this potentially inflammatory tactic had on the jury;
- expressing concern that the trial lawyers failed to raise evidence of diminished culpability at the guilt phase of the trial;
- noting that one of his defence lawyers has since been disciplined by the State Bar Association, further fuelling concern about the quality of trial representation for capital defendants in North Carolina;
- calling for clemency for Eddie Hartman in the interests of justice, decency, and the reputation of North Carolina.

APPEALS TO:

State Governor

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<http://www.governor.state.nc.us/email.asp?to=1>

Salutation:

Dear Governor

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

PLEASE SEND APPEALS IMMEDIATELY.