

UA 220/01

Death pen**USA (Texas)Gerald Lee Mitchell, black, aged 33**

Gerald Mitchell is scheduled to be executed in Texas on 22 October 2001 for a murder committed when he was aged 17. International law prohibits the death penalty against people who were under 18 at the time of the crime.

Gerald Mitchell was sentenced to death in 1986 for the murder of Charles Angelo Marino, white, who was shot dead in Houston in June 1985. Mitchell was convicted and sentenced by an all-white jury, in a county whose population was about 20 per cent African American. After the original jury pool had been pared down to individuals who were qualified to serve, the state removed all seven African Americans from the remaining group using peremptory strikes, the right to dismiss jurors without giving a reason. Many blacks have been sentenced to death in the USA by all-white juries selected after such use of peremptory strikes against blacks.

After the prosecutor was challenged on his apparently discriminatory use of peremptory strikes, he stated that he used a basic standard when selecting jurors: "I was looking for someone who's a solid citizen, who had a background in the community, had a stake in the community...". He also said that he did not want jurors who would view youth as such a mitigating factor that they could not vote for a death sentence, or those who would look at the defendant as if he were their son. The trial court ruled that his use of peremptory challenges had been racially neutral, emphasizing his removal of prospective black jurors who had friends or family who were or had been in prison, and those who had teenaged children. Among the white jurors selected were reportedly individuals who fell into this category.

BACKGROUND INFORMATION

The International Covenant on Civil and Political Rights (ICCPR) prohibits the use of the death penalty against those who were under 18 at the time of the crime. When the USA ratified the ICCPR in 1992 it entered a "reservation", reserving the right to execute juvenile offenders. This reservation has been widely condemned as invalid, including by the Human Rights Committee, the expert body which monitors compliance with the ICCPR.

Recognizing a young person's immaturity and potential for rehabilitation, the Convention on the Rights of the Child also prohibits the use of the death penalty against under 18-year-olds. This treaty has been ratified by 191 countries, all but the USA and Somalia. The USA has signed the treaty, and in so doing obliged itself to respect its principles in good faith, pending its decision on whether to ratify it.

The ban on the death penalty against children is so widely respected that it has become a principle of customary international law, binding on all countries regardless of which treaties they have or have not ratified. The USA leads a tiny group of countries which have carried out such executions in the past decade. The only known such executions worldwide in the past four years were in Iran (3), Democratic Republic of Congo (1), and the USA (8 - 4 in Texas). Over 80 prisoners are on death row in the USA for crimes committed when they were 16 or 17. Thirty-one of them are in Texas.

More than 730 people have been executed in the USA since it resumed executions in 1977. In over 80 per cent of cases, the original crime involved a white

murder victim. Yet blacks and whites are the victims of murder in almost equal numbers in the USA. In Texas, which accounts for a third of US executions, over 20 per cent of executions have been of black defendants convicted of killing whites. In juvenile cases, the figure is 33 per cent. In no case, out of over 250 Texas executions, has a white defendant been executed for the murder of a black. For more information, see: *Too young to vote, old enough to be executed. Texas set to kill another child offender* (AMR 51/105/2001, July 2001).

On 14 August 2001, in its report on the USA, the UN Committee on the Elimination of Racial Discrimination noted the "disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty..." The Committee urged the USA to ensure that "no death penalty is imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers..."

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

To the Board:

- expressing sympathy for the family of Charles Angelo Marino;
- expressing concern that, in violation of international law and standards of decency recognized around the world, Texas has scheduled the execution of Gerald Mitchell, who was under 18 at the time of the crime;
- also expressing concern that this is another case of an African American tried by an all-white jury after all blacks had been removed by the state;
- urging the board, in the name of international law, commonly-held standards of decency, and the reputation of the State of Texas, to call on the Governor to commute Gerald Mitchell's death sentence.

To the President:

- urging him to meet his obligation, under international law, to intervene to prevent this violation of international law, by calling on the Texas authorities to commute Gerald Mitchell's death sentence.

APPEALS TO:

1. 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

Your appeals should ask Mr Garrett to relay your message to all the Board members. If possible, and if resources permit, you may fax an appeal directly to them instead (Salutation: Dear Board Member [last name]).

Charles A. Shipman, Abilene Board Office. **Fax: +1 915-676-4921**

Lucinda Simons, Amarillo Board Office. **Fax: +1 806-358-6455**

Daniel Lang and Linda Garcia, Angleton Board Office. **Fax: +1 979-849-8741**

Lynn F. Brown, Juanita Gonzalez and Filiberto Reyna, Gatesville Board Office.

Fax: +1 254-865-2629

James E. Bush, Rissie Owens and LaFayette Collins, Huntsville Board Office.

Fax: +1 936-291-8367

James Paul Kiel, Jr., Brendolyn Rogers-Johnson, and Roy A. Garcia

Palestine Board Office. **Fax: +1 903-723-1441**

Alvin Shaw, Gerald Garrett, and Paddy Burwell. San Antonio Board Office. **Fax:**

+1 210-226-1114

2. President George W. Bush

c/o Albert R. Gonzales, Counsel to the President
The White House, 1600 Pennsylvania Avenue, Washington, DC 20500, USA
Fax: +1 202 456 6279 (Counsel's fax) or +1 202 456 2461 (President's fax).
Salutation: Dear Mr President

COPIES TO:

Governor Rick Perry
c/o Bill Jones, General Counsel
P.O. Box 12428, Austin, Texas 78711
Fax +1 512-463-1932 (General Counsel's Fax), or 463 1849 (Governor's fax)

and to diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY.