

PUBLIC

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EXTRA 53/03 Death penalty / Legal concern

04 December 2003

USA (Texas) **Bobby Lee Hines (m), white, aged 31**

Bobby Hines is scheduled for execution in Texas on 11 December 2003. He was sentenced to death in March 1992 for the murder of Michelle Wendy Haupt, white, in October 1991. Bobby Hines was 19 years old at the time of the crime.

Bobby Hines' lawyers are challenging his execution on the grounds of evidence that he has mental retardation. In June 2002, the US Supreme Court prohibited the execution of people with mental retardation. The decision, *Atkins v Virginia*, left it up to individual states as to how to comply with the decision. In its most recent legislative session earlier this year, the Texas legislature failed to amend Texas law to reflect the *Atkins* decision. The state judiciary has not clarified the issue either. In the absence of binding guidelines from the Texas Court of Criminal Appeals on what procedures should be applied to determine if a death row inmate has mental retardation and is therefore protected by the *Atkins* ruling, the state's trial-level courts are dealing with such claims of mental retardation on a case by case basis, leading to inconsistency.

Although the *Atkins* decision did not provide a definition of mental retardation, the Supreme Court pointed to the fact that the states that had legislated against the execution of this category of defendant generally used definitions which conformed to those of the American Association of Mental Retardation (AAMR) and the American Psychiatric Association. In late May 2002, the AAMR issued the latest version of its manual, in which it defined mental retardation as "a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates before age 18."

At school Bobby Hines was in special education classes, where he performed poorly. His IQ was measured at 68 and 73 (within the range indicating possible retardation). In an affidavit, one of his teachers has stated that "there is no doubt in my mind that Bobby had impaired mental abilities, social skills, and impulse control. During seven years of public school, test results labelled him mentally retarded, learning disabled, and emotionally disturbed." Another teacher has signed an affidavit recalling that Bobby Hines was a "significantly handicapped child".

As an adolescent in a Texas youth facility, Bobby Hines was also placed in special education classes. The records indicate that he was regarded as "severely learning disabled". Although an IQ test during this time assessed his IQ at 96, a psychologist who has practiced in the forensic setting for over 20 years has cast doubt on the validity of this test. He has suggested that this result was "an anomaly and does not accurately reflect Mr Hines' intellectual functioning". He said that it is "so inconsistent with the other data" that "it strongly suggests the need for careful re-testing and evaluation before one could say that Mr Hines is not mentally retarded". After reviewing records and affidavits in this case, the psychologist has concluded that there is a "strong likelihood that Mr Hines is retarded".

An appeal just filed in the Texas courts details evidence documenting Bobby Hines' limitations in social and practical adaptive skill areas. It states that "throughout a tumultuous childhood of abuse, malnutrition, poverty and neglect, Mr Hines's upbringing was largely left to his brothers, sisters and friends. It was clear to them that Mr Hines was slow and needed protection". This is supported by affidavits from the family members. For example, Bobby Hines' brother has recalled that "Bobby was never able to find his own job or live on his own without someone else to pay the bills and look after him".

The AAMR manual lists categories of risk factors that can contribute to mental retardation. Bobby Hines' appeal brief details some of these factors in his case, including his malnutrition as a child – a child welfare

worker noted that “half of the time there was not sufficient food in the house to feed the family”, and his brother has recalled that “many times we went hungry”. Another of the AAMR risk factors present in Bobby Hines’ case is the domestic violence that characterized his upbringing. His older brother has stated that their father was “an alcoholic who abused us... Bobby would get the worst of the abuse because he had blond hair and blue eyes. Our father thought he was not his child. Although we all took severe beatings around the head and body, Bobby was most frequently the target of our father’s rage”. His mother was physically abused by the father, and the children would witness this violence. Bobby Hines’ mother has recalled how “the kids were scared all of the time from what they saw at home” and confirmed that, of the children, “Bobby definitely got the worst of the abuse”.

BACKGROUND INFORMATION

Texas is the leading death penalty state in the USA. As of 4 December, it had accounted for 312 of the 883 executions carried out nationwide since judicial killing resumed in 1977. Texas has violated international law and standards in its pursuit of the death penalty, including by using it against people who were under 18 at the time of the crime, the mentally impaired, the inadequately represented, people whose guilt was in doubt, and foreign nationals denied their consular rights.

Since the *Atkins* decision in June 2002, Texas prosecutors have shown little inclination to take a progressive attitude towards the ruling. For example, in the current case of Walter Bell, a long-time death row inmate who has a strong claim of mental retardation, the local prosecution is challenging his claim despite having not disputed it at the original trial (at a time when the execution of people with mental retardation was constitutional). In an editorial on 25 November 2003, the *Austin-American Statesman* said of the case: “In short, the Jefferson County prosecutors are hell-bent on executing Bell; the truth about his mental state is irrelevant and the requirements of the law are something to be evaded... Bell’s case also is indicative of the failure of the Legislature this year to rewrite state law to reflect the Supreme Court’s ruling, and the failure of the executive branch, including the governor, to review the inmates on death row to see which ones should not be there because of mental retardation.”

RECOMMENDED ACTION:

Using the above information, please send appeals to arrive as quickly as possible, in English or your own language, calling on the Governor to intervene to prevent the execution of Bobby Hines in the event that the Courts do not issue a stay to conduct further proceedings into his claim of mental retardation. Please include Bobby Hines’ prisoner number #999025 in your appeals

APPEALS TO:

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 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.