

Texas carries out a double execution

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11 August 2000

In the absence of Governor George W. Bush, who was campaigning for the presidency in California, the state of Texas carried out a double execution Wednesday, for the fourth time in fifty years and the third since Bush took office. Brian Keith Roberson, 36, and Oliver David Cruz, 33, were put to death at a state prison in Huntsville a little more than a half hour apart. They were the 27th and 28th inmates executed in Texas this year, the country's leader in capital punishment. Republican Lieutenant Governor Rick Perry acted for Bush in refusing to issue a 30-day delay in either case.

Roberson was condemned for the 1986 killing of an elderly couple who lived across from him in Dallas. Before his execution by lethal injection he angrily denounced those who had testified against him. "You ain't got what you want," he said.

Cruz's case had aroused international attention because of his mental retardation. The condemned man admitted raping and murdering a woman stationed at Kelly Air Force Base in San Antonio in 1989. On IQ tests Cruz, who repeated seventh grade three times, scored 64 to 76, and was said to have the mental age of a 12-year-old. Police who took his confession acknowledged that Cruz could not read and that he could not understand words in the Miranda warning.

Texas has no law banning the execution of the mentally retarded. Bush opposed the enactment of such a law last year, asserting that juries, not legislators, should determine the importance of a person's mental capacity. "I like the law the way it is right now," he declared. Twelve states ban the execution of the mentally retarded.

In 1989 the US Supreme Court ruled that execution of mentally impaired people did not violate the "cruel and unusual punishment" clause of the Eighth Amendment of the US Constitution, as long as the judge instructs the jury on how to consider the mitigating factors of the mental condition.

The trial judge in Cruz's case issued a directive to the jury on the defendant's condition. Jeff Pokorak, Cruz's attorney, has argued that this instruction was inadequate, and last month the federal 5th Circuit Court of Appeals agreed with him. This didn't stop the execution going ahead, however. The Court of Appeals refused to throw out the death sentence on the grounds that Cruz's attorneys should have presented evidence during trial to show how "the disability relates to the crime charged." In other words, the judges wanted the defense to demonstrate that his mental state was a direct cause of the criminal act.

Pokorak pointed out, in a last-minute appeal to the US Supreme Court for a reprieve, that this placed an unfair burden on the defendant. That august body rejected the appeal by a vote of 6-3.

Cruz's lawyer noted that Texas is considering a new version of the law banning execution of the mentally retarded. "Cruz could be the last mentally retarded person executed in Texas," he told the *Dallas Morning News*. "That will be a horrible moment for the state and personally devastating if that happens." He went on: "We're asking whether it's right to execute the mentally retarded for their crimes. I don't see how any culture can say that it is."

In an effort to put a better face on their brutal conduct, Texas officials at the last moment circulated a story that Cruz in fact had an IQ of 83. The report had not been introduced during Cruz's trial. Indeed, the prosecutor had argued that one reason to execute Cruz was because he "may not be smart," and that made him "more dangerous" to society.

Pokorak responded angrily to the report of Cruz's allegedly higher IQ, commenting, "They know they should not be killing a mentally retarded person, so now they are coming up with new evidence that says he is not mentally retarded."

Various organizations had appealed to Bush to stop

the execution of Cruz. The president of the American Bar Association, Martha W. Barrett, wrote: "The execution of persons who are mentally retarded serves no principled purpose and demeans our system of justice." Council of Europe Secretary General Walter Schwimmer issued an unusually strong statement, expressing his "deepest concern and abhorrence about the imminent executions. The case of Cruz is particularly abhorrent as it is reported that he is mentally retarded. His execution would not only flout a recent Resolution of the UN Human Rights Commission but would also contravene international legal standards." The European Union also urged Bush to spare Cruz's life.

Opponents of the execution pointed to the hypocrisy of Bush's claim to be a "compassionate" conservative. Dave Atwood, head of the Texas Coalition to Abolish the Death Penalty, remarked: "Bush's embrace of the machinery of death indicates he is unfit to be president of the US, or even governor of Texas."

Texas has carried out 227 executions since 1982, 140 under Bush, who has commuted one death sentence to life imprisonment and granted one 30-day reprieve. The 2000 presidential election campaign will be punctuated by executions, as thirteen are presently scheduled nationwide before November 7, seven of them in Texas. Four more deaths by lethal injection are upcoming in Texas in August alone.

Thirty-four certifiably retarded people have been executed in the US since the death penalty was reinstated by the Supreme Court in 1976, five of those in Texas. Each of the thirty-four cases is a horror story. A few examples:

*Jerome Bowden, a black man, was executed in Georgia in June 1986. At the age of 14 his IQ had been 59. According to the Death Penalty Information Center, "His conviction was based solely upon a signed statement he could not even read. He signed the statement because a police officer told him he would help him."

*James Terry Roach, a white man, was put to death in South Carolina in 1986 as well. His IQ was registered at 69-70; Roach also had Huntington's Disease, causing the brain to deteriorate. He was executed for a crime committed when he was 17.

*President Bill Clinton has Ricky Ray Rector's death on his conscience. Rector, mentally defective due to a

lobotomy, was put to death in Arkansas when Clinton, then the state's governor, rushed back to Little Rock and oversaw his execution in the midst of the Democratic primary campaign in January 1992. This was a transparent attempt to prove his toughness on crime.

*Luis Mata, executed in Arizona in 1996, had an IQ of 68 to 70. He had been born with water on the brain and suffered other brain damage from a severe fall when he was young.

Popular opposition to the death penalty is growing in the US. However, it can find virtually no expression in the public arena. A journalist for Agence France-Presse, the newswire service, in a story on the Texas double execution noted in passing that "discussion of the death penalty has been muted on the campaign trail because Bush's opponent, Democratic Vice President Al Gore, also supports capital punishment."



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