

# Autry's case sent back to Texas federal court

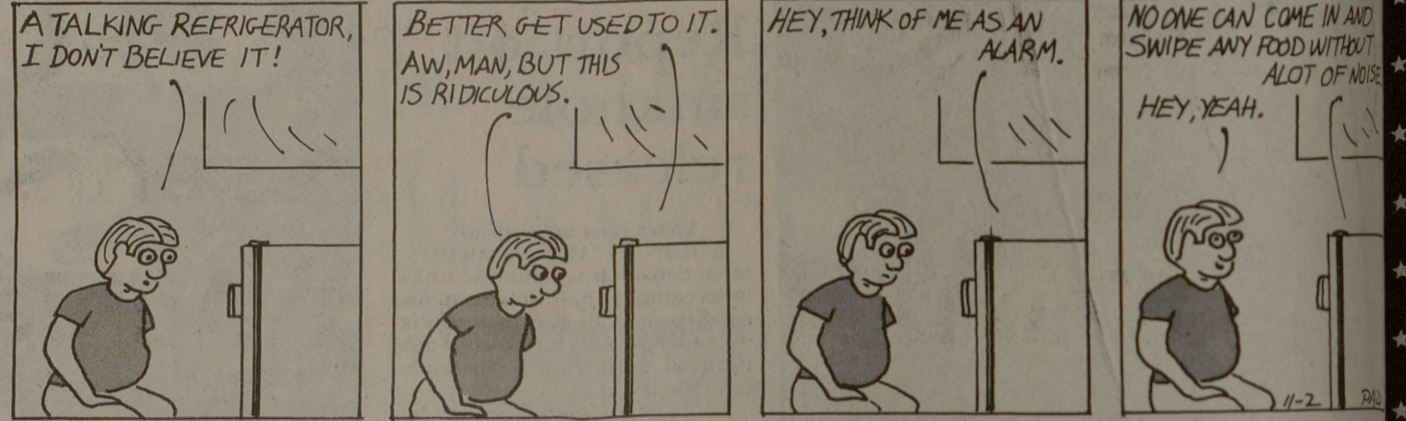
United Press International  
 NEW ORLEANS — A federal appeals court in New Orleans Wednesday remanded the case convicted murderer James "Cowboy" Autry back to a Texas federal court for an evidentiary hearing.

Autry, who came within 31 minutes of execution by lethal injection on Oct. 5 in Huntsville, Texas, his trial attorney was ineffective, the Texas death penalty is cruel and unusual punishment and does not address the proportionality issue.

The question of proportionality — whether some inmates are sentenced to death for crimes that result in life sentences for others — led U.S. Supreme Court Justice Byron White to grant the 11th-hour stay. White also granted a certificate of probable cause, with which the 5th U.S. Circuit Court of Appeals Wednesday concurred and sent the case to the federal court in Marshall.

The Texas attorney general earlier this week asked the high court to lift the stay, but the justices refused. Jim Mattox said the high court decision could prevent Texas from carrying out its "necessary duties in death penalty cases" until next spring. White's stay remains in effect until the high court rules in a California case, which addresses the proportionality issue. Arguments on the case are scheduled for this month and a ruling is not expected until next spring.

Autry's brush with death by injection was the third time he has come close to being executed, but each time stays were issued by appeals courts.



## FBI accused of frame-up

# Murderer was 'encouraged'

United Press International  
 ALBUQUERQUE, N.M. — Marion Albert Pruett, convicted of murder in four states, said in secret court documents the FBI encouraged him to frame a man for a Georgia prison killing that

he had committed, a newspaper said Wednesday.

The Albuquerque Tribune said that in exchange for the testimony, Pruett was offered enrollment in the federal protected witness program, where he was given a new identity and moved to New Mexico.

Pruett, a self-described "mad-dog" killer, was convicted in four states of killing people during a cross-country crime spree that followed his release

from the Georgia prison. He is scheduled to be executed in Mississippi Dec. 7.

The Tribune said Pruett gave a court-ordered, secret deposition about the 1978 killing of William Zambito at the Atlanta Metropolitan Correctional Center. The transcript of his testimony has remained sealed.

The newspaper, which did not specify where it obtained the testimony, quoted Pruett as testifying he killed Zambito in

March 1978 after an inmate identified as Al Benton gave the word that he would have Zambito killed. Zambito was a federally protected witness who had been scheduled to testify against Benton.

A short time later, the Tribune said, Pruett was taken to another institution where the FBI approached him about blaming the killing on Benton. He said when he balked at an aide to Rep. Wyeth Fowler, Georgia promised that he would be entered in protected witness program.

"(The FBI said) if you go for the government and tell them that Al Benton done the killing, then Congress Wyeth Fowler will help you into the federal witness protection program, and you will be released to the street with a new identity," the newspaper quoted Pruett as saying.

The Tribune said Pruett testified that the government was in "big trouble" because Zambito was killed, but by blaming Benton, government officials would be "happy because they lost Zambito, they said Big Al (Benton), OK?"

The Justice Department officials declined comment on Pruett's allegation, but the Tribune said an FBI official requested anonymity called "nonsense."

The Tribune said Pruett testified that he made a mistake when he testified against Benton and the murder charge was dropped. Benton was convicted of conspiracy.

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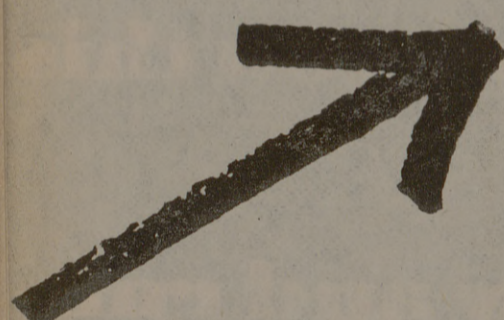
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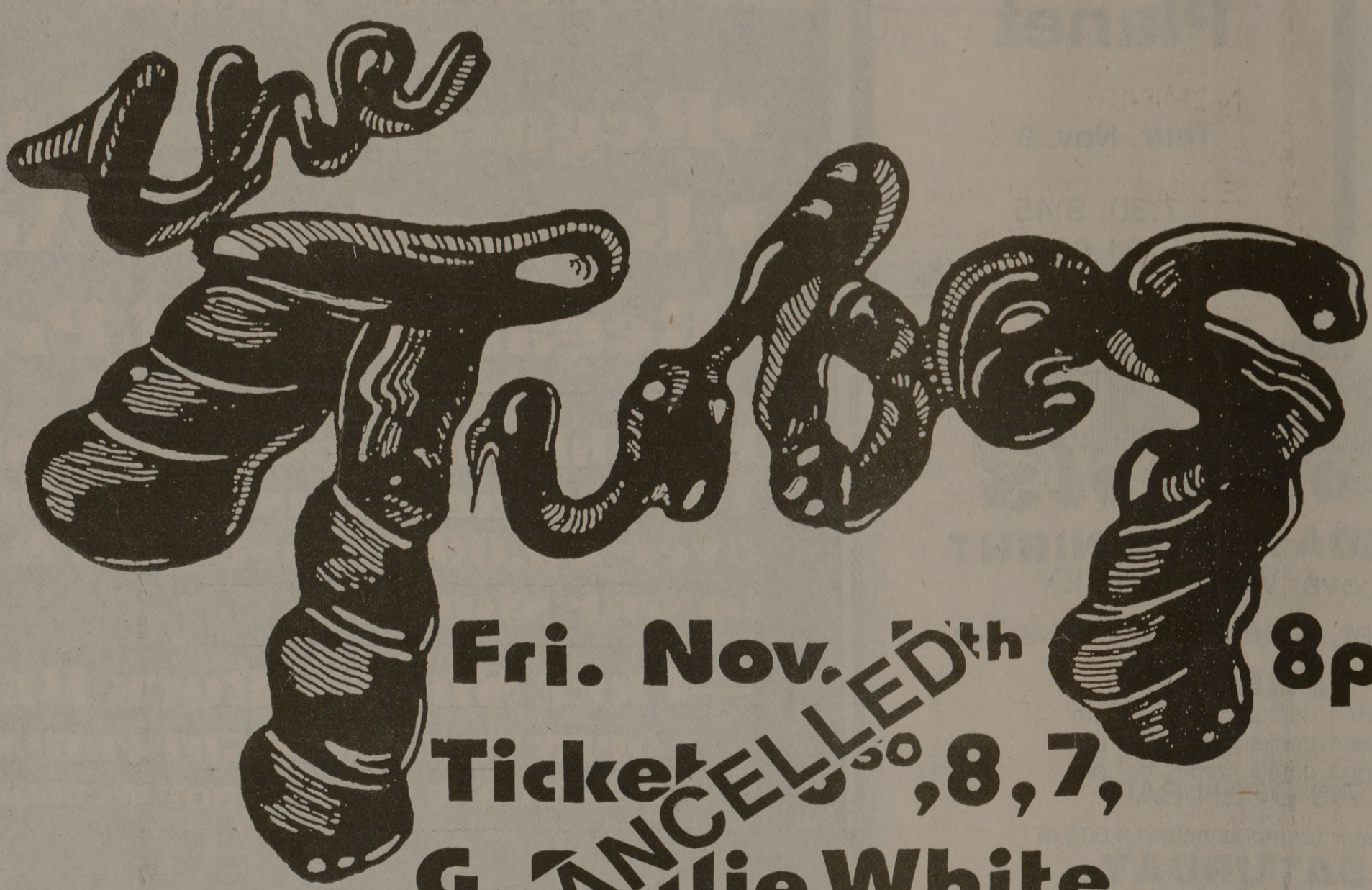
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