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# amnesty international

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## UNITED STATES OF AMERICA

### Death and the President

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A recent Amnesty International document recalled one of the organization's campaigning posters from the early 1990s depicting a number of leaders, each with a hand in the air. Adolf Hitler, Joseph Stalin, Mao Zedong, Idi Amin, and Saddam Hussein were among those pictured. So too was the then US President, George Bush. The caption read: "All those in favour of the death penalty, raise your hand". In "*A lethal ideology*", Amnesty International pointed out that a decade later, in stark contrast to the global abolitionist trend, the presidential hand is still raised in the United States as that country approaches its 900<sup>th</sup> execution since it resumed judicial killing in 1977.<sup>1</sup>

President George W. Bush's record on this cruel and brutalizing policy is well known. Although he has held the power of executive reprieve for only a short part of the last quarter of a century, almost one in five of the USA's executions carried out since 1977 passed his desk.<sup>2</sup> Today his support for executions is once again in the spotlight after he made clear his belief that the former President of Iraq should be executed. President Bush had initially refused to be drawn on the question, saying at a press conference on 15 December that "my personal views aren't important in this matter".<sup>3</sup> A day is a long time in politics, however, and in an interview 24 hours later he told ABC's *Primetime* journalist Diane Sawyer that Saddam Hussein is "a disgusting tyrant" who "ought to receive the ultimate penalty".<sup>4</sup>

At the 15 December press conference, responding to questions about any future trial of Saddam Hussein, President Bush said that "of course we want it to be fair. And of course, we want the world to say, well, this – he got a fair trial. Because whatever justice is meted out needs to stand international scrutiny." Asked about this statement in the ABC interview the following day, President Bush added that "what I meant by this is, you know, you don't want a kangaroo court... [T]here needs to be a process that people – that is transparent and open and people are able to see exactly what's – what's going on".

This is more than President Bush is offering the hundreds of foreign nationals in US custody at Guantánamo Bay, over an unknown number of whom hangs the threat of execution. It is President Bush himself who has provided for trials by military commission with the power to hand down death sentences.<sup>5</sup> It is he who has determined the first six people to be made eligible for these trials.<sup>6</sup> And, after any proceedings that end in death sentences, it is he who will have the final say on who lives and who dies.

Unlike the quality of trial that President Bush says that Saddam Hussein should receive, his proposed trials by military commission will not stand international scrutiny. These executive bodies – not independent and impartial courts – lack independence from the executive, place severe restrictions on the defence, and deny defendants the right of appeal to any court anywhere in the world. Justice will neither be done nor seen to be done. International concern is already widespread. Last month, for example, Lord Johan Steyn, a judge from the United Kingdom's highest court, characterized the proposed military

commissions as “kangaroo courts” and said that trials before them “would be a stain on United States justice”.<sup>7</sup> Amnesty International agrees.

In the context of the death penalty provisions of his Military Order, President Bush’s record on clemency when he was governor of Texas and since he took office in the White House gives serious cause for concern. Documentary evidence obtained by a journalist suggests that his decisions on whether or not to intervene in Texas executions were based on cursory and pro-prosecution information. For the first 57 cases this information was provided by the Governor’s then legal counsel, Alberto Gonzales.<sup>8</sup> They included the case of Terry Washington. Alberto Gonzales’ three-page memorandum to the Governor was mainly devoted to the facts of the crime, rather than to possible reasons for clemency. For example, Terry Washington’s jury never knew that he had mental retardation or a background of appalling deprivation and abuse because his trial lawyer had not presented any mitigating evidence. The clemency memo failed to mention this.<sup>9</sup> Governor Bush wrote his mark next to the word DENY, signed his name underneath, and Terry Washington was killed later that day.

Twenty-eight such denials had already occurred during his governorship. There would be more than 100 more before the end of his governorship. As in Terry Washington’s case, many of the executions which Governor Bush failed to stop flouted international law or safeguards, including the killing of child offenders, the mentally impaired, the inadequately represented, individuals whose guilt was still in doubt, and foreign nationals denied their consular rights.<sup>10</sup> This disregard for international standards has continued. President Bush’s refusal to stop the execution of federal prisoner Juan Raul Garza in 2001 ignored a call for clemency by the Inter-American Commission on Human Rights. The IACHR concluded that Garza’s fair trial rights had been flouted, and that his execution would constitute a “deliberate and egregious violation” of the USA’s international obligations.<sup>11</sup> Amnesty International believes that any execution carried out pursuant to a judgment by the proposed military commissions would also violate the USA’s international obligations.

Defending his administration’s recent decision not to award any Iraq reconstruction contracts to countries which had not participated in or helped to finance the US-led invasion of Iraq, President Bush was asked about the German Chancellor’s suggestion that the US move might have international law implications. The President responded: “International law? I better call my lawyer... I don’t know what you’re talking about, about international law. Better consult my lawyer.”<sup>12</sup> His lawyer is Alberto Gonzales, and Amnesty International’s experience is that this Counsel to the President is willing to ignore international law.

Amnesty International wrote to Alberto Gonzales in October 2001 to raise the case of Gerald Mitchell, scheduled for execution in Texas for a crime committed when he was aged 17. The use of the death penalty against anyone under 18 at the time of the crime is prohibited under international law. Amnesty International’s letter pointed out that, under international law, the US administration could not hide behind the federal system of government to escape its obligation to ensure that the execution of Gerald Mitchell did not go ahead.

The Counsel to the President replied to Amnesty International, but entirely ignored the question of the USA’s international obligations. Instead, reminiscent of his “Texas clemency memos”, his letter emphasised that “Mr Mitchell’s guilt is not at issue” and that “the courts obviously determined that Mr Mitchell has been afforded due process of law.”<sup>13</sup> Gerald Mitchell was executed, a violation of international law that has been repeated in the USA four times since.<sup>14</sup>

In his inaugural address, President Bush promised to be a leader who would “speak for greater justice and compassion”.<sup>15</sup> His words fade a little more with every execution.

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<sup>1</sup> *A lethal ideology*, AMR 51/149/2003, 9 December 2003.

<http://web.amnesty.org/library/Index/ENGAMR511492003>

<sup>2</sup> As of 17 December, there had been 885 executions in the USA since 1977. When George W. Bush was governor of Texas from 1995 to 2000, there were 152 executions in that state. Although the power of gubernatorial clemency is limited in Texas, the governor has the authority to stop any execution, and also holds undoubted influence over the gubernatorial appointees on the Board of Pardons and Paroles. Since taking the presidency, he has allowed the first three federal executions since 1963 to take place.

<sup>3</sup> Press Conference of the President, Room 450, Eisenhower Executive Office Building, 15 December.

<sup>4</sup> ABC News, 16 December 2003.

<sup>5</sup> Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism. Military Order, signed by President Bush, 13 November 2001.

<sup>6</sup> *President determines enemy combatants subject to his Military Order*. Department of Defense news release, 3 July 2003. Following discussions with the UK and Australian governments, the US Government has said that three of the six named prisoners will not receive the death penalty. These are two UK nationals, Moazzam Begg and Feroz Abbasi, and Australian national David Hicks. On 18 December, the Pentagon announced that a fourth man, Yemeni national Salim Ahmed Hamdan, had been assigned a military lawyer in preparation for possible trial by military commission. No such assurance about the death penalty has been given in his case, as far as Amnesty International is aware, nor in the case of the other two made eligible for trial by commission. Their identities remain unknown, although reports indicate that they may be nationals of Pakistan and Sudan.

<sup>7</sup> *Guantánamo Bay: The legal black hole*. Twenty-seventh F.A. Mann Lecture: 25 November 2003.

<sup>8</sup> *The Texas clemency memos*. By Alan Berlow. Atlantic Monthly, July/August 2003.

<sup>9</sup> Confidential memorandum to Governor George W. Bush from Alberto R. Gonzales, 6 May 1997. Re: Scheduled execution of Terry Washington. For a description of the Terry Washington case, see *The death penalty in Texas: Lethal injustice*, AI Index: AMR 51/10/98, March 1998.

<http://web.amnesty.org/library/Index/ENGAMR510101998>

<sup>10</sup> For some examples, see *USA: Arbitrary, discriminatory and cruel: and aide-mémoire to 25 years of judicial killing*, AI Index: AMR 51/003/2002, 17 January 2002,

<http://web.amnesty.org/library/Index/ENGAMR510032002>

<sup>11</sup> Report N° 52/01. Case 12.243. Juan Raul Garza, United States. 4 April 2001.

<http://www.iachr.org/annualrep/2000eng/ChapterIII/Merits/USA12.243.htm>

<sup>12</sup> *Bush defends restrictions on Iraq contracts*. Washington Post, 11 December 2003.

<sup>13</sup> Letter to Deputy Secretary General Kate Gilmore from Alberto Gonzales, Counsel to the President, 27 October 2001.

<sup>14</sup> Napoleon Beazley, T.J. Jones and Toronto Patterson were executed in Texas in 2002 for crimes committed when they were 17 years old, and Scott Hain was executed in 2003 in Oklahoma, also for a crime committed at 17. Four child offenders were executed in Texas during the governorship of George W. Bush – Joseph Cannon, Robert Carter, Glen McGinnis and Gary Graham.

<sup>15</sup> “I will live and lead by these principles: to advance my convictions with civility, to pursue the public interest with courage, to speak for greater justice and compassion, to call for responsibility and try to live it as well.” Inaugural address. 20 January 2001.