UNITED STATES OF AMERICA
FAILING THE FUTURE

Death Penalty Developments, March 1998 - March 2000[1]

- "Three or four hundred years ago, cops used to catch people like Reich just to kill them. Capital punishment they called it."
- "You're kidding."

The Demolished Man, by Alfred Bester, set in the year 2301

Clinging to the past: The US death penalty in an increasingly abolitionist world

In 1951, the year that Alfred Bester published his critically acclaimed science fiction novel *The Demolished Man*[2], his country executed 105 prisoners. It was the last time that the US judicial death toll reached three figures in a single year. Its 98 executions in 1999, however, brought the United States closer to repeating this ignominious record than in any year since then. Unless the country's leaders adopt a vision of modern justice hitherto markedly absent, it will not be long before the USA repeats or exceeds its 1951 total. However, having reopened the Pandora's box of judicial killing in 1977, few US leaders seem inclined to close it again.

Not long before publication of *The Demolished Man* - a story of a world in which capital punishment has long gone - the international community produced its own blueprint for the future. The Universal Declaration of Human Rights, adopted on 10 December 1948, the first Human Rights Day, imagined a world in which the rights to life and freedom from cruel, inhuman or degrading punishment were fully respected. One measure of progress towards this end is the number of countries that have stopped using the death penalty. In 1948 there were only eight abolitionist countries; in 1998 and 1999 alone, nine more countries abolished the death penalty for all crimes.[3] By March 2000, 108 countries were abolitionist in law or practice.

Executions in the USA

[1] This is one in a series of "US death penalty developments" reports researched and written at Amnesty International's International Secretariat since the publication in 1987 of its 245-page report, *United States of America: The Death Penalty* (AMR 51/01/87). The previous issue, *A Macabre Assembly Line of Death: Death penalty developments in 1997* (AMR 51/20/98, April 1998), gave some details from the first quarter of 1998.

[2] Originally released in *Galaxy* magazine, *The Demolished Man* was published in book form in 1953, and became the first winner of the Hugo Award for Best Novel. Alfred Bester died in Pennsylvania in 1987.

[3] 1998: Azerbaijan, Bulgaria, Canada, Estonia, Lithuania and the United Kingdom; 1999: East Timor, Turkmenistan and Ukraine. Latvia abolished the death penalty for ordinary crimes in 1999.

For a brief moment in 1972, when the US Supreme Court ruled that the death penalty as it was then applied violated the Constitution, it seemed that the USA might be ready to consider abolition. However, states enacted new capital statutes, the Court lifted the moratorium on executions in 1976, and the modern era of US judicial killing began on 17 January 1977 with the firing squad execution of Gary Gilmore in Utah. Today, the laws of 38 US states, as well as federal and military law, allow for the death penalty, and recent years have seen the pace of execution rise dramatically. In 1998, only China and the Democratic Republic of Congo (DRC) were known to have judicially executed more prisoners than the USA and in 1999 only China, DRC, Iran and Saudi Arabia had higher execution totals.[4]

Between January 1977 and the end of March 2000, a total of 625 prisoners were put to death in 30 US states. Sixty per cent of these executions occurred in the past five years alone, and 30 per cent (193) since 1 January 1998. In 1999, the USA executed prisoners at the rate of one every three working days. More prisoners have been put to death in the first three months of the new century in the USA than were executed in any one of the first 15 years following resumption.

1977 - 1
1978 - 0
1979 - 2
1980 - 0
1981 - 1
1982 - 2
1983 - 5
1984 - 21
1985 - 18
1986 - 18
1987 - 25
1988 - 11
1989 - 16
1990 - 23
1991 - 14
1992 - 31
1993 - 38
1994 - 31
1995 - 56
1996 - 45
1997 - 74
1998 - 68
1999 - 98
2000 - 27
TOTAL - 625
(to 31 March 2000)

Amnesty International opposes the death penalty unconditionally. It believes that every death sentence is an affront to human dignity, every execution a symptom of, not a solution to, a culture of violence. The death penalty is a cruel, fallible and outdated punishment, whose use in the USA continues to be arbitrary, racially and socially biased, as well as prone to error. One of the eight wrongful capital convictions that emerged during 1999 was of a man who came within 48 hours of execution in 1998 after 16 years on death row, before being proved innocent by a group of students and released in February 1999. In the first 12 weeks of 2000 alone, three more prisoners were acquitted of the murders for which they had previously been sentenced to die. Between them they had spent nearly two decades on death row before being exonerated.

[4] In 1998, China (1,700 - total believed to be higher), DRC (more than 100); USA (68) and Iran (66) accounted for 86 per cent of the world's known executions. The recorded totals in 1999 were China (1077 - total believed higher), Iran (165), Saudi Arabia (103), and DRC (100), and USA (98) - 85 per cent of world total. Hundreds of executions were reported in Iraq, but AI was unable to confirm most of the reports.

Issues of guilt and innocence aside, this report is about people convicted of brutal crimes against their fellow human beings. The 166 individuals put to death in the USA in 1998 and 1999 were convicted of killing some 230 people. During the past two years, Amnesty International activists worldwide have sent hundreds of thousands of appeals urging US authorities not to add to the death toll. Such campaigning does not seek to belittle the magnitude of the crimes or their consequences. As an organization which works on a daily basis with, and on behalf of, victims of human violence, Amnesty International has the greatest sympathy for people who have lost relatives and loved ones to murder. Their suffering is immeasurable, and should not be overlooked by those working to find solutions to violent crime. In seeking such solutions, however, those in power have an obligation to provide leadership in setting certain minimum standards of behaviour. Midway through the 20th century, the US Supreme Court emphasized that "evolving standards of decency" must continue to shift the definition of cruel and unusual punishment -- banned under the US Constitution -- as society becomes more enlightened.[5] It is to the USA's shame and increasing isolation, that at the beginning of a new century, much of the country's judicial and political leadership has still not recognized the inherent and irrevocable indecency of the death penalty.

An example of the USA's growing isolation in an increasingly abolitionist world was evident on 3 March 2000. On that day, the International Criminal Tribunal for the former Yugoslavia sentenced Bosnian Croat General Tihomir Blaskic to 45 years in prison for war crimes and crimes against humanity, including ordering the murder of more than 100 men, women and children. For the international community has agreed that, even for what are commonly considered to be the worst crimes in the world, the death penalty is not an appropriate response in modern day society. On the same day that General Blaskic was sentenced, the USA executed its 20th prisoner of the new century. These 20 individuals - and the seven others executed by the end of March - included three young men executed for murders committed when they were children (page 55), a man whose severe mental illness had been left untreated before his crime (page 59), a 62-year-old great-grandmother diagnosed with Battered Woman Syndrome (page 41), a man whose possible wrongful conviction led the President and Prime Minister of France to intervene on his behalf (page 74), and a father who, evidence strongly suggests, would have received a life prison term if his trial jury had understood its sentencing options (page 51).

There are positive signs amidst this relentless conveyor belt of death, however. During 1999, legislative efforts to reintroduce the death penalty in Iowa, Maine, Massachusetts and Michigan failed.[6] Opinion polls indicate a waning in popular support for the death penalty in some states. The religious community, long seen as the "sleeping giant" of US abolition, has become more vocal as national and international opposition to the death penalty grows. An increasing number of relatives of murder victims are speaking out against the death penalty, countering those politicians who justify executions in the name of "victims' rights". In line with international standards, in 1999 Montana became the 15th of the 38 US death penalty states to ban the use of capital punishment against child offenders, and South Dakota recently became the 13th to ban the execution of the mentally retarded. In

[5] *Trop v Dulles* (1958)

[6] Twelve states, and the District of Columbia, do not have the death penalty: Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, Wisconsin.

November 1999, a US Senator from Wisconsin introduced the Federal Death Penalty Abolition Act, and called for a moratorium on executions in individual states. On 31 January 2000, the Governor of Illinois announced a moratorium on executions in his state on account of its "shameful" record of wrongful convictions, a move which might just encourage officials at federal level and in other states to begin to think what until now for them has been the unthinkable -- life without the death penalty.

2 federal	1998	1999	1977-99	2000	@1/1/2000	offenders	MR ban	1973-2000
Alabama	**1**	**2**	**19**	**2**	**185**	**12**		**2**
Arizona	**4**	**7**	**19**	**2**	**121**	**3**		**4**
Arkansas	**1**	**4**	**21**		**40**	**1**	✓	
California	**1**	**2**	**7**	**1**	**561**	**n/a**		**3**
Colorado	**0**	**0**	**1**		**5**	**n/a**	✓	
Connecticut	**0**	**0**	**0**		**7**	**n/a**		
Delaware	**0**	**2**	**10**		**18**	**0**		
Florida	**4**	**1**	**44**	**2**	**389**	**4**		**19**
Georgia	**1**	**0**	**22**		**134**	**3**	✓	**6**
Idaho	**0**	**0**	**1**		**21**	**0**		
Illinois	**1**	**1**	**12**		**160**	**n/a**		**13**
Indiana	**1**	**1**	**7**		**43**	**0**	✓	**2**
Kansas	**0**	**0**	**0**		**3**	**n/a**	✓	
Kentucky	**0**	**1**	**2**		**39**	**2**	✓	
Louisiana	**0**	**1**	**25**		**87**	**3**		**3**
Maryland	**1**	**0**	**3**		**17**	**n/a**	✓	**1**
Mississippi	**0**	**0**	**4**		**63**	**5**		
Missouri	**3**	**9**	**41**	**1**	**83**	**2**		**2**
Montana	**1**	**0**	**2**		**6**	**n/a**		
Nebraska	**0**	**0**	**3**		**9**	**n/a**	✓	
Nevada	**1**	**1**	**8**		**89**	**2**		
New Hampshire	**0**	**0**	**0**		**0**	**0**		
New Jersey	**0**	**0**	**0**		**16**	**n/a**		
New Mexico	**0**	**0**	**0**		**5**	**n/a**	✓	**4**
New York	**0**	**0**	**0**		**5**	**n/a**	✓	
North Carolina	**3**	**4**	**15**		**224**	**1**		**3**
Ohio	**0**	**1**	**1**		**199**	**n/a**		**2**
Oklahoma	**4**	**6**	**19**	**4**	**149**	**1**		**7**
Oregon	**0**	**0**	**2**		**27**	**n/a**		
Pennsylvania	**0**	**1**	**3**		**232**	**3**		**2**
South Carolina	**7**	**4**	**24**		**67**	**4**		**3**
South Dakota	**0**	**0**	**0**		**3**	**0**	✓	
Tennessee	**0**	**0**	**0**		**101**	**n/a**	✓	
Texas	**20**	**35**	**199**	**12**	**462**	**26**		**7**
Utah	**0**	**1**	**6**		**11**	**0**		
Virginia	**13**	**14**	**73**	**3**	**31**	**2**		
Washington	**1**	**0**	**3**		**17**	**n/a**	✓	**1**
Wyoming	**0**	**0**	**1**		**2**	**0**		
US Government	**0**	**0**	**0**		**21**	**n/a**	✓	
US Military	**0**	**0**	**0**		**7**	**n/a**		
TOTALS	**68**	**98**	**598**	**27**	**3659**	**74**	**14**	**86**

Notes: Figures for this year's executions as of 31 March 2000.
Child offenders: under 18 at time of crime (n/a = not applicable [18 minimum age for death penalty])
MR ban? ✓ = The execution of the mentally retarded forbidden under state law.
The number of individuals under sentence of death is actually 3652, as the total of 3659 includes seven prisoners sentenced to death in more than one state.
The total number of people sentenced to death and later exonerated is 87 (one man was sentenced to death in Massachusetts in 1971 under earlier death penalty laws, and released in 1982)

Sources: Criminal Justice Project of the NAACP Legal Defense and Educational Fund, New York; Death Penalty Information Center, Washington, DC; Amnesty International, International Secretariat, London, UK

Blurred lines, failed leadership: The politics of executions

"*Maybe there are circumstances in which historically one can justify* [the death penalty]. *I'm not sure there are any more. I hope we will be in for a season of serious reexamination of that issue*." Reverend Philip Wogaman, 13 February 2000

On 13 February 2000, the senior minister at the Foundry Methodist Church in Washington, DC, called for a reconsideration of the death penalty at a service attended by President Bill Clinton. At a press conference three days later the President stated that if he were still a state governor, he would "look very closely at the situation... and decide what the facts were", but that he did not see the need for a moratorium on federal executions. He said that Governor Ryan's moratorium in Illinois was "probably a courageous thing to do, because a majority of the American people support capital punishment, as do I."

Seven and a half years earlier, during the 1992 US presidential campaign, Bill Clinton, then Governor of Arkansas, broke off campaigning in New Hampshire to return to his home state and oversee the execution of severely mentally impaired Ricky Ray Rector. That execution violated international standards, as have many of the more than 400 executions across the USA that have been carried out since President Clinton took office on 20 January 1993. It seems that, as far as the death penalty is concerned, little has changed since 1992. Reacting to perceived public support for executions, many leading US politicians, at federal and state level, continue to express their support for the death penalty and for expansion of its scope if "appropriate". Few, for example, will refer to the 1998 report on the use of the death penalty in the USA by the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions (hereafter "Special Rapporteur), which said that expansion of the death penalty contravenes international standards.[7]

The Special Rapporteur's report, highly critical of the USA's use of the death penalty, appears to have been largely ignored by the US Government. For example, the report had concluded that "a serious gap exists between federal and state governments, concerning implementation of international obligations undertaken by the United States Government." Far from offering the leadership necessary to begin to remedy this situation and stop state-level abuses, the US Government has, for example, reconfirmed its policy of allowing individual states to violate international law in the case of children accused of capital crimes. In 1999, the US Solicitor General filed an *amicus curiae* brief in the Supreme Court urging the court not to examine the USA's obligations in relation to the international ban on the use of the death penalty against child offenders -- those under 18 at the time of the crime (see page 52). Three more child offenders have been executed since then. Others have been sentenced to death.

[7] E/CN.4/1998/68/Add.3: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Mission to the USA. For more on this report, see *A Macabre Assembly Line of Death: Death Penalty Developments in 1997* (AMR 51/20/98, April 1998).

At the state level, Texas continues to lead the country's resort to judicial killing, by far outstripping any other state in sheer numbers of executions. On 12 January 2000, Earl Heiselbetz became the 200th prisoner executed in Texas since it resumed state killing in 1982. The increasing rate of execution is illustrated by the fact that more than 120 of these executions have been carried out since January 1995. This means that in the past five years, Texas has executed more prisoners than any other US state has done over a period of more than two decades. Indeed, the Texas rate of execution is higher than for most *countries*, and stands in stark contrast to the global abolitionist trend. The more than 120 executions since January 1995 include many carried out in violation of international standards. Examples from the past two years included the execution, in violation of international law, of three prisoners for crimes committed when they were children.[8] In March 2000, Texas accounted for a third of the country's 74 child offenders on death row.

Amnesty International has long held that the quality of court-appointed defence representation for low-income capital defendants in Texas has often failed to meet international minimum standards. Recent research concluded that court-appointed lawyers in criminal cases in Texas "are frequently not provided with proper financial incentives to vigorously defend their clients nor are they provided with sufficient resources. Most disturbingly, the current system appears to provide a lower standard of justice for the state's poor."[9]

Ricky Eugene Kerr was scheduled to be executed on 25 February 1998. The Texas Court of Criminal Appeals refused to stop the execution despite being presented with an affidavit from Kerr's court-appointed lawyer, admitting that he did not understand the appeals process. The lawyer had failed to raise a single issue in the appeal, essentially filing a blank piece of paper with the appeals court. Dissenting from the majority refusal to stay the execution, Judge Morris Overstreet called the appeal a "non-application" for post-conviction relief, and warned that the Court would have "blood on its hands" if Kerr was executed.[10] An experienced appeal lawyer intervened and a federal judge stopped the execution 48 hours before it was due. US District Judge Orlando L. Garcia called the appointment of an inexperienced lawyer, whose health problems meant that at times he was too ill to work, "a cynical and reprehensible attempt to expedite execution at the expense of all semblance of fairness and integrity."[11]

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[8] The only other jurisdiction in the world known to have executed as many child offenders in the same period is the state of Virginia. Iran is the only country apart from the USA known to have executed as many child offenders *in the past decade* - it has put three child offenders to death since 1990.

[9] The study surveyed the opinions of judges, prosecutors and defence attorneys. For example, it found that 90.3 per cent of prosecutors, and 87.3 per cent of judges who responded, reported that court-appointed lawyers in criminal cases devote less time to their indigent client than to those who hire them privately. Also 65.6 per cent of prosecutors and 66 per cent of judges noted that court-appointed lawyers "put on a less vigorous defense" than they do in similar cases where they are retained privately. *And Justice for Some: Indigent Criminal Defense in Texas.* Allan K. Butcher and Michael K. Moore, University of Texas. 15 March 2000.

[10] On 15 July 1998, the Texas Court of Criminal Appeals dismissed the appeals of LaRoyce Lathair Smith and Paul Colella because their state-appointed lawyers had filed them too late. Judge Overstreet, dissenting, said that such a decision "borders on barbarism". In 1999 Texas passed an amendment to the Code of Criminal Procedure to allow such defendants to go back into court and be appointed a new attorney.

[11] *Kerr v Johnson*, 24 February 1998.

In the light of such cases, in 1999 a bill was passed by both houses of the Texas legislature to improve the selection of lawyers for low-income defendants. However, on 20 June 1999, it was vetoed by the Texas Governor, who also reportedly opposed a bill introduced to prohibit the use of the death penalty against mentally retarded defendants in line with international standards, which failed to be enacted in 1999.[12]

[12] Dallas Morning News, 19 May 1999, and New York Times, 18 August 1999. On 1 September 1999, a bill came into effect in Texas relating to procedures for dealing with inmates with an incompetency claim, that is, those who do not understand the reason for, or reality of, their execution.

Regrettably, the example set by Texas in the area of the death penalty appears to be attractive to other jurisdictions looking to execute more efficiently and quickly. Officials from New Mexico and Tennessee, preparing for their first executions since 1960, visited the Texas lethal injection chamber in September 1999 to learn from Texas expertise in judicial killing. Two officials from the New Mexico Department of Corrections witnessed the execution of Richard Wayne Smith on 21 September as part of their visit. A spokesperson for the Texas Department of Criminal Justice noted that "representatives of the federal government" have also visited the state's death chamber.[13] On 23 February 2000, with bills pending in the Alabama legislature proposing that the state switch to lethal injection from the electric chair, three Alabama correctional officials visited the Texas death chamber to learn from the execution of Cornelius Goss that evening.[14]

[13] Associated Press, 12 September 1999. A Philippines government official has also reportedly witnessed a Texas execution. See *A Macabre Assembly Line of Death* (AMR 51/20/98, April 1998).

[14] Birmingham News, 24 February 2000.

Perhaps more disturbing than these official visits to the Huntsville death chamber are efforts by some states to imitate the Texas rate of execution. In December 1999, Florida's Governor announced his aim to speed up the appeals process, despite his state's appalling record on wrongful capital convictions[15]. In a news release, heralding a two-day special session of the legislature aimed at passing such reforms, the Governor said: "Since 1994, criminals have murdered more than 4,000 people in our state. During that same time, only 12 convicted murderers have been executed. And the delays keep increasing, not decreasing... Justice delayed is justice denied. Our goal is to have capital cases resolved within five years".[16] Brad Thomas, policy advisor to the Florida Governor said: "What I hope is that we become like Texas. Bring in the witnesses, put them [the inmates] on a gurney, and let's rock and roll."[17] One of the legislators who supported the proposals at the special session from 5 to 7 January, was Republican Representative Ken Pruitt. He received a standing ovation from families of murder victims present at the session, when he urged legislators to vote for the reforms: "The families of victims have watched the courts give the benefit of the doubt to the killers of their mothers and daughters and fathers and sons. For the most part, the courts have shown little deference to the legislature. They want to be the policymakers of this state. And it's clear we have to draw the line in the sand... It's time for justice."[18] The Death Penalty Reform Act of 2000 was approved by the state legislature on 7 January, and signed into law by Florida's Governor. It is said to be modelled on the law in Texas, and sets time limits and deadlines on appeals.[19]

In his State of the State speech on 1 February 2000, Governor Siegelman of Alabama echoed his Florida counterpart: "The families of murder victims must relive their tragedies year after year after year as endless, senseless and needless appeals clog our court systems. Justice delayed is justice denied. And justice takes too long in death penalty cases... Enough is enough." Two weeks later, the Governor and Attorney General of Alabama announced that they had requested the Alabama Supreme Court to "streamline" the appeals process in capital cases to speed up executions. Attorney General Bill Pryor added: "I believe strongly that this is a bipartisan issue and I appreciate Governor Siegelman's leadership on this issue.[20]

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[15] Florida has released 19 wrongly condemned inmates since 1973, more than any other state (including Illinois, where the Governor has reacted to the rate of wrongful capital conviction with a moratorium on executions). Also, the rate of trial errors requiring re-sentencing or retrial found by the Florida Supreme Court in its automatic review of new death sentences remains alarmingly high. In 1998 the court found errors in 77 per cent of cases, and in the first eight months of 1999 this rose to 83 per cent.

[16] *Governor Bush, Senate and House Leaders Call Special Session on Death Penalty Reforms*. News Release, 9 December 1999.

[17] *Bush backs off firm limits to death row appeals.* St Petersburg Times, 5 January 2000. The gurney is the trolley to which the prisoner is strapped for lethal injection.

[18] *Constitutional issues remain after death penalty session.* Florida Bar News, 15 January 2000.

[19] *Florida lets speed govern executions.* Chicago Tribune, 28 February 2000.

[20] *Siegelman and Pryor Call for Changes in Death Penalty Appeals Process. Ask Alabama Supreme Court to Eliminate Two-Tiered Review of Capital Cases.* News Release, 14 February 2000.

While the reaction of the Alabama Supreme Court remained to be seen at the time of writing, the Florida Supreme Court responded to the measures newly enacted by the Florida Governor by suspending them on 7 February while it considers if they are constitutional. The Speaker of Florida's House of Representatives reacted angrily about "unelected judges" thwarting the legislature and the Chairman of the legislature's Criminal Justice and Corrections Council threatened to introduce a constitutional amendment to cut the state Supreme Court out of the death penalty appeals process.[21] Republican legislators proposed the introduction of a bill that would allow Governor Jeb Bush, whose administration had been criticized in 1999 for a plan to seek "ideologically compatible" candidates for judicial vacancies, to appoint two new justices to the Supreme Court.[22] One leading Republican representative who expressed his support for such a bill, said: "The court in general has been obnoxious and way out of line. Because of a very lax, very liberal judiciary, a convicted capital felon has been able to file 12 appeals and spend 15 years before the execution is carried out."[23]

[21] *Assault on the courts*. St Petersburg Times, 13 February 2000. In an attempt to keep politics out of the judicial appointment system, Florida operates a system of Judicial Nominating Commissions, which screen applicants for judges and recommend finalists to the Governor. The Supreme Court Justices face a "merit retention vote" at the first general election that occurs after they have been in office for more than one year. If retained by the electorate, the Justice serves a six-year term before facing the voters again.

[22] In an article on 1 October 1999 entitled, *Plan would find judges compatible with Bush,* the St Petersburg Times published details of an internal e-mail sent to Governor Bush on 13 August from one of his legal advisors, Deputy General Counsel Frank Jimenez. The latter suggested a plan of how to encourage people with views "ideologically compatible" to the Governor's to apply for judicial vacancies. The paper also noted that earlier in the year, the Bush administration had talked to Christian Coalition leaders and had asked this conservative religious group to submit names of possible judicial applicants. In an open letter to the Florida Bar Association on 1 November, Governor Bush gave assurances that he supports the independence of the judiciary, and had never endorsed or supported the plan outlined in the e-mail.

[23] *Plan in works to expand state Supreme Court.* Miami Herald, 4 March 2000. On 14 March, shortly before he was due to appear before the court to defend the new death penalty legislation, Representative Feeney apologized to the court for his earlier remarks to the Miami Herald.

The politics of executions regularly threatens to blur the lines between the judiciary and the legislature. In his 1998 report on the USA, the UN Special Rapporteur expressed his concern that "the politics of the death penalty, particularly during election campaigns, raises doubts as to the objectivity of its imposition."[24] Furthermore, he wrote that the system of election of judges to relatively short terms of office in the vast majority of US states which allow for the death penalty "may risk interfering with the independence and impartiality of the judiciary."[25] Recent developments in Colorado, where judges are appointed by the Governor for two years and thereafter voted in or out of office, demonstrate the risk that the appointment and retention of judges can become politicized. In 1999, Colorado's first death sentences were passed under a 1995 law removing the sentencing decision from the 12-person jury and giving it to a panel of three judges. For a death sentence to be handed down, all three judges must agree. During 1999, three-judge panels sentenced two defendants to death and four to life imprisonment. Two of the latter were spared after one judge voted for life. Frustrated by these decisions, interpreted by some death penalty supporters as a single judge from outside the county where the crime occurred being able to block executions on grounds of conscience, Colorado's Senate President set about introducing legislation to replace the three-judge panel system with the trial judge. His latest effort was narrowly defeated in the Colorado Senate on 24 March 2000 amidst accusations that he was trying to influence the sentencing outcome of an ongoing capital trial.[26]

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[24] The Special Rapporteur noted that he had met with "several lawyers and members of the bar in different states who acknowledged having received letters from judges requesting financial contributions for their campaigns for re-election", and raised his concern about what effects such electioneering may have. A recent survey of county judges in Texas found that roughly a third took into consideration whether an attorney is a political supporter or has contributed to their campaign in the process of appointing lawyers for low-income criminal defendants. *And Justice for Some: Indigent Criminal Defense in Texas* (op.cit.). Reportedly, in 1998 a study sponsored by the Texas Supreme Court, Office of Court Administration, and the State Bar, into the Public's Trust and Confidence in the Courts and the Legal Profession in Texas, found that 43 per cent of Texans felt that campaign contributions made to judges have a "very significant" effect on the decisions judges make in the courtroom; a further 40 per cent felt this effect to be "somewhat significant".

[25] In March 2000, the death penalty became an election issue between two candidates running for the Illinois Supreme Court. A television commercial for one candidate, appeal court judge Morton Zwick, accused his opponent, county court judge Thomas Fitzgerald, of overseeing a court system that has "sent innocent men to death row, while killers walk the streets. Fitzgerald wants promotion to the Supreme Court. We deserve better." *Zwick attacks Fitzgerald on death sentence issue.* Chicago Tribune, 9 March 2000. The Chicago Bar Association called the advertisement unethical and misleading.

[26] The bill was defeated 16-18 after the Senate refused to postpone the vote. The Senate President's initial proposal to delay the vote was seen by some legislators as an attempt to influence the outcome of proceedings against George Woldt, who had been found guilty of capital murder in an El Paso County court on 23 March (The three-judge panel to decide his sentence was named on 24 March). The Senate Minority Leader claimed that he heard the Senate President say that he wanted to keep the pressure on the El Paso County courts. Lucas Salmon, Woldt's co-defendant, was sentenced to life imprisonment without parole in 1999 after one of the three judges refused to vote for death, an outcome which had angered the Senate President among others. *Vote retains 3-judge panels in death penalty cases.* Denver Post, 25 March 2000.

Another sponsor of such legislative efforts in Colorado is a Senator whose support for executions is reported to have been strengthened by the murder of his own aunt, saying: "The target I'm looking for is increased use of the death penalty. I'm sick and tired of violent murders going on and judges coddling convicted murderers."[27] The Senator flew to Oklahoma on 7 March 2000 to witness the execution of the man convicted of murdering his aunt, scheduled for the first few minutes of 9 March. Loyd LaFevers' execution was stayed by the courts shortly before it was due to be carried out after new DNA evidence threw his guilt in the crime into doubt. The Colorado Senator reportedly said: "It is an absolute insult to let this guy continue to breath Oklahoma air... How could a court say we need to give this guy additional time?"[28]

In California, newly-elected Governor Davis was criticized during 1999 for making support for the death penalty part of the qualification for judicial appointments. A law professor who spoke to several of the candidates for posts as judges said that they had come away from their interviews "absolutely traumatized" by the questioning about their position on the death penalty: "None of the candidates indicated that they thought the death penalty was the greatest thing since sliced bread. That is what Davis is requiring."[29] In February 2000, Governor Davis' concept of an independent judiciary was called into question when he reportedly told journalists that the judges he appoints should follow his political views or step down: "My appointees should reflect my views. They are not there to be independent agents. They are there to reflect the sentiments that I expressed during the campaign [for election to governor]." When asked what would happen if they arrived at views contrary to his, Governor Davis was reported to have responded that they "shouldn't be a judge. They should resign." He continued: "Obviously judges have to follow the law. But in interpreting the law, I expect that they keep faith with the representations that I made to the electorate. Otherwise, we are doing a great disservice to the democratic system."[30]

In Idaho, a county judge, elected to a four-year term in 1997, drew widespread anger following his decision in mid-1999 to sentence Scott Yager to life imprisonment without parole rather than death for the 1998 killing of a police officer.[31] The judge ruled that he could not sentence him to death under the aggravating factors that make a murder eligible for the death penalty under the Idaho Code. In response to this case, newly-elected Idaho Governor Dirk Kempthorne proposed legislation to ensure that killing a police officer is a clear aggravating factor for which judges may consider imposing the death penalty. The resulting bill was overwhelmingly approved by the Senate on 24 February 2000, passed by the House of Representatives by 60 votes to seven on 29 March, and passed to the Governor for signature.

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[27] Denver Post, 24 January 2000.

[28] *Court upholds execution stay for Oklahoma County killer.* Tulsa World, 9 March 2000.

[29] Los Angeles Times, 13 November 1999.

[30] Associated Press, 29 February 2000. Governor Davis was in Washington DC for the National Governors' Association meeting.

[31] For example, the Idaho police chaplain called for the judge to be removed: "If a man looks that hard for a reason not to impose capital punishment, he should not be sitting on the bench in a capital case." Spokesman-Review, 19 August 1999.

At federal level, judges are appointed for life. The risk that their appointment can become politicized according to their perceived record on the death penalty was apparent in 1999 in the case of Judge Ronnie White, the first African-American to sit on the Missouri Supreme Court. He was nominated by President Clinton to be a federal district judge. However, the US Senate voted to reject the nomination, in part, because of Judge White's alleged reluctance to support death sentences. The Republican Party's campaign against Judge White was led by Missouri Senator John Ashcroft, running for re-election on a pro-death penalty platform. He depicted the judge as "pro-criminal" and the most anti-death penalty judge on the Missouri Supreme Court. Yet, Judge White had affirmed the death sentence in 41 out of 59 capital cases that had come before him, and in 10 of the 18 cases in which he voted against the death sentence, he was in the company of a unanimous court.[32] Earlier in the year, Senator Ashcroft had made clear his aim to limit the powers of federal judges over state court decisions. In a reply, dated 7 July 1999, to an Amnesty International member in Sweden who had expressed concern about the death penalty, Senator Ashcroft wrote: "As a Senator, I have supported legislation to streamline the appeals process and bring an end to the endless second-guessing of State court convictions by federal judges far removed in time and place from the initial conviction. In the 106th Congress, I will continue to fight to reduce the process."

In his 1998 report on the death penalty in the USA, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote that the increasing number of crimes which are eligible for the death penalty contradicts the restrictive intent of article 6(2) of the International Covenant on Civil and Political Rights. Yet aggravating factors continue to be added across the USA, widening the scope of the death penalty. Such factors added in 1998 included: the murder of a person in retaliation for providing court testimony (Delaware); killing a pregnant woman (Indiana); intentional killing of a child under 14 by an adult over 21 years old (Virginia); murder of a victim 70-years-old or older (Tennessee).

In his State of the State speech on 1 February 2000, the Governor of Alabama announced his aim to introduce the death penalty "for any adult repeat offender who violently rapes a young child". On 17 February 2000, the latest attempt by a prosecutor in Louisiana to obtain a death sentence for the non-homicidal rape of a child ended in a sentence of life imprisonment without parole after the jury could not agree on whether the defendant, Fred LeBlanc, should be executed. The prosecution had sought a death sentence under a 1995 state law making the rape of a child under the age of 12 a capital crime. In 1996, the Louisiana Supreme Court ruled that the death penalty for such a crime was not unconstitutional (*Louisiana v Wilson*). However, no defendant has yet been sentenced to death under this law, and the US Supreme Court has therefore not ruled on its constitutionality. In 1977 (*Coker v Georgia)*, the Court ruled that execution for rape was excessive, but the Louisiana court argued that the *Coker* decision applied only to the rape of an adult woman and left open the question of the rape of a child.

Rather than trying to speed up executions or expand the scope of the death penalty, or allowing the politics of the death penalty to undermine the independence of the judiciary, US politicians should offer genuine human rights leadership in educating themselves and public opinion about international standards and alternative responses to violent crime.

Uninformed consent? A punishment remote from the public mind

[32] *The Ghost of Ronnie White,* Washington Post, 9 October 1999.

"*Their votes are not informed by evidence or argument, but by terrors of the night which can best be calmed by effective policing, rather than by lynching a scapegoat.*"[33]

Repeated poll evidence continues to suggest that an informed consideration of the death penalty, including about alternatives to it, produces a different public response to the reflex demands for murderers to be killed. In his 1998 report, the UN Special Rapporteur cited US research which concluded that "people tend to be quick to stand in support of this sanction, but they are just as quick to back off their support when given specific information about its administration".[34]

Far from US voters being fully informed about the judicial killing being carried out in their name, however, the human reality of the death penalty appears to remain largely remote from the public consciousness. In October 1998, the then City Manager of Huntsville in Texas indicated this when he said: "I would say that if you were to go around town and interview five people, they couldn't tell you when the last execution was, they couldn't tell you when the next execution was, and they couldn't tell you anybody's name on death row. It is that businesslike, if you will -- detached, impersonal -- it's not a daily concern of this community beyond very, very few people."[35] Yet over 200 executions -- including more than 100 since 1995 -- have been carried out in the Huntsville lethal injection chamber, more than in any other in the USA.

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[33] *Crimes against Humanity: The struggle for global justice.* Geoffrey Robertson QC. Allen Lane/The Penguin Press. 1999.

[34] The Special Rapporteur was referring to the research of Dennis R. Longmire, Director of the Criminal Justice Center, Sam Houston State University, Huntsville, Texas.

[35] *BBC Radio 5* interview with Mr Gene Pipes, 7 October 1998. The City Manager, appointed by the Council, is the Chief Administrative and Executive Officer of the City.

In one of the 20th century's final insults to the Universal Declaration of Human Rights, five US prisoners were put to death in the 30 hours leading up to Human Rights Day 1999, including two in Texas.[36] The first of the five to be killed, David Martin Long, an inmate with a long history of mental illness, had attempted suicide by drug overdose two days earlier. He was still in intensive care in hospital in Galveston, about 200 kilometres from Huntsville, as his scheduled execution time approached. The Texas authorities saw no reason to wait, and in contrast to his 1987 murder trial, when the state had denied his lawyers the funds to conduct a full assessment of Long's mental impairment[37], it spared no expense to have him killed. He was flown by aeroplane to Huntsville, accompanied by a full medical team to ensure his safe arrival. As he was given the lethal injection, David Long "snorted and began gurgling. A blackish-brown liquid spouted from his nose and mouth and dribbled to the floor"[38]. This was the charcoal solution that had been used to detoxify his body, only hours before it would be injected with lethal chemicals. The niece of one of David Long's victims, who had come to attend the execution, became distressed at the sight and had to leave the witness room. It took nine minutes for David Long to die.

The execution was widely reported in the media. Yet normally, executions generate little public attention, particularly outside of the state in which they occur.[39] While all executions represent a failure of political vision, the fact that the "unusual" circumstances of David Long's execution were deemed to have made it more newsworthy seems to reflect a more general failure of imagination within a society whose mainstream has become desensitized to the killing being carried out in its name.[40] It seems to have become easy to turn a blind eye to a cruel ritual that has become

[36] David Long was executed in Texas on the evening of 8 December, and on 9 December DH Fleenor (Indiana), Bobby Lynn Ross (Oklahoma), James Beathard (Texas) and Andre Graham (Virginia) were put to death. This was the first time since 1977 that the USA executed four prisoners in one day.

[37] A psychologist, who testified that Long was probably legally insane at the time of the crime, called for a full neurological examination because of the "high probability" that brain damage played a role in the offence. He said that without such an examination a complete diagnosis was impossible. The court refused. The prosecution psychiatrist testified, without having examined Long, that the defendant was "sociopathic" but sane. Neurological testing after the trial confirmed that Long did have brain damage.

[38] *Man who tried suicide executed.* Dallas Morning News, 9 December 1999. The courts had denied appeals for a stay of execution. State District Judge Ed King stated: "The desire to cheat the hangman or thumb your nose at the state does not mean you're incompetent to be executed."

[39] "The United States may have become accustomed to the revival of the death penalty, but much of Western Europe is appalled by it. While executions get little notice in American newspapers any more, the United States' willingness to put prisoners to death is often scrutinized here [Europe]". *Europeans deplore executions in the US.* New York Times, 26 February 2000.

[40] Another recent execution in Texas which received additional publicity was the execution on 14

normalized, and which, although already repeated on some 600 individual occasions, is dissipated across time and location in a vast country.

For example, what if the aeroplane bearing David Long from his hospital bed to the execution chamber, instead of containing a single inmate, had been a jumbo jet carrying 600 condemned prisoners (the approximate number executed since 1977)? What if those passengers had been led off the plane one by one, strapped down, and killed? At what point would the US electorate have become sickened? After the first 100 had been put to death? Or the second? All 600?

Would people call a halt to the killing sooner if they knew the degree to which each execution took their country further out of step with most other nations? Would the public conscience be stirred by additional information about the condemned individuals, not out of sympathy for them above their murder victims, but in recognition that justice and humanity are not served by further killing? What if the public was aware that many of the prisoners were suffering from serious mental impairment? Or that, through poverty, had received appallingly poor defence representation at their trials? Or that racial discrimination had played a part in sentencing? Would the knowledge that a number of the prisoners might be innocent of any capital crime, lead to a change of heart over this irrevocable punishment?

March 2000 of Ponchai Wilkerson. He spat a key out of his mouth as his final act before being lethally injected. Earlier guards used chemical spray to extract him from his cell in order to take him to the Huntsville execution chamber. In an earlier Texas case, guards used spray to move Desmond Jennings to the death watch cell prior to his execution on 16 November 1999.

There are many such question marks around the administration of the death penalty. One that lies at the heart of criminal justice relates to the possibility of rehabilitation.[41] What if inmates display genuine remorse for what they have done, or have so changed since their crimes that they are unrecognizable from the violent, abused, or alcohol or drug impaired individuals who had originally been condemned? A 1999 poll in Texas suggested that support for the death penalty drops to 53 per cent (from around 70) if the inmate has "shown signs of turning his or her life around".[42] Yet the death penalty, by definition, denies the capacity of people to change.

[41] "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation." (International Covenant on Civil and Political Rights, Article 10.3)

[42] Fort Worth Star Telegram, 14 January 1999. Perhaps this poll result was a sign of continuing public concern over the 4 February 1998 execution in Texas of Karla Faye Tucker, who had educated herself and become deeply religious on death row. Her execution had created a storm of protest within the USA, even from death penalty supporters. See *A Macabre Assembly Line of Death* (AMR 51/20/98, April 1998). The case can still generate controversy. In mid-1999, the Texas Governor drew criticism when a reporter alleged that he had mocked Karla Faye Tucker when asked about her case during an interview. A spokesperson later said that the reporter must have misinterpreted his response "because Governor Bush did not and would not ever make fun of the difficult and serious responsibility of enforcing the death penalty." Reuters, 11 August 1999.

The possibility that support for the death penalty is vulnerable to additional information about its use would appear to be substantiated each time that a juror or other person earlier involved in a particular capital case subsequently comes forward to oppose the death sentence after learning more about the crime or the defendant.[43] At the clemency hearing for Patrick Poland in Arizona on 14 March 2000, the two prosecutors and a federal police agent who two decades earlier had worked together to obtain the death sentence against him, appealed for the execution not to be carried out. They had become aware of mitigating factors relating to Patrick Poland's role in the 1979 crime for which his brother, Michael, was executed in June 1999. Patrick Poland was denied clemency and executed on 15 March. As the execution of Philip Workman loomed in Tennessee, several jurors from his trial expressed misgivings about his death sentence in the light of evidence uncovered since the 1982 proceedings. At the clemency hearing for Sean Sellers on 27 January 1999, one of the jurors from his 1986 trial pleaded for this child offender's life to be spared. She recalled how the jurors had not really believed that Oklahoma would carry out his execution, but had feared his early release if sentenced to imprisonment. She related how she had learned of, and been moved by, Sean Sellers' personal development on death row and his work to help other troubled teenagers. Sellers was executed on 4 February 1999. Five days later, Jaturun Siripongs was put to death in California. Among those who had appealed for clemency for this Thai national was a juror from his trial who noted Siripongs' "adjustment to prison" and his "questionable defence" at trial. In October 1998, two jurors from the 1991 trial of Dwayne Wright in Virginia stated that they would not have voted for death if they had known the extent of his mental impairment. Wright was executed on 14 October 1998 for a murder committed when he was still a child.

For some jurors, a change of heart comes early in the process. In October 1999, a single juror refused to vote for death at the trial of Justin Walker Sincock in Wyoming. The 11 other jurors favoured a death sentence, but the one opposing vote meant that Sincock was sentenced to life imprisonment. The solitary juror had supported the death penalty but changed his mind when faced with the reality of becoming personally involved in executing a person: "I just couldn't kill someone. I thought the death penalty was appropriate before."[44]

Executions in the USA are carried out in the name of all its citizens, not just its capital jurors, its prosecutors, or its legislators. People's legitimate outrage and frustration at violent crime must not stop them from being fully informed of the human reality of the policy of judicial killing being pursued on their behalf.

The death penalty: Always cruel, always inhuman, always degrading

"*We're definitely trying to make the process as clinical as possible. And the point is to make what you see as uneventful as possible."* Florida official on lethal injection, February 2000[45]

Lethal injection, which accounted for 179 of the 193 executions carried out between 1 January 1998 and 31 March 2000, is widely promoted as having updated an ancient

[43] At the jury selection for capital trials, individuals who are opposed to the death penalty are removed from the panel of prospective jurors.

[44] Associated Press, 22 October 1999.

[45] *Lethal injection more secretive than electric chair*, Naples Daily News, 28 February 2000.

punishment into an acceptable modern form.[46] Some liken it to the method used to dispose of sick animals. In October 1998, a radio reporter, witness to more than 100 executions, said of this method of execution: "It's a process much like what happens at animal shelters, when there are too many animals and not enough people who want to own them and love them. Unwanted animals are done away with often in a similar method as what is used for humans who have committed crimes..."[47]

[46] The other 14 executions were carried out by electrocution (12) and lethal gas (2). Of the 432 executions carried out in the USA between 1977 and 1997, 287 were carried out by lethal injection, 131 by electrocution, nine by lethal gas, three by hanging and two by firing squad.

[47] BBC Radio 5, 7 October 1998. Interview with the News Director of KSAM Radio, Huntsville.

A recent example of officialdom perpetuating the myth of humane execution is the Connecticut Supreme Court's adjudication, by five votes to two, that death by lethal injection is not a cruel punishment. The Chief Justice wrote that the reason why most US executing states have adopted lethal injection is "because it is universally recognized as the most humane method of execution." While such opinions doubtless play their part in protecting public sensibilities from the reality of judicial killing, there can be no masking the inherent cruelty of the death penalty, as one of the two dissenting Connecticut judges, Justice Katz, pointed out: "I recognize that some methods of execution are worse than others, but none is better. Therefore, whether carried out by impalement or electrocution, crucifixion or the gas chamber, firing squad or hanging, lethal injection or some other method yet to be designed, the very quintessence of capital punishment is cruelty."[48]

Lethal injections, like any other method of execution, do not always go according to plan. For example, as the lethal solution began to flow into the body of child offender Joseph Cannon in Texas on 22 April 1998, the needle blew out of his arm. Witnesses were ushered out while it was reinserted and were then led back in to observe the second, successful, attempt to kill him. His mother collapsed after seeing her son killed and had to be taken to hospital. At the execution of James Ronald Meanes in Texas on 15 December 1998, a medical technician had difficulty finding a suitable vein in the condemned man's arms, so needles were inserted in the left side of his neck and in his right hand. The authorities said that the difficulty was probably caused by the prisoner's past drug use. The execution of Wilford Berry in Ohio on 19 February 1999 was delayed for about 20 minutes because of problems inserting the needle into his right arm. Similarly, the execution of Eddie Lee Harper in Kentucky on 25 May was delayed for 10 minutes while the execution team searched for a suitable vein. Two minutes after the lethal solution began to flow, Harper's face turned "slightly purple and became puffy." He was pronounced dead 10 minutes later.[49]

The US Supreme Court announced in October 1999 that it would examine if execution in Florida's electric chair violated the constitutional ban on cruel and unusual punishment, following a legal challenge brought by death row inmate Anthony Bryan. Fearful that the Court's eventual ruling could lead to the reversal of Florida's death sentences, the state legislature held a special session in January in which it voted to offer prisoners the choice of lethal injection. On 24 January, the US Supreme Court announced that it would drop the *Bryan* case as the challenge to the electric chair had become irrelevant. At 7am on 23 February 2000, Florida carried out its first lethal injection -- that of 58-year-old Terry Sims. A private citizen, anonymous and black-hooded, earned $150 in cash for pushing the plunger to begin the flow of lethal solution. Exactly 24 hours later, Anthony Bryan was similarly killed.

On 22 February the US Supreme Court refused to hear a legal challenge to Alabama's electric chair. It had stayed the execution of Robert Lee Tarver on 4 February hours before he was due to be electrocuted to consider whether to consider this challenge. On 2 March it refused to consider the same claim brought by Freddie Lee Wright, and a few hours later Wright became the second Alabama prisoner executed in the state's electric chair in 2000. Robert Tarver was rescheduled to be executed on 14 April 2000. On 23 March 2000, the Georgia legislature passed a bill to phase out the use of the electric chair and make lethal injection the state's primary method of execution. With Governor Barnes approving the bill, Alabama and Nebraska will be the only two states using the electric chair as their sole method of execution.

There appear to be wide variations in the length of time it takes for lethal injection to kill a person. On 22 March 2000 in Missouri, it reportedly took three minutes for James Hampton to die. On 8 September 1999 in Arkansas, Mark Gardner was pronounced dead 13 minutes after the lethal solution began to flow. An hour later, in the same execution chamber, Alan Willett died 16 minutes after receiving the injection. In North Carolina, the executions of Zane Hill (14 August 1998), James Rich (26 March 1999) and David Brown (19 November 1999) took, respectively, 23, 21 and 20 minutes between the start of the lethal injection and pronouncement of death.

[48] *State v Webb*, 15 February 2000.

[49] Louisville Courier-Journal, 26 May 1999

On 24 September 1999 the Florida Supreme Court ruled by a narrow majority that execution by electrocution did not violate the state's constitution, but urged the legislature to adopt lethal injection as an alternative to the electric chair. This exhortation followed the electrocution of Allen Lee Davis on 8 July 1999, during which blood was seen to pour from Davis' nose and spread across his chest, the latest in a series of botched executions in Florida. Three of the Supreme Court judges attacked the use of the electric chair, variously describing it as "barbaric", "savage", "inhumane" and "more befitting a violent murderer than a civilized state".[50] One of the judges appended -- on the internet -- post-execution photos of Allen Lee Davis in order to make his point more graphically. Sadly, however, none of the judges took the opportunity to note that, regardless of the method used to end the life of the prisoner, the death penalty is a human rights violation which brutalizes society and promotes the message that killing is an appropriate response to killing.[51] After Florida legislators subsequently voted to adopt lethal injection (see box), officials from the state went to Virginia to witness the execution of child offenders Chris Thomas and Steve Roach on 10 and 13 January 2000. Also present at the execution of Steve Roach were six Virginia citizens who had volunteered to be witnesses (Virginia law requires such witnesses). Two gave their reasons for being there: "One witness, a woman, said this was her third execution. She said she keeps coming because they are "interesting"...Another witness said he came to watch Roach die as a way of avenging his own son's death. He said his son was beaten to death and nobody was ever convicted of the crime."[52] A volunteer witness at the execution of Anthony Chaney in Arizona on 16 February gave a similar reason. "I had a brother in Tennessee who was murdered. The guy who did it was allowed to plea bargain... [17 years in prison]... that's all he got."[53]

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[50] *Thomas H. Provenzano v Michael W. Moore*, 24 September 1999

[51] Some studies have indicated that murder rates may increase after an execution. One study published in 1998 found that there was a significant increase in particular types of murder in Oklahoma after the state resumed executions in 1990. *Deterrence, Brutalization, and the Death Penalty: Another examination of Oklahoma's return to capital punishment.* (36 Criminology 711-33). Another study published in 1999 found that murders in Los Angeles increased during the eight months after the execution of Robert Harris in California in 1992. *Effects of an Execution on Homicides in California.* (3 Homicide Studies 129-150). Source: Death Penalty Information Center - www.essential.org/dpic

[52] *Watching Steven Roach die*. APB News, 14 January 2000.

[53] Wall Street Journal, 31 March 2000.

And what of the effect on the officials and the executioners themselves? Bishop Kenneth Carder in Tennessee said recently: "We put them in a very difficult situation when they have to bear the brunt of the emotional trauma of an execution in our name".[54] Don Cabana, who oversaw six executions as warden of Parchmon prison in Mississippi, now campaigns against the death penalty which he believes is cruel to all involved. He recently spoke, for example, of the trauma of executing Edward Earl Johnson, who may have been innocent of the crime for which he was sentenced to die, and of Connie Ray Evans, who had come "to be like another of my six kids".[55] In 1999 Ohio Supreme Court Justice Paul Pfeifer referred to the clemency role of a governor as "the most difficult and lonely decision a governor has to make", as Ohio prepared to execute its first prisoner since 1963. Justice Pfeifer, who co-wrote the state's 1981 death penalty law, now has doubts: "As we stand poised on history's doorstep, I find myself wondering if it's a step that we really want to take. Should the state really be in the business of ending people's lives, no matter how reprehensible those people are?"[56]

Whatever execution method is used, condemned prisoners suffer years of mental torment, as their minds conjure images of their impending deaths, exacerbated by their awareness of the execution of fellow inmates. As 20-year-old Texas child offender, Randy Arroyo, said: "Every time I see someone get executed, I know it's just a closer number to mine."[57] Today, some 3,600 prisoners are being subjected to this same daily cruelty in the USA. One of them, 22-year-old Wesley Quick in Alabama, said in December 1999: "You try to put it out of your head, but you do think about it. It's still there. You can't put it all the way out."[58]

On 15 October 1999, the US Government submitted to the UN Committee Against Torture the USA's initial report on its implementation of the Convention Against Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. The report, which had been due since November 1995, stressed the government's belief that it was not obliged to report on the USA's use of the death penalty because of various conditions which it had attached to its 1994 ratification of the Convention. In essence, these conditions stated that the USA only considers itself bound to prevent "cruel, inhuman or degrading treatment or punishment", as Article 16 of the Convention demands, to the extent that that term matches the "cruel and unusual" punishment prohibited by the US Constitution as interpreted by the US Supreme Court. The USA also included an "understanding" that the Convention did not limit "any constitutional period of confinement prior to the imposition of the death penalty".

In step with this "understanding", the majority of current US Supreme Court Justices remain unwilling to examine the cruelty of forcing a human being to live under a sentence of death. On 8 November 1999, it dismissed the appeals of two prisoners who claimed that the length of time they had spent on death row amounted to cruel and unusual punishment. Carey Dean Moore has been on death row in Nebraska since 1980, and Thomas Knight was

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[54] *Religious coalition's postcard blitz tries to prevent executions*. The Tennessean, 6 March 2000.

[55] *The painful world of a six-times executioner*. The Irish Times, 17 March 2000.

[56] Columbus Dispatch. 18 February 1999.

[57] San-Antonio Express News, 27 January 2000.

[58] Birmingham News, 8 December 1999.

sentenced to death in Florida in 1975. The Supreme Court did not rule on the merits of their appeals, but two of the Justices gave an indication as to their thinking on the matter.

Dissenting from the majority decision not to consider the issue, Justice Breyer wrote: "Both of these cases involve astonishingly long delays flowing in significant part from constitutionally defective death penalty procedures. Where a delay, measured in decades, reflects the State's own failure to comply with the Constitution's demands, the claim that time has rendered the execution inhuman is a particularly strong one. I believe this Court should consider that claim now." Justice Breyer noted that a "growing number of courts outside the United States – courts that accept or assume the lawfulness of the death penalty -- have held that lengthy delay in administering a lawful death penalty renders ultimate execution inhuman, degrading, or unusually cruel."[59]

On the other hand, Justice Thomas agreed with the dismissal of the appeals in the Knight and Moore cases. He wrote that a defendant could not expect to take advantage of the "panoply" of appeal procedures and "then complain when his execution is delayed". His opinion would no doubt be welcomed by those politicians and prosecutors who complain that the US capital appeals process unnecessarily prolongs the time between death sentence and execution. For example, on the eve of Andre Graham's execution on 9 December 1999 in Virginia, irritated by appeals claiming that Graham had not been the gunman in the crime for which he was sentenced to die, a spokesman for the Attorney General said: "Death row inmates have nothing better to do than perpetuate lies and myths about third party killers, last-minute evidence and a host of other smoke screens to try to avoid the death penalty."[60]

[59] For example, the Supreme Court of Zimbabwe, the European Court of Human Rights, and the Judicial Committee of the Privy Council. On 13 October 1998, the US Supreme Court similarly refused to hear the appeal of William Elledge, on death row in Florida for over 23 years. Justice Breyer dissented, saying that this may amount to cruel or unusual punishment. "Not only has he, in prison, faced the threat of death for nearly a generation, but he has experienced that delay because of the State's own faulty procedures and not because of frivolous appeals on his own part... After such a delay, an execution may well cease to serve the legitimate penological purposes that otherwise provide a necessary constitutional justification for the death penalty."

[60] Associated Press, 9 December 1999. Andre Graham was executed as scheduled on 9 December.

Those officials who wish to speed up the time between death sentence and execution must reflect upon how many of the wrongfully convicted death row inmates, subjected to the cruelty of the death penalty and later found to be innocent, would have been executed under shorter appeal processes. On 16 March 2000, Joseph Nahume Green was acquitted of the murder for which he was sentenced to die in Florida in 1993, becoming the 87th wrongfully convicted prisoner released from death rows since 1973.[61] For nearly four of the seven years he spent in prison he was on death row, during which time eight other prisoners were executed in the electric chair. To this day he has said that he cannot hear an air conditioner humming without thinking of the electricity in the death chamber. One inmate with whom he had grown close was Pedro Medina, put to death in a botched execution in March 1997, a month before Green was transferred to county jail to await retrial. On 15 March 2000, he told Amnesty International: "To know a guy has been executed who you talked to, to know that one day someone is going to come and take you to death watch and then kill you -- that eats at you, and eats at you, and eats at you. Death row is very, very dehumanizing."

Amnesty International believes that the death penalty violates the prohibition on cruel, inhuman or degrading treatment regardless of the length of time a prisoner spends on death row, the execution method used, or whether the condemned inmate is guilty or innocent of the crime for which their government intends to kill them. Notwithstanding issues of compensation to wrongfully convicted inmates, abolition of the death penalty is the only just solution.

Added cruelty - Torture and ill-treatment of the condemned

"*People on death row have no rights. Their contact with the outside world is over.*" Rick Eddins, North Carolina House of Representatives, July 1999[62]

[61] In the absence of any physical evidence linking Green to the 1992 murder he was accused of committing, and despite alibi evidence, he was convicted principally on the basis of the eyewitness account of a mentally and memory impaired man whose testimony the Florida Supreme Court later described as "inconsistent and contradictory", and by a prosecution under pressure from a small community to solve the murder of one of its well-known members. On 23 June 1998, the eyewitness was ruled unreliable and incompetent to testify at a retrial, effectively leaving the prosecution with no case. Green was released without bail on 7 July 1999, and the state was given until 15 March 2000 to retry Green or he would be acquitted.

[62] *Death row artists go online.* News and Observer, 16 July 1999. Representative Eddins was reacting to a website displaying art by death row inmates, and unsuccessfully attempted to introduce a bill against it. In 1999 he also sponsored a bill aimed at having the state Supreme Court adopt rules to expedite capital cases.

Amnesty International has concerns about the treatment of capital defendants and condemned prisoners in addition to the cruelty of their sentences. Perhaps a society that accepts the judicial killing of selected individuals runs the risk of nurturing an increased tolerance to other forms of cruelty against inmates. For example, many defendants and prisoners in the USA, capital and non-capital, have been made to wear remote control electro-shock stun belts in court or during transportation. Amnesty International believes that the use of the stun belt violates the international prohibition on cruel, inhuman or degrading treatment.[63] At his capital trial in Florida, Jeffrey Lee Weaver was made to wear a stun belt. During jury selection on 15 April 1999, a deputy accidentally activated the transmitter and Weaver received an eight-second 50,000-volt electro-shock.[64] Similarly, in June 1999, mentally ill French national Claude Maturana, on death row in Arizona, is alleged to have been electro-shocked by a stun belt on his way to a court hearing.[65]

Christopher Beck was hours from execution in Virginia on 10 June 1999 when he was granted a stay. Exactly a month earlier, on 10 May, an hour and a half after an incident in which he threw a cup of water at a nurse through the food slot in his cell door, up to 10 prison guards entered his cell. It is alleged that they beat him for 45 minutes and arbitrarily electro-shocked him with a stun shield. He was then allegedly held in four-point restraint for 24 hours. The Warden of Sussex I State Prison informed Amnesty International that an investigation was being carried out into the incident, but the organization has not yet been told of its conclusions.

On 21 July 1999, Amnesty International called for an inquiry into the death of Frank Valdes, allegedly beaten to death by prison guards on Florida's death row on 17 July. During the incident, guards were alleged to have used chemical spray against Valdes into the cell, and to have entered armed with electro-shock stun shields. According to autopsy reports, 22 of Valdes' ribs were broken, as were his jaw, sternum, collarbone, shoulder and three vertebrae. One autopsy noted a "probable shoe or boot sole" print on Valdes' stomach. Prison guards claimed that the injuries were self-inflicted. On 2 February 2000, four guards were charged with second-degree murder. They have pleaded not guilty.

Emile Duhamel was found dead in his Texas death row cell on 9 July 1998. He was a severely mentally impaired man, with an IQ of 56, and had been diagnosed with serious mental illness, including paranoid schizophrenia. Although he was reported to have died from "natural causes", there was concern that medical neglect and the high temperatures (over 40 degrees centigrade) in the non-air conditioned cells during the summer heatwave may have contributed to his death. Anti-psychotic drugs, which Duhamel was taking, interfere with the body's temperature regulation. The UN Special Rapporteur on extrajudicial, summary or

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[63] See: *Cruelty in Control? The Stun Belt and other Electro-Shock Equipment in Law Enforcement* (AMR 51/54/99, June 1999). Amnesty International has many human rights concerns in the USA, a country where the incarcerated population was reported to have reached two million in February 2000. See: *USA: Rights for All* (AMR 51/35/98, October 1998).

[64] At Weaver's trial, the jury convicted him and recommended that he be sentenced to life imprisonment for the killing of a police officer. On 27 August, the judge overrode their recommendation and sentenced Weaver to death.

[65] Due to his mental illness, which includes schizophrenia, in January 1999 Claude Maturana was found incompetent for execution (that is, that he did not understand the reason for, or reality of, his punishment). If his condition improves, he could be declared fit for execution.

arbitrary executions, concerned by the USA's continuing use of the death penalty against the mentally impaired in contravention of international standards, had met Emile Duhamel during his visit to Texas death row in late 1997.

Amnesty International has long held that, even without the sentence of death, conditions in H-Unit of Oklahoma State Penitentiary amount to cruel, inhuman or degrading treatment in violation of international standards.[66] The facility houses the state's male death row population, effectively underground, in tiny windowless concrete cells, in which the condemned are confined for 23 to 24 hours a day. For up to 60 days prior to their scheduled execution, the 10 inmates put to death in H-Unit in 1998 and 1999 were transferred to solitary confinement in special double-doored punishment cells, and subjected to a harsh suicide watch regime, including repeated strip-searches and cell searches. A few days before he was executed on 3 June 1999, Scotty Lee Moore wrote: "At present, I am incarcerated in the "high max" or punishment cell awaiting my execution. This is a disciplinary cell and used only for punishment. I have been locked up here only because I have an execution date - not because I have broken any prison rules. It is extreme isolation here behind two closed front steel doors. This high max cell is even more removed from human contact than the rest of H-Unit is. Human beings are social creatures. When you isolate someone you torture him."[67]

In May 1998, a lawsuit was filed concerning conditions for death row inmates in Idaho Maximum Security Institution. The suit states that inmates are held in solitary confinement for 163 of every week's 168 hours in small concrete and steel cells with solid metal doors and a narrow slit for a window. Inmates are allowed out of their cells for a maximum of one hour a day, excluding weekends, for recreation, alone and handcuffed, in one of 12 enclosed wire mesh pens measuring approximately seven by 15 feet. The prisoner named in the lawsuit, Randy McKinney, states that he has lived under such a regime for 16 years, and that such treatment constitutes torture. In early 2000, the Chairperson of Idaho's House Judiciary Committee reportedly stated that the solitary confinement policy should not be changed unless the courts found it to be unconstitutional: "Public opinion would come down on the side of solitary confinement for those folks."[68] No ruling on the lawsuit had been made at the time of writing.[69]

Giving up the ghost - Prisoners who agree to their execution

"*I am begging you for your help to get my sentence carried out. I know what I am doing and this is what I want.*" Kevin Scudder, death row, Ohio, January 2000.[70]

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[66] See Amnesty International's report: *Conditions for death row prisoners in H-Unit, Oklahoma State Penitentiary*, AMR 51/34/94, 1994.

[67] This policy was adopted after an incident in 1995 in which Robert Brecheen overdosed on sedatives hours before he was due to be executed. He was taken to hospital, treated, returned to prison and killed. The policy has reportedly been "relaxed" in 2000 to seven days in the punishment cell prior to execution.

[68] *Lawmakers not so worried about death row inmates*. Associated Press, early 2000 (date unknown).

[69] In February 2000 a class-action lawsuit was also filed against the Arizona Corrections Department claiming that the harsh conditions on death row, including excessive use of restraints, amount to cruel treatment.

[70] Letter to Ohio Attorney General requesting her help in ensuring his execution be carried out as scheduled on 25 April 2000. Akron Beacon Journal, 7 February 2000. According to reports, Kevin Scudder attempted suicide as a teenager and was later diagnosed as suffering from paranoid schizophrenia. At the time of

writing, Christina Riggs was scheduled to be executed on 2 May in Arkansas after giving up her appeals against her 1998 death sentence for killing her children.

The number of prisoners executed after giving up their appeals -- some 21 in 1998 and 1999 -- may be one manifestation of the cruelty of forcing individuals to live under sentence of death.[71] In 1998, Missouri death row inmate James Hampton dropped his appeals, saying: "I see prisoners down in Potosi [Correctional Center] with 15 years on the row before they finally get to the execution chamber, and I know that I don't want to go through that." Hampton, a 62-year old man who sustained serious brain damage after shooting himself in the head at the time of his 1992 arrest, was executed on 22 March 2000. Eddie Lee Harper, sentenced to death in Kentucky in 1982 for the murder of his adoptive parents, dropped his appeals in 1999 and said he preferred death to the "torture" of life on death row. Defence lawyers argued that he suffered from delusions, had a history of suicidal tendencies within his family, and required a psychiatric evaluation to assess his competency to drop his appeals. The courts rejected their efforts to have his execution stayed, and on 25 May 1999, he became the first inmate to be executed by lethal injection in Kentucky.[72]

Prisoners clearly suffering from mental illness have been allowed to give up their appeals. Jeremy Vargas Sagastegui was executed in Washington State on 13 October 1998 for triple murder. He had represented himself at his 1996 trial, without a proper evaluation of his competency, background or motivation. Three months before he committed the crime, he had been diagnosed as suicidal, and had also been diagnosed as suffering from schizophrenia and bipolar disorder (manic depression). At his jury selection, he rejected jurors less likely to favour the death penalty, and objected when the prosecution rejected a juror who would have automatically returned a death sentence. Sagastegui offered no defence, and presented no evidence about his mental disorders, suicidal tendencies, or his severe sexual and physical abuse as a child. Finally he asked the jury to sentence him to death, which they did. He then waived his right to appeal. In an interview in 1998, Jeremy Sagastegui said: "I can't explain what death is, but it's something I want", and "if the state wouldn't have had the death penalty, those people would still be alive."

At his trial in Georgia in October 1998, Daniel Colwell claimed that he committed murder in order that the state would execute him, and threatened the jurors that he would torture or kill them if they did not sentence him to death. Colwell, diagnosed as suffering from various mental illnesses, including paranoid schizophrenia, said that he brought a gun in July 1996 in order to kill himself, but when he discovered that he could not do it, he randomly selected Mitchell Bell and Judith Bell and shot them dead in a car park. The jury sentenced him to death. Before the trial his lawyer, who said that giving a suicidal man what he wants by executing him sets a "dangerous public policy", argued for Colwell to be declared incompetent to stand trial and for him to receive treatment for his illness. This was rejected by the court. Following his conviction, Daniel Colwell received treatment on death row, and in

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[71] The following prisoners were executed after dropping their appeals: 1998: Lloyd Hampton (Illinois, 21 January); Robert Smith (Indiana, 29 January); Ricky Sanderson (North Carolina, 30 January); Steven Renfro (Texas, 9 February); Michael Long (Oklahoma, 20 February); Arthur Ross (Arizona, 29 April); Steven Thompson (Alabama, 8 May); Stephen Wood (Oklahoma, 5 August); Roderick Abeyta (Nevada, 5 October); Jeremy Sagastegui (13 October). 1999: Wilford Berry (Ohio, 19 February); James Rich (North Carolina, 26 March); Alvaro Calambro (Nevada, 5 April); Eric Payne (Virginia, 28 April); Aaron Foust (Texas, 28 April); Eddie Harper (Kentucky, 25 May); Gary Heidnik (Pennsylvania, 6 June); Alan Willett (Arkansas, 8 September); Richard Smith (Texas, 21 September); Joseph Parsons (Utah, 15 October); Robert Atworth (Texas, 14 December). 2000: James Hampton (Missouri, 22 March).

[72] Kentucky adopted lethal injection in a law passed on 31 March 1998. During 1998 Tennessee and Mississippi also adopted lethal injection.

mid-1999, realizing that he had been very ill, decided that he wanted to live and took up his appeals.

In Ohio, Wilford Berry dropped his appeals after nearly a decade on death row, and on 19 February 1999 became the first person to be executed in the state since 1963. Berry suffered a childhood of extreme sexual and physical abuse. His first attempt at suicide occurred when he was aged 11, the first of 11 such attempts. At age 14 he was diagnosed as suffering from severe schizophrenia, but received inadequate treatment. At 19 he was sentenced to six years in prison for car theft in Texas. While incarcerated, he was raped by another inmate and attempted suicide. The National Alliance for the Mentally Ill appealed for clemency: "The facts of Mr. Berry's case also strongly suggest that he is using the State of Ohio and the legal system to achieve assisted suicide. Please do not allow the people of Ohio and yourself personally to be complicit to such an outrageous, morally indefensible act..." Governor Taft, who was reported to have received some 4,000 appeals to stop the execution and said that he felt compassion for Berry because of his "extremely unfortunate life circumstances", denied clemency.

Whatever motivates prisoners to consent to their execution, whether mental or physical illness[73], remorse[74], the severity of the conditions of their confinement, or pessimism about their appeal prospects, it does not absolve the state from the fact that it is engaged in a premeditated human rights violation and is participating in a cycle of violence.

In cold blood: When society kills those it condemns for killing

"*Before they put the needle in John Noland's arm, they swabbed his arm with rubbing alcohol, to kill the germs... I'm convinced that sometime in the future we're going to look back on all this and think this was nothing except deliberate, premeditated, calculated madness."* Defence lawyer, immediately after witnessing his client's execution, 20 November 1998

On 19 November 1998, the governor of North Carolina denied clemency to John Noland, saying that he had "cruelly and cold-bloodedly killed two members of his wife's family". Noland, who had been committed to mental hospital less than a year before the 1982 murders, was executed on 20 November after 16 years on death row.

An essential element of the death penalty if society is to tacitly accept its calculated cruelty, is the labelling of the condemned as less than human and beyond change. Government officials frequently cite the "cold-blooded" nature of condemned prisoners' crimes to justify their execution. In a news release issued on 30 November 1998 announcing that he was seeking an execution date for child offender Sean Sellers, the Attorney General of Oklahoma stated: "Sean Sellers committed three coldly calculated murders...". In a grotesque juxtaposition, directly under these words was the heading "Execution Schedule",

[73] Richard Wayne Smith was executed in Texas on 21 September 1999. He dropped his appeals after being diagnosed with terminal liver failure caused by hepatitis C, attributed to long-term drug and alcohol abuse.

[74] Steven Ceon Renfro waived his appeals and was executed in Texas on 9 February 1998, an exceptionally short 10 months after he arrived on death row for a shooting rampage in 1996. His final statement was: "I would like to tell the victims' families I am sorry, very sorry. I am so sorry. Forgive me if you can."

followed by the names of three men -- Tuan Nguyen, John Duvall and John Castro -- and the exact times, to the minute, of their planned killing by the Oklahoma authorities.

On 2 December, two days after the Attorney General's news release, Sean Sellers wrote in his diary: "How many times do I have to say it? I want people to look me in the eyes, know who I am before they say "Sean should be executed". If they did that then I'd be okay with it. But how can I respect [the Attorney General] when I am just a piece of paper to him? This system that separates the arm of the executioner from the eyes of the executioner is wrong. If [he] wants me dead he should have to come face me, talk to me, and *then* leave and sign a death warrant for me. He shouldn't be able to do it so far removed from me that it bears him no more conscious thought than filling out the paperwork laid on his desk one morning."

Tuan Nguyen, John Duvall, John Castro, and Sean Sellers were executed as scheduled, becoming four of the 598 men and women put to death by US state governments between 1977 and 1999. Of the hundreds of thousands of killings carried out in the USA in those 23 years, these 598 could surely qualify as the most premeditated and calculated: killings in which the victim was captured, rendered defenceless, informed that they would be killed, kept for years in that knowledge, told a date on which they would be put to death, perhaps spared shortly before that moment arrived, only to be given another date and killed at that pre-ordained time. In Louisiana on 9 September 1999, Feltus Taylor was reprieved 30 minutes before he was due to be put to death. It was the fourth time he had an execution date. He may yet receive another.[75] In Virginia on 16 June 1999, after living under a sentence of death for his whole adult life, 26-year-old Christopher Douglas Thomas was five hours from execution when the state Supreme Court issued a stay. Chris Thomas, convicted of a crime committed when he was still a child, was said to be "tearful" and "very joyous" when he received news of the reprieve, and immediately rang his parents to tell them. An hour earlier he had said his final goodbyes to them. Six months later, on 10 January 2000, Chris Thomas and his parents were subjected to the same cruelty. This time the execution went ahead, in violation of international law banning the death penalty against child offenders.

[75] The US Supreme Court granted a stay of execution to consider the claim that jail authorities had misadministered powerful anti-psychotic medication to Taylor during his 1991 trial and that this had had prejudicial effects on his demeanour during the proceedings.

When the human dignity of a death row prisoner threatens to puncture society's demonization of them, the state will react to protect the status quo. At the clemency hearing for Cornel Cooks in front of Oklahoma's Pardon and Parole Board on 16 November 1999, he spoke of his long-held remorse, about which he had not been allowed to tell his trial jury. His appeal lawyer presented the Board members with reasons why her client should be allowed to live. For the state, the Assistant Attorney General (AAG) responded: "This morning you have heard from Mr Cooks' representatives. They have presented a myriad of reasons why they believe clemency should be recommended. Among those reasons offered: Mr Cooks' low intellectual functioning; the fact that he had a less than ideal childhood; the fact that he made the decision to use alcohol and drugs. It is plain that he is remorseful and that he received ineffective assistance of counsel at his trial. But let me tell you here and now, that if you believe these are adequate reasons for clemency, you should be prepared in the next year or so to grant or at least recommend clemency over and over and over. We estimate within the next year 15 to 20 people will come before you with death sentences, asking for clemency. I guarantee you, you will hear stories much like Cornel Cooks' from each and every one of them." Plainly, the AAG wanted the Board to view Cornel Cooks not as an individual with claims to clemency that were uniquely his own (which the Board could accept or reject on their own merits), but as one of a group defined only by their death sentences.[76] The Board duly steered clear of what the AAG had portrayed as a 'slippery slope' of clemency, and voted 5-0 against sparing Cornel Cooks' life. He was executed on 2 December 1999.

As the AAG openly acknowledged, Cornel Cooks had received ineffective defence representation at his trial. His lawyer had never handled a capital case before, having only finished law school two years earlier. His loyalty to his client was in question from the start. When the mentally impaired Cooks asked what it meant that the state was seeking the death penalty against him, the lawyer replied "That's what they do to niggers who rape white women". The federal 10th Circuit Court of Appeals found that his defence of Cornel Cooks at the second, sentencing, phase of the trial had been "ineffective", and was "troubled" that he had "called no witnesses, and presented no evidence on Mr Cooks' behalf". The Court added, "Indeed, we are unable to glean from the record any second stage strategy developed to defend Mr Cooks against the death penalty." However, the Court denied the appeal, speculating that the jury would have sentenced Cooks to death even if his lawyer had met his professional duties.[77]

Cornel Cooks' experience is far from unique. In violation of international standards, many low-income capital defendants have been sentenced to death after receiving inadequate defence representation at trial from inexperienced, incompetent, or underfunded lawyers.[78] In contrast, they face experienced and better funded prosecutors, whose conduct has frequently pushed the boundaries of acceptable behaviour under the adversarial system.

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[76] The AAG also publicly attacked Amnesty International appeals on behalf of Cornel Cooks. See *Open Letter to Assistant Attorney General Humes, Oklahoma* (AMR 51/193/99, 2 December 1999).

[77] *Cooks v Ward*, 97-6105, 15 December 1998. In *Strickland v Washington* (1984) the US Supreme Court ruled that errors by lawyers would not merit judicial remedy unless the defendant could prove that such errors had prejudiced the outcome of the case.

[78] UN Economic and Social Council's Safeguards Guaranteeing the Protection of the Rights of Those Facing the Death Penalty, adopted by consensus by the UN General Assembly in 1984, include "the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of proceedings."

Inadequate defence and zealous prosecution: Unfair trials

"*I can think of no stronger signal to a jury that a defendant's life is not worth sparing, than the failure of anyone to speak for him.*"[79] Federal judge, 1998.

Scotty Moore's trial lawyer was denied the resources to investigate mitigating evidence of Moore's long history of mental health problems. While on death row, Moore educated himself about the law and mental illness, including chronic depression, which had fueled his earlier abuse of alcohol and drugs. He helped other prisoners with legal or other matters when they were unable to help themselves, because of illiteracy, lack of education or deteriorating mental health. One such prisoner was Ronald Williamson, whose serious and untreated mental illness Moore documented and drew to the attention of Williamson's lawyers.

On 15 April 1999, six weeks before Scotty Moore was executed, Ronald Williamson was released after DNA evidence cleared him of the crime of which he had been convicted. Williamson, sentenced to death in 1988, had come within five days of execution in 1994. His trial lawyer had failed to investigate his extensive record of mental illness, and the fact that another man had confessed to the crime.

[79] Judge Brorby, dissenting opinion favouring re-sentencing for Scotty Lee Moore. US Court of Appeals for the 10th Circuit. *Moore v Reynolds*. 13 July 1998.

Scotty Lee Moore was represented at his Oklahoma trial by a lawyer, who due to his lack of preparation, made no closing argument as to why the jury should spare Moore's life. No remedy for this ineffective representation was forthcoming on appeal, although in 1998 one appeal judge dissented from his peers: "The devastating effect of some errors simply should not be overlooked. An attorney's failure to argue for his client's life during the sentencing phase of a capital case is that type of error. The absence of argument for the defendant in this situation leads inevitably, I believe, to a breakdown of the adversary system and a flawed trial.... When nobody in the courtroom stands up and argues for the defendant's life, it devalues the jury system, the court, and life itself."[80]

In contrast to his defence lawyer's performance, Scotty Moore faced a prosecutor doing his utmost to obtain a death sentence. The official in question attempted to minimize any feelings of concern the jurors may have had about their involvement in the future killing of a fellow human being, by telling them that they were just "a small piece of the machinery that is designed to take people like Scotty Lee Moore and put them on death row."[81] He appealed to the jurors' sense of patriotism, comparing military service during wartime with handing down a death sentence, and arguing that "we're the ones he is a threat to unless something is done about it." The 10th Circuit Court of Appeals ruled that such comments, "even if improper", had not influenced the jurors' decision. Scotty Moore was executed on 3 June 1999.

On 27 January 2000, the Illinois Supreme Court granted death row inmate Murray Blue a new trial after it found that the prosecution had engaged in improper conduct during the 1997 Chicago trial. For example, the prosecution made extensive use of a headless mannequin dressed in the uniform of the murder victim, a police officer. The uniform, stained with the officer's blood and brain matter, was left on display in the courtroom during the testimony of several witnesses and was also allowed into the juryroom during deliberations. The Supreme Court found that "the nature and presentation of the uniform rendered the exhibit so disturbing that its prejudicial impact outweighed its probative value", and was one of several ploys by the prosecution aimed directly at the sympathies or outrage of the jurors and their loyalty to law enforcement. The Court also found that both the defence and prosecution had engaged in equal degrees of "immaturity and unprofessionalism."

[80] Judge Brorby, op. cit.

[81] The same prosecutor, who is reported to have personally obtained more death sentences -- over 50 -- than any other US prosecutor, used the same ploy at the trial of Sean Sellers, a child offender executed in 1999: "You don't kill anyone. What you do, you go out and you deliberate, and you decide, and if death is the appropriate verdict, you bring it back into the courtroom. That's all you do."

James Beathard was executed in Texas on 9 December 1999. He and his co-defendant Gene Hathorn had been tried separately, Beathard first. At Beathard's trial, Hathorn testified that Beathard had shot the victims. The prosecutor agreed with Hathorn, saying that there "has not been one piece of evidence that says Gene Hathorn is a liar... he is telling the truth." At Hathorn's own trial, the now defendant repeated his version of events. However, this time the same prosecutor told the jurors that if Hathorn was telling the truth then "I'm a one-eyed hunting dog". The prosecutor argued that Hathorn had been the gunman, the jury agreed, and Hathorn, too, was sent to death row. One prosecutor, two versions of the crime, two death sentences.[82] After the trials, Gene Hathorn came forward and said that he had lied at both trials under threats from law enforcement officials and a prospect of receiving a sentence less than death in return for his testimony, and that James Beathard was innocent. No evidentiary hearing was ever held into the merits of Hathorn's recantation. In his final statement before being lethally injected, James Beathard criticized the prosecutor, as well as the death penalty: "The United States has got to the point now where there is zero respect for human life. My death is just a symptom of a bigger illness... I'm dying tonight based on testimony that all parties -- me, the man who gave the testimony, the prosecutor he used -- knew was a lie."

On 25 October 1999, the foreman on the jury which sentenced James Chambers to death in Missouri in 1991 signed an affidavit saying that the "preparation of, courtroom presence of, and overall talent demonstrated by" the prosecutor had been "far superior" to that of the defence attorney. He stated that the "sheer force of [the prosecutor's] personality and confidence were factors nearly as weighty as the evidence in convicting Mr Chambers." The former juror stated that he no longer believed that James Chambers should be executed. He noted the prosecution's reliance on questionable eyewitness testimony, and the defence lawyer's failure to present any evidence of the defendant's mental impairment in mitigation. James Chambers had already been moved to the cell next to the death chamber in preparation for his execution on 10 November 1999 when he was granted a stay.[83]

Victor Kennedy, a black man convicted of killing a white woman, was executed in Alabama on 6 August 1999. In 1980, as an 18-year-old of limited intelligence and education, suffering the after-effects of alcohol, and without a lawyer present, Kennedy had made incriminating statements to police, which formed the main evidence against him at his 1982 trial. An appeal court granted him a new trial on the grounds that his trial lawyer had failed to investigate or present evidence of his mental impairment, traumatic childhood, or possible lesser role in the crime. However, the state appealed and a higher court reinstated the death sentence, ruling that Kennedy's claim of ineffective counsel had been raised too late.

[82] At a state post-conviction hearing, the same prosecutor adopted a third position, namely that both men had shot the victims.

[83] James Chambers was sentenced to death for the 1982 murder of Jerry Oestricker in the context of an argument in a bar. A dissenting Missouri Supreme Court judge said of the case in 1986: "This is an ordinary barroom altercation... Under these circumstances, I cannot impose the death penalty."

As in James Chambers' case, defence lawyers have frequently failed to investigate and present mitigating evidence on behalf of their clients at the sentencing phase, the phase at which the judge or jury has to decide if there are any factors relating to the defendant or crime that should result in a life rather than a death sentence. Marlon DeWayne Williams was executed in Virginia on 17 August 1999 for a murder committed when he was 19, having just emerged from a childhood of brutal and sustained abuse at the hands of his mother and stepfather. At 15 he was diagnosed as "a very psychologically damaged young man" At his sentencing, the defence called no expert witnesses, despite the availability of a range of social workers, counsellors and mental health professionals who had come into contact with Marlon Williams. The judge hinted at the paucity of mitigating evidence presented to him, and the lack of expert witnesses: "There is no evidence before the Court from which I could conclude that he was under the influence of extreme mental or emotional disturbance. There is no testimony here by an expert." He sentenced Williams to death.

In May 1998 an Amnesty International delegation visited Aaron Patterson on death row in Illinois. Patterson has consistently maintained his innocence and alleges that he was tortured by police into confessing to the 1989 crime. His claims are consistent with other allegations of torture by Chicago police at the time, including of nine other men on death row in Illinois. On 2 February 1999, a coalition of lawyers and others called for an independent investigation into the cases of the "Death Row 10".

On 8 July 1999, the Florida Supreme Court granted Nathan Joe Ramirez a new trial on the grounds that the police had violated his constitutional rights in obtaining a confession. One of the judges stated that the police had engaged in a "carefully orchestrated trap" and a "purposeful sleight-of-hand" in order to violate Nathan Ramirez' rights. The judge noted that this police violation was "even more egregious here because the accused was a minor." Nathan Ramirez was 17 at the time of the crime, rendering his death sentence a violation of international law. The prosecution appealed up to the US Supreme Court to have the death sentence reinstated, but were unsuccessful. A date for the new trial had not been set at the time of writing.

Tyrone Gilliam's attorney, who had not handled a capital case before, apparently believed that because the judge was Catholic he would not sentence Gilliam to death. He therefore persuaded his client to forego a jury trial. The lawyer failed to present mitigating evidence on Gilliam's behalf, such as the childhood sexual and physical abuse he suffered from three male relatives. The basis of the evidence against Gilliam was testimony from an accomplice who was offered a reduced sentence in return for testifying, and Gilliam's own confession to the crime which he gave after 13 hours of interrogation while still suffering serious head injuries sustained in the car crash that preceded his arrest. Tyrone Gilliam was executed in Maryland on 16 November 1998.[84]

[84] Gilliam was black, convicted of killing a white person, like nine of the other 14 men on Maryland's death row at the time. A Task Force, appointed by the Governor, concluded in 1996 that racial disparities in Maryland's death sentencing "remains a cause for concern". Governor Glendening has set aside US$225,000 to fund another study into the issue. Washington Post, 9 February 2000.

On 12 October 1999, the US Supreme Court refused to consider the appeal of Exzavious Lee Gibson, sentenced to death in Georgia in 1990 for a murder committed when he was 17 years old. At a state post-conviction hearing in 1996, Gibson had been forced -- through poverty -- to appear without a lawyer, in violation of international standards. Gibson, who has an IQ of between 76 and 82, attempted to represent himself, but, as a transcript of the hearing shows, he was clearly out of his depth. He offered no evidence, examined no witnesses, and made no objections. In 1999 the Georgia Supreme Court ruled that he had no constitutional right to a lawyer in post-conviction proceedings. Three of the seven judges dissented: "The official taking of human life is the ultimate governmental exercise of control and power over individual liberty. If it is to be done, it must be done cautiously, dispassionately, soberly, and fairly. And fundamental fairness demands that a condemned prisoner have the benefit of competent counsel to articulate his constitutional claims and to navigate the procedural and substantive morass that is our habeas corpus law." The dissenting minority went on to say that to require a condemned man, without counsel, to bring his claims for relief in a "process that he can not possibly understand... is an outcome that no just government should countenance."[85] On 12 October 1999, the US Supreme Court, without comment, allowed the majority decision of the Georgia court to stand.

In 1999 a federal court agreed that a Texas death row inmate, in effect, had had no lawyer at his 1984 trial. Calvin Burdine, a gay man whose lawyer had slept during much of his trial and who was prosecuted by an official whose argument for a death sentence included the contention that "sending a homosexual to the penitentiary certainly isn't a very bad punishment for a homosexual", finally had an appeal upheld after 15 years on death row and six execution dates.[86] On 29 September 1999, US District Judge Hittner ruled that Burdine's constitutional right to representation had been denied by his lawyer's sleeping, saying that "the record and the evidence here is clear: [the defence lawyer] was actually unconscious." The judge gave the state 120 days to retry Burdine or release him. The state missed its 27 January deadline, and on 1 March Judge Hittner ruled that Burdine's continuing detention was unconstitutional, and gave the prison authorities five days to release him.[87]

David Junior Brown was executed in North Carolina on 19 November 1999, despite successive courts acknowledging the prosecutorial misconduct during the proceedings that led to his death sentence. The Court of Appeals for the Fourth Circuit found that the fact that the prosecutor had denied the defence attorneys pre-trial access to the crime scene and witnesses was an error of a constitutional nature, but determined that the error was "harmless". Likewise a judge for the District Court provided no remedy despite concluding that the prosecutor's conduct had been "based on personal animosity" (towards the defence attorney), "inexcusable", and "especially abhorrent when a person's life is at stake". David Junior Brown went to his death maintaining his innocence. In an interview shortly before his execution, he said: "All I can say to the family is that I am sorry for your loss. But I did not

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[85] Georgia Supreme Court. *Gibson v Turner*. 22 February 1999.

[86] The same lawyer who represented Calvin Burdine was also reported to have slept during the trial of Carl Johnson, who was executed in Texas on 19 September 1995. George McFarland remains on death row in Texas despite his 72-year-old lawyer having slept during parts of his trial.

[87] The state prosecution appealed the ruling and Calvin Burdine remained incarcerated at the time of writing. The state is not barred from retrying him if it loses the appeal.

do this... I did not kill Diane [Chalfinch] or her daughter... I don't think the people of North Carolina would want that on their consciences, to kill an innocent man."

Adherence to the stringent international standards for fair trials in capital cases is crucial, not only to minimize the risk of executing the innocent, but also to reduce arbitrariness in the sentencing of the guilty, that is, unfair disparities in which defendants receive a prison term and which are sentenced to death.[88]

A deadly freedom of choice: prosecutorial discretion

[88] In his report on the USA, the UN Special Rapporteur said that the concept of arbitrariness enshrined in article 6(1) of the ICCPR (*No one shall be arbitrarily deprived of his life*) cannot be equated to simply 'against the law', but "has to be interpreted more broadly, to include the notion of inappropriateness and injustice".

"*In Harris County, they choose to seek more death penalties than other counties. I doubt that Harris County is any more violent than any other county. It's just the District Attorney they chose to have*." Former Texas Attorney General Jim Mattox, 1999[89]

Harris County in Texas has supplied more death row inmates than any other US county. From 1977 to the end of 1999, 61 inmates sentenced to death in Harris County had been executed, more than any whole *state* except Virginia (and Texas). From 1979, the office of District Attorney of Harris County has been held by Johnny B. Holmes Jr. In 1999 he announced that he would not be seeking re-election in 2000, having won the previous five elections, because he believed that "it's time go home from a vacation when you're still having fun."[90] Under his leadership, his office has obtained more than 200 death sentences.[91]

The discretionary power of local, usually elected, prosecutors to choose which aggravated murders they will seek the death penalty for contributes to marked geographical disparities in capital sentencing. In December 1999, a national US newspaper published the results of a study it had conducted indicating that *where* a crime occurs, not just the crime itself, can determine whether a defendant lives or dies. It found that 15 counties accounted for nearly a third of all prisoners sentenced to death, but only one-ninth of the population of the 38 states which allow the death penalty. For example, it found that in Maryland, the City of Baltimore had averaged 320 murders a year in the 1990s, but had only one person on death row in January 1999. In contrast, suburban Baltimore County averaged 29 murders a year in the same period, and had four on death row. Similarly in Georgia, Baldwin County (population 42,000) had sent five people to death row, one more than Fulton County (population 722,000). Fulton County averages about 230 murders a year, Baldwin County about two.[92]

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[89] *In the capital of capital punishment*. Christian Science Monitor, 29 July 1999.

[90] Associated Press, 12 October 1999.

[91] In the election campaign to replace him, DA Holmes endorsed Republican Party contender Chuck Rosenthal, a prosecutor in Holmes' office for many years who has indicated that there would be little change if he were to be elected. *Holmes's support was key to Rosenthal lead.* Houston Chronicle, 15 March 2000.

[92] *Geography of the death penalty*. USA Today, 20 December 1999.

While some commentators have said that such disparities are a sign of elected officials representing the wishes of their local community, it clearly raises questions of arbitrariness if one aggravated murder is punished by imprisonment in one county and a similar crime receives death in another. Such geographical differences can result in legal challenges to a state's capital statutes. In 1999 such a challenge was being anticipated in New York, the most recent US state to reintroduce the death penalty. Statistics indicate that district attorneys in upstate counties have been nine times more likely to seek the death penalty than their counterparts in downstate counties, the areas in and around New York City. One lawyer attributed the geographical disparity to prosecutors' differing political viewpoints: "Upstate is a bunch of tough-talking Republican-type prosecutors who like to be tough on crime, which I guess they think the death penalty is."[93] The apparent reluctance by some downstate prosecutors to seek the death penalty has led to criticism by victims' rights groups and politicians, including Governor Pataki, who reintroduced the death penalty to New York State in 1995. On 4 December 1997, a divided New York Court of Appeals upheld Governor Pataki's intervention in a murder case in which he had replaced the prosecutor, whom he alleged had a "blanket policy" against seeking the death penalty, with one willing to seek a death sentence. One of the dissenting judges said that the Governor's intervention was "a naked attempt to substitute his policy choices...for the preferences of the elected District Attorney."[94]

One result of the geographical disparity within New York State, given the higher murder rate in the downstate counties, is that the death penalty has not been sought in as many cases as was predicted when New York's death penalty law was introduced in 1995. By the January 2000 there were five prisoners on the state's death row. Another unpredicted outcome is that whites -- the predominant population in upstate counties -- have been more likely to face death sentences than blacks. Between 1995 and January 1999, whites made up 21 per cent of the state's murder defendants overall, but 55 per cent of the capital defendants.[95]

A return to mandatory death sentencing would violate US constitutional law and the restrictions imposed by international standards. Prosecutorial discretion leads to arbitrary sentencing, reflecting political considerations as well as the inequalities and prejudices in wider society. Abolition of the death penalty is the only solution.

Still racist after all these years? Race and the US death penalty

"*The rush to snuff out the life of the defendant will only deepen African-Americans' perception of racism in this court, in the judicial system and in society.* Dissent, Connecticut Supreme Court, 1999[96]

[93] Rochester Democrat and Chronicle, 13 September 1999.

[94] *Johnson v. Pataki*. On 21 March 1996, Governor Pataki issued an Executive Order requiring Attorney General Dennis Vacco to replace District Attorney Robert Johnson in the investigation of the murder of police officer Kevin Gillespie. Attorney General Vacco then announced that he would seek the death penalty against Angel Diaz, charged with the murder. Before he could be tried, Diaz committed suicide in his jail cell.

[95] New York Times, 21 January 1999.

[96] Justice Robert Berdon, dissenting, *State v Cobb*, 7 December 1999. Sedrick Cobb, a black man on death row for killing a white woman, had appealed to the court to order, as part of a review into whether the

Russell County in Alabama has a population which is about 40 per cent African American. In 1985 Robert Lee Tarver, a black man, was tried in Russell County for the murder of Hugh Kite, a 63-year-old white man. Tarver's jury consisted of 11 whites and one black after the prosecutor had removed 13 of the 14 African Americans from the jury pool via peremptory strikes - the right to exclude individuals deemed unsuitable without giving a reason. Following Tarver's conviction and death sentence, appeals for him to be granted a new trial on the grounds of racial discrimination during jury selection failed because his trial lawyer had not raised the claim early enough, thereby causing Tarver to lose it as an appeal issue. At the time of writing, Robert Tarver was facing execution in the electric chair on 14 April 2000, He had come within three hours of execution in February.

Total: 3,652
Men: 3,600 Women: 52
White: 1,701 (46.71%)
Black: 1,562 (42.77%)
Latino/a: 312 (8.54%)
Native American: 45 (1.23%)
Asian: 31 (0.85%)
Unknown: 1 (0.03%)

Executions 1977 - 1999

	Defendants	Victims
Totals:	**598**	**794**
White:	**333**	**652**
Black:	**212**	**97**
Latino:	**40**	**27**
Nat Am:	**8**	**0**
Asian:	**5**	**18**

Source: Criminal Justice Project, NAACP Legal Defense and Educational Fund, Inc.

sentence was fair in comparison to others, an evidentiary hearing into statistical evidence that in Connecticut's capital justice system "the race of the victim and the race of capital defendants impermissibly influence the decision of whether a particular defendant will be sentenced to death or not." The court rejected the appeal.

The history of the US death penalty is one of racist use, and today the value placed on white life by an overwhelmingly white prosecutorial system still appears to be higher than that placed on the lives of black people. For the fact that a defendant is black or a murder victim white appear to increase the likelihood of a death sentence. Blacks account for some 43 per cent of the people on death row, but only about 12 per cent of the population at large. Between 1977 and 1999, 598 prisoners were executed for the murder of 794 people. Of these murder victims, 82 per cent were white (see table). Yet only about 50 per cent of murder victims in the USA are white. The overwhelming majority of district attorneys and other officials who make the decision as to whether to seek the death penalty are white. In 1998, of the 1,838 such officials in states with the death penalty, 22 were black and 22 were Latino. The remainder were white.[97]

Over 60 per cent of Pennsylvania's death row inmates are black in a state in which less than 10 per cent of the population is black. Philadelphia accounts for just over half of the state's current death sentences. A study in 1998 found that, even after making allowances for differences in the circumstances of the crimes and defendants, blacks in Philadelphia were substantially more likely to receive death sentences than other defendants who committed similar murders.[98]

A journalistic investigation in 1999 found that the race of victim appears to be a key factor in South Carolina's capital sentencing, and echoes a history of racial discrimination in the state's use of the death penalty. South Carolina's current death row population is evenly split between white and black inmates (in a state where 70 per cent of the population is white), but the race of the murder victim in the majority of cases was white. The 68 inmates on death row in November 1999 had been convicted of killing 77 people, 83 per cent of whom were white, despite whites being less likely to be the victims of murder than blacks in South Carolina.[99] On 29 October 1999, Richard Charles Johnson was scheduled to become the 264th prisoner executed in the state since 1912, but only the eighth execution of a white person convicted of killing a black. The state Supreme Court stopped his execution 24 hours before it was due after a key witness gave an affidavit saying that she had killed the victim, a police officer, and that she had lied at the trial to save herself from the death penalty. Two weeks later, on 12 November, Leroy Drayton, black, was executed in South Carolina for the murder of Rhonda Smith, white, despite evidence not heard at his trial that the 1984 shooting may have been accidental.

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[97] (1998) J. Pokorak, *Probing the Capital Prosecutor's Perspective: Race and Gender of the Discretionary Actor,* Cornell Law Review.

[98] D. Baldus et al. *Racial Discrimination and the Death Penalty in the Post Furman Era: An Empirical and Legal Overview, with Recent Findings from Philadelphia*, Cornell Law Review, Volume 83, 1998

[99] *Race plays into death penalty use*. Augusta Chronicle, 14 November 1999.

In late 1999 the US Department of Justice initiated a review of the federal death penalty to establish if there were any inappropriate racial disparities in the federal capital justice system. An ongoing non-governmental study has found that since the US Government reintroduced the federal death penalty in 1988, the Attorney General has authorized prosecutors to seek the death penalty against a total of 188 defendants, 76 per cent of whom were non-white (98 blacks, 45 Hispanic and 10 Asian/Indian).[100] Of the 21 inmates on federal death row in Terre Haute, Indiana, on 1 January 2000, 14 were black, five white, one Asian, and one Hispanic.[101]

In a letter to Amnesty International, dated 11 August 1999, the US Department of Justice responded to the organization's 1999 report on race and the death penalty in the USA[102]. The letter said that: "With regard to federal capital prosecutions, every effort has been made to foreclose race as a factor in the decision whether to seek the death penalty...". Some defence lawyers have argued that since the mid-1990s, in an attempt to redress racial imbalances, the Attorney General has been discriminating against whites in the process to decide which defendants should face the death penalty.[103]

At the time of writing, Juan Raul Garza, was set to become the first federal prisoner executed in the USA since 1963 after the US Supreme Court denied his appeal in November 1999. On 27 January 2000, the US Government was requested by the Inter-American Commission on Human Rights not to allow the execution to proceed until the IACHR has examined the claim that Garza's rights to a fair trial were violated. The claim challenges the use by the prosecution of evidence of Juan Raul Garza's involvement in unsolved murders in Mexico for which the defendant was never prosecuted or convicted. The prosecution introduced the evidence at the sentencing phase of the trial in order to bolster its argument for a death sentence rather than life imprisonment without parole. It is the only time that a capital defendant has been sentenced to death using evidence of unadjudicated crimes committed in a foreign country since the USA resumed executions in 1977. See Amnesty International Urgent Action 40/00, AMR 51/27/00, 17 February 2000.

[100] Federal Death Penalty Prosecutions 1988-2000, Federal Death Penalty Resource Counsel Project.

[101] Of the seven men on the US military's death row, five are black, one Asian, and one white.

[102] *Killing with Prejudice: Race and the Death Penalty in the USA.* (AMR 51/52/99, May 1999).

[103] *Who lives, Who dies? Department of Justice seeks consistency in capital cases, but defense bar cites vagaries.* Legal Times, 16 June 1999.

Characteristically, in its letter to Amnesty International, the US administration hid behind the federal system of government in responding to concern over what is occurring under state death penalty laws: "The Attorney General appreciates your expression of concern that capital sentencing laws in the United States are being applied in a disparate manner between defendants based on their race and the race of their victims... [It] cannot be disputed that the circumstances of many of the identified cases, as you have described them, raise concerns. The federal government's "oversight" of the states' capital sentencing procedures, however, is limited by the United States Constitution to the federal courts' redress of errors of Constitutional dimension... [I]nmates sentenced to death under state law can seek relief from the federal courts if they are able to demonstrate that race had an actual, versus an assumed or speculative, impermissible impact in the prosecution of a capital offense."[104]

Amnesty International believes that it is an abdication of leadership for the US Government to wash its hands of alleged human rights violations committed at state level, and that its stated reliance on the federal courts to remedy state abuses is disingenuous given the government's 1996 legislation to restrict the power of federal courts to review state court decisions (see page 43). Besides, proving that racism influenced any individual case, the standard for a successful appeal set by the US Supreme Court in 1987 in *McCleskey v Kemp*, is almost impossible. Legislative remedies have not been forthcoming either.[105]

[104] The federal government adopts the same tactic in replies to appeals calling for their intervention to stop the execution of child offenders. For example in a reply to the President of the Italian Section of Amnesty International in September 1999, regarding the organization's appeal for the execution of Chris Thomas in Virginia to be stopped, the Deputy Assistant Attorney General at the US Department of Justice wrote: "The federal government may not override a state's determinations. Thus, the concerns you express... should more properly be raised before the Governor and Legislature for the Commonwealth of Virginia." Under international law, the federal system of government may not be used to justify an evasion of international law.

[105] In 1998, Kentucky adopted the Racial Justice Act which prohibits seeking the death penalty against a person on the basis of race and establishes procedures for dealing with claims made under this Act. It is the only US state to have enacted such legislation.

Between 1910 and 1961 North Carolina executed 282 blacks and 75 whites, and its use of the death penalty today still raises questions of racial disparity in a state where 75 per cent of the population is white and 22 per cent black. Over 55 per cent of the state's current death row inmates are African American (124 out of 224), and although 13 of the 15 prisoners it has executed since the death penalty resumed in 1977 have been white, 14 out of the 15 were convicted of killing white people. In 1999, North Carolina executed its first black prisoner in the modern era of US judicial killing. Harvey Lee Green was executed on 24 September after state and federal courts refused to accept that racial discrimination may have played a part in his death sentence. He was convicted of a double murder which his Pitt County trial court found he had not premeditated when he robbed a dry cleaners in 1983. He became the only person to be executed in North Carolina for a murder committed in 1983, although there were 550 other murders in the state that year.[106] There were 11 murders in Pitt County in 1983 -- all the victims were black except in Harvey Green's case. His case -- the only one involving a black defendant accused of killing a white person -- was also the only case in which the county sought the death penalty. Prior to Green's 1984 sentencing, the defence attorney asked the court to prevent the prosecutor from systematically removing blacks during jury selection, which the defence argued was his tendency. The court denied the request. At the subsequent jury selection, the prosecutor excluded five of the six prospective black jurors, but only one of 26 white jurors. At a hearing in 1989 an expert testified that the statistical probability that race was not a factor in the prosecutor's selection process in Green's case was one in 10,000. At a 1992 re-sentencing, Harvey Green faced the same prosecutor and a jury selection process which again resulted in one black and 11 white jurors.[107]

Harvey Green's final statement before being put to death was: "I'd like to let the public know that the wrong they're doing now, it compounded the wrong I did years ago. It ain't no justification. Ain't no fairness. That's all I got to say, and they know it's right."[108] His execution went ahead despite appeals from four of North Carolina's leading African-American elected officials for it to be stopped.

A few weeks earlier, 26 members of the Congressional Black Caucus in Washington DC had appealed to Governor Siegelman of Alabama to stop the execution of Brian Baldwin, "in light of the clear pattern of racial discrimination evident in his case". Former US President Jimmy Carter wrote to the governor urging that the sentence be commuted on the basis that "there were clear reasons to question his culpability in the murder" and that "there is no doubt that racial prejudice was a significant factor both in his trial and in his death

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[106] The other aggravated murders included a double murder of two black men, one of whom was shot, the other stabbed, before being dumped into a river. The perpetrator reportedly said that he had planned to kill one of the men for his money and car. In Harvey Green's case, the court found that he had not planned to kill.

[107] From 1983 to 1992, there were 88 murders in Pitt County. Over two-thirds of the victims were black. Only four murders involved inter-racial killings. The state sought the death penalty in all three cases involving white victims and black defendants, but did not do so for the white-on-black killing. In total during this period, the state sought the death penalty 11 times. In nine of those cases, the defendant was black. In March 2000, there were four prisoners on North Carolina's death row who had been tried in Pitt County. All four were black.

[108] At his 1992 re-sentencing Green was not allowed to tell the jury of his remorse. He later became the first US death row inmate to participate in Restitution Inc., a non-profit group that helps inmates to sell their art, with the proceeds going to family members of the murder victim, or to a charity. See: www.restitutioninc.org

sentencing." Brian Baldwin, black, was convicted in 1977 of the murder of a white girl when he was 18. His confession to the crime, allegedly extracted under police torture and death threats, was admitted as evidence. The trial, in front of an all-white jury after the prosecutor had removed all black jurors during jury selection, lasted a day and a half.

On 16 June 1999, Coretta Scott King, wife of the late Martin Luther King Jr., and founder of the Center for Nonviolent Social Change, in Georgia, appealed to Governor Siegelman to stop the execution "for the sake of justice and human decency": "I fear that without your intervention, this case will become a textbook example of racial injustice. Mr Baldwin, who was called 'boy' and 'savage' in court, was convicted by an all-white jury in a county in which nearly half the residents are African American... It would be a terrible tragedy, an outrage and a setback for equal justice if the state of Alabama rushes to execute Mr Baldwin amid growing evidence of his innocence and abuse of his legal and civil rights." Nevertheless, Governor Siegelman denied clemency despite stating that he was "deeply troubled" by some aspects of the case. Given the governor's earlier comments relating to clemency, outlined below, Amnesty International is concerned that the politics of the death penalty may have interfered with his decision.

The last draw in the lottery: the clemency decision

"*Judy Neelley would have been shown the same compassion under Don Siegelman that she showed her victims*" Governor Don Siegelman, 21 January 1999.[109]

Governor Siegelman, who took office in January 1999, had joined the angry public criticism of the decision taken by his predecessor, Fob James, to commute the death sentence of Judith Neelley as one of his final acts of office. However, Governor Siegelman opposed a legislative proposal to strip Alabama governors of the power to commute death sentences, stating that no such change was necessary as he would never do what Governor James had done. The clemency decision on Brian Baldwin's case (above) was the first of Don Siegelman's governorship.

Because Governor James' 15 January decision to spare the life of Judith Neelley came at the end of his term in office, he was spared the political consequences of the inevitable backlash. He gave no reason for his decision, although there was widespread speculation that Neelley's conversion to Christianity might have been a factor in persuading him to grant clemency. Yet this not been enough to save either Karla Faye Tucker, a woman executed in Texas in 1998 despite turning to Christianity, or the many men who have found religion while under sentence of death.[110] All acts of executive clemency are to be welcomed, and can require a degree of political courage. Nevertheless,

[109] Associated Press, 21 January 1999. Governor Siegelman was speaking to reporters at a meeting of state District Attorneys.

[110] For example, Jonathan Nobles was executed in Texas on 7 October 1998. He had turned to

Governor James' decision would appear to further demonstrate the politicized and arbitrary nature of US capital justice, as do the other five executive commutations from death to life imprisonment during 1998 and 1999, namely those of: Darrell Mease (Missouri), Wendell Flowers (North Carolina), Henry Lee Lucas (Texas), Bobby Ray Fretwell (Arkansas) and Calvin Swann (Virginia, see box, page 59).

Darrell Mease was scheduled to be put to death on 27 January 1999 in Missouri at the same time as a planned visit to the state by Pope John Paul II, who actively opposes the death penalty. After this embarrassing coincidence of events had become known, the state Supreme Court rescheduled the execution for 10 February. However, at a meeting with Governor Carnahan on 27 January, the Pope made a personal plea for Mease to be granted clemency. The next day, Governor Carnahan commuted the death sentence: "I continue to support capital punishment, but after careful consideration of his direct and personal appeal and because of a deep and abiding respect for the pontiff and all he represents, I decided last night to grant his request."

> "After careful review of the evidence in the case I concur with the jury that Betty Lou Beets is guilty of this murder. I am confident that the courts, both state and federal, have thoroughly reviewed all the issues raised by the defendant..."

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religion on death row, and obtained the necessary qualifications to minister to fellow inmates. He had abused drugs from the age of eight to escape a childhood of sexual and physical abuse. While drugs "influenced my mind enough to allow me to commit murder, I still take the responsibility for the murders. I'm not making up excuses... I'm a convicted killer; I committed a heinous act. When I think deeply about it, it nauseates me." Two weeks before his execution he met for several hours with the mother of one of his victims at which he was able to apologise and take responsibility for his crime. The mother of his victim reportedly said that she forgave him.

A day after the Governor's decision, the Missouri Supreme Court set the execution date for James Rodden. On 24 February he was put to death, one of nine prisoners executed in Missouri in 1999. Why were they killed and Darrell Mease allowed to live? The answer is in the luck of the draw: Mease was spared simply because his scheduled execution date happened to coincide with the Pope's visit. One of the nine Missouri prisoners executed was Roy Roberts. He was put to death on 10 March 1999, despite a plea for clemency from the Pope, this time in a written appeal.

Roy Roberts had been sentenced to death for a murder committed in prison, involving two other inmates, one of whom is serving a life sentence, the other of whom had his death sentence overturned on appeal. Roberts, whose last words were "you're killing an innocent man", had been convicted despite conflicting eyewitness testimony and other questionable evidence. Like Roberts, Wendell Flowers in North Carolina had been sentenced to death for a prison murder involving other inmates. Also like Roberts, Flowers had been sentenced to death despite questions as to whether he was principally responsible for the murder. He was the only one of the four prisoners involved in the killing to be sentenced to death. However, unlike in Roberts' case, on 15 December 1999, Governor Hunt of North Carolina recognized the arbitrariness in the sentencing and commuted Wendell Flowers' death sentence two days before his execution.

Following this statement by Governor Bush denying reprieve, great-grandmother Betty Lou Beets went to her death in the Texas execution chamber on 24 February 2000, two weeks before her 63rd birthday.

The jury which sentenced Betty Beets to death was left unaware of evidence directly contradicting the prosecution's claim that she had killed her husband for financial gain -- the aggravating factor in the crime that made it punishable by death. Neither did the jury learn of crucial mitigating evidence, including Beets' traumatic history of severe physical and sexual abuse from an early age. Expert testimony in post-conviction proceedings established that she suffered from post-traumatic stress disorder, Battered Woman Syndrome and organic brain damage.

Appeals from the United Nations Special Rapporteurs on extrajudicial, summary or arbitrary executions and on violence against women were among the thousands of calls for Governor Bush to stop the execution. The UN experts urged the Governor to consider "the specific circumstances of the crime and in particular the violent abuse which Betty Lou Beets suffered at the hands of her spouses and the effect of this abuse on her state of mind and her actions." They noted that the earlier execution of Karla Faye Tucker on 4 February 1998 had "brought worldwide condemnation of a state death penalty process incapable of showing mercy...".

In August 1999, a federal district judge overturned the death sentence of Faye Copeland, an elderly woman on death row in Missouri, also diagnosed with Battered Woman Syndrome. The ruling -- which cited improper prosecutorial statements at the 1990 trial -- came on Faye Copeland's 78th birthday. The State of Missouri has appealed the ruling and at the time of writing was seeking to have the death penalty reinstated by the Eighth Circuit Court of Appeals.

Governor Huckabee of Arkansas commuted the death sentence of Bobby Ray Fretwell in March 1999. He said that he was swayed by an appeal from one of the trial jurors for the execution to be stopped. The juror wrote that he had been the only one of the 12 initially to vote for life, but had changed his vote to death because he felt intimidated and did not want to be shunned by his community. The Governor's courageous decision was welcome, but when compared to other similar cases it further highlights the arbitrariness in US capital justice. Much the same as occurred at Fretwell's trial, for example, had taken place at Louis Truesdale's trial in South Carolina. A single juror who had wanted to vote for life later admitted to being intimidated by the racism prevailing in the juryroom into changing her vote to death (she was the only black juror; Truesdale was black, accused of killing a white woman). Yet, while Bobby Fretwell was allowed to live, Louis Truesdale was executed on 11 December 1998.

Governor Bush of Texas commuted the sentence of Henry Lee Lucas on 26 June 1998 because there were doubts about his guilt in the crime for which he was sentenced to die. Governor Bush said: "...I feel a special obligation to make sure the State of Texas never executes a person for a crime they may not have committed"[111]. Since January 1999, Troy Farris, James Beathard (see page 29), and Odell Barnes (page 74) have gone to their deaths in Texas despite doubts over their guilt.[112] One difference between the cases was that the Lucas case had achieved a great deal of publicity and raised concern in official circles in Texas, including the belief of two former state Attorneys General that Lucas was in all likelihood innocent of the crime for which he was sentenced to death. The *Dallas Morning News* said: "For other death row inmates, the questions of guilt are not as publicized, but they are equally compelling."[113] One case that has received posthumous publicity is that of David Spence, executed in Texas on 3 April 1997 for the 1982 murder of three teenagers. Reportedly, two police officers who investigated the case later stated that they believed David Spence was innocent, as did a Republican Texas businessman who examined the case.[114] Spence himself had maintained his innocence to the end -- "I want you to understand the truth when I say I didn't kill anyone" were his final words before being lethally injected.

Finality vs. fairness: The Anti-Terrorism and Effective Death Penalty Act

[111] In order to commute a death sentence, Governor Bush has to receive a recommendation to do so from his appointees on the Texas Board of Pardons and Paroles (BPP). Henry Lucas was the first such commutation since Governor Bush took office. The Governor received a recommendation for clemency after he had asked the Board to review the case. Governor Bush also has the power to grant a 30-day reprieve, but he has never granted such a delay. On 28 December 1998, a judge reviewing BPP procedures stated: "It is abundantly clear that the Texas clemency procedure is extremely poor... The Board would not have to sacrifice its conservative ideology to carry out its duties in a more fair and accurate fashion." See: *Killing without Mercy: Clemency procedures in Texas* (AMR 51/85/99, June 1999).

[112] Troy Farris was executed on 13 January 1999. Unusually, five members of the Board of Pardons and Paroles had voted for a reprieve.

[113] Another feature of the case was that the murder victim was never identified. As such there was no call for an execution from relatives. The Governor was criticized by the head of the Texas Sheriffs' Association, among others: "This is the only bad decision that he's made. I'm in favor of what he has done, except for that. I still like the guy. Everybody makes mistakes." (Fort Worth Star-Telegram, 14 July 1998).

[114] *The Wrong Man*, New York Times, 25 July 1997.

"*Cantu's petition for federal habeas relief indisputably falls outside the one-year time limit prescribed by Congress in the Anti-terrorism and Effective Death Penalty Act in order to bring regularity and finality to federal habeas proceedings*." Court of Appeals, Fifth Circuit, 1998[115]

Andrew Cantu was executed in Texas on 16 February 1999 without any state or federal review of the issues in his case. The federal courts ruled that he had missed the deadlines for filing his appeals and thereby run out of time under the provisions of the Anti-terrorism and Effective Death Penalty Act (AEDPA), a law designed to expedite executions and signed into law by President Clinton in April 1996.

In his 1998 report on the USA the UN Special Rapporteur on extrajudicial, summary or arbitrary executions expressed his concern that the AEDPA, by severely limiting the ability of the federal courts to remedy errors and abuses in state proceedings, had "further jeopardized the implementation of the right to a fair trial as provided for in the International Covenant on Civil and Political Rights and other international instruments." Developments in 1999 in a Texas capital case illustrated the way that the Act has sacrificed fairness for finality. In 1996, the US Court of Appeals for the Fifth Circuit applied the new rules of the AEDPA to the claim of Texas death row inmate Bobby James Moore that his representation at trial had been inadequate.[116] In a brief opinion, the court rejected the claim and reaffirmed his death sentence. However, in 1997, the US Supreme Court ruled that the provisions of the AEDPA do not apply retroactively.[117] As the Fifth Circuit had applied the act retroactively in Bobby Moore's case, it reconsidered his appeal, and this time applied the less stringent pre-AEDPA rules. In August 1999 it handed down its new ruling on the case. Its decision ran to five times the length of its 1996 ruling, and this time found in favour of Bobby Moore. The court was scathing about the legal representation that Moore had received at trial, describing it as "pathetically weak" and falling "well outside the bounds of reasonable professional performance". The Court said that it had "no trouble" concluding that Moore's lawyers had been unconstitutionally ineffective and that their performance had prejudiced the sentence.[118] It granted him a new sentencing hearing, which at the time of writing was due to take place in early 2001. The case of Bobby Moore thus appears to confirm that the AEDPA will allow prisoners to go to their deaths who have had their constitutional rights violated.

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[115] *Cantu-Tzin v. Johnson*, 2 December 1998. The Fifth Circuit refused to stay Andrew Cantu's execution, then scheduled for 3 December, after a District Court had ruled that he had deliberately engaged in delaying tactics. One of the three Circuit Court judges dissented, arguing that by refusing to appoint counsel and hold an evidentiary hearing, the District Court had been in no position to say whether Cantu had resorted to dilatory tactics. Cantu had taken to representing himself after two court-appointed lawyers withdrew from the case, and after he had fired a third for failing to put any work into his case. Fifteen minutes from execution, after an experienced lawyer stepped in on his behalf, the US Supreme Court issued a stay, but later dismissed the appeal and Cantu was executed on 16 February.

[116] See *The Death Penalty in Texas: Lethal Injustice* (AMR 51/10/98, March 1998).

[117] *Lindh v Murphy*

[118] *Moore v Johnson* (Revised, 16 November 1999).

Whilst Texas executes more death row prisoners than any other US state, Virginia has a higher execution rate per head of population.[119] Apart from state-level legislative measures which have rendered the appeals process one of the speediest in the country,[120] among the factors making Virginia so efficient at killing death row prisoners is widely believed to be the conservative nature of the Virginia Supreme Court and the Fourth Circuit Court of Appeals -- the federal appeals court that oversees Virginia cases. Up to mid-1999 only about six per cent of Virginia's death sentences since 1976 had been reversed on appeal, compared to a national average of around 33 per cent.[121] In 1998 and 1999, the Fourth Circuit's strict interpretation of the Anti-Terrorism and Effective Death Penalty Act came under scrutiny following its decisions in two death penalty cases.[122]

In December 1998, the Fourth Circuit denied the appeal of Virginia death row prisoner Terry Williams. The US Supreme Court subsequently stopped his execution shortly before it was due to be carried out on 6 April 1999. At the heart of the Williams case is the meaning of "contrary to" and "unreasonable" under the AEDPA; the Act does not allow federal courts to review a state court decision unless that decision was "contrary to, or involved an unreasonable application of, clearly established" US Supreme Court precedent. In the view of the Fourth Circuit, "contrary to" means "in square conflict with" a Supreme Court precedent in a similar case, and an "unreasonable application" of federal law is one that "reasonable jurists would **all** agree is unreasonable" (emphasis added). At a hearing on 4 October 1999, US Supreme Court Justice Ruth Bader said to the Virginia Assistant Attorney General defending the Fourth Circuit's interpretation: "But reasonable jurists always disagree... If I understand your argument, you'd never have a case a petitioner could win."[123]

Terry Williams was sentenced to death in 1986 for the murder of Harris Thomas Stone a year earlier. On appeal, a state court ordered a new sentencing on the grounds that the trial lawyer had been constitutionally deficient by failing to present mitigating evidence, including of Williams' deprived and abused upbringing, his alcoholic family, and his borderline mental retardation. The court ruled that if the jury had heard such evidence, at least one juror would probably have voted for a life sentence (a unanimous vote is required for death to be imposed in Virginia capital cases). The ruling was overturned by the Virginia Supreme Court, applying its interpretation of federal law, but this was itself reversed by a

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[119] As of 29 February 2000, Texas had an execution rate of 0.106 per 10,000 population, whereas Virginia had a rate of 0.111. Source: Death Penalty Information Center. The Virginia rate of execution is now likely to drop as it has been executing more people annually than it has been sentencing to death.

[120] Notoriously, under Virginia's "21- Day Rule", no court is permitted to review any newly discovered evidence presented 21 days or more after the initial sentencing. The latest attempt to amend this rule stalled in the Virginia Senate in March 2000. A bill aimed at increasing the time limit from 21 days to three years was passed by House of Delegates in February, but was amended in the Senate to 45 days. Consideration of the bill was then put off until 2001.

[121] Washington Post, 4 April 1999.

[122] Also in 1999, the Fourth Circuit ruled in *USA v Dickerson* that federal law enforcement officials are not bound by the US Supreme Court's 1966 ruling (*Miranda v Arizona)* requiring police officers to warn suspects that they have the right to a lawyer and to remain silent.

[123] *Federal Courts' Power in Federal Death Penalty Cases is Reviewed.* New York Times, 5 October 1999.

federal district court which agreed with the lower state court that a better defence lawyer would probably have led to a breach in the jury's unanimity and a verdict of life rather than death. However, in December 1998 the Fourth Circuit Court of Appeals overturned the district court's decision. It said that the Virginia Supreme Court's decision to reimpose the death sentence had not been an "unreasonable" application of federal law, and ruled that in order for the claim of ineffective defence representation to be upheld, Terry Williams must show that all 12 jurors would have voted against the death penalty if he had had a better lawyer. The Fourth Circuit reasoned that "a court may not assume that one juror may be more likely swayed by mitigating evidence than his fellow jurors" because it must be assumed that all 12 jurors are "reasonable, conscientious, and impartial". Thus, the Fourth Circuit concluded, the fact that "one hypothetical juror might be swayed by a particular piece of evidence is insufficient to establish prejudice" under the standard required by US Supreme Court precedent.

The second Fourth Circuit decision was made in the case of Virginia death row inmate Michael Wayne Williams, whose appeal it denied on 2 August 1999. The defence lawyers had challenged a section of the AEDPA which restricts a federal district court's ability to conduct an evidentiary hearing on issues that the defence has "failed to develop" in state court unless there is overwhelming evidence of innocence.[124] Applying the AEDPA, the Fourth Circuit rejected the claim that Michael Williams should have had a hearing to consider evidence of juror misconduct and that the state had unconstitutionally withheld evidence from the defence. On 28 October, the US Supreme Court stopped Michael Williams' execution less than an hour before it was due to be carried out, agreeing to review that section of the AEDPA and the Fourth Circuit's interpretation of it. At the time of writing the US Supreme Court had not ruled on the two Williams cases. If it upholds either of the Fourth Circuit's decisions, it will go further towards eliminating the power of federal courts to remedy internationally recognized violations of prisoners' rights to a fair trial.

The case of Thomas Thompson, who was executed in California in the first few minutes of 14 July 1998, serves to illustrate how finality has become the motivating force in the administration of the death penalty, as well as showing the cruel roller coaster ride of alternating hope and despair to which condemned prisoners are subjected. Thompson, sentenced to death for the 1981 rape and murder of Ginger Fleischli, had his sentence overturned by one court in 1995, but reinstated by another in 1996. In August 1997, he came within six hours of execution. He had already ordered his final meal, when the Court of Appeals for the Ninth Circuit overturned his conviction for rape, the aggravating factor that made the crime eligible for the death penalty, on the grounds that his inadequate legal representation had "cast grave doubt on the reliability of the rape conviction".[125] Four months earlier the Ninth Circuit Court had denied Thompson an appeal hearing, but subsequently decided that it had erred and that the case should be reviewed.

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[124] Section 2254(e)(2) of the AEDPA.

[125] Earlier in 1997, seven former California prosecutors, all supporters of the death penalty, had filed a brief in support of Thompson because of their concerns in the case: "If... Thompson is executed, the message that will be conveyed is that carrying out death sentences is more important than ensuring that criminal prosecutions... do not involve the manipulation of facts, and witnesses, and ultimately, the truth."

The State of California appealed, and on 29 April 1998 the US Supreme Court overturned the Ninth Circuit Court's decision, stating, in unusually harsh language, that the appeal court had committed "a grave abuse of discretion" by reopening its earlier decision. The Supreme Court said that although the appeal court had not acted illegally, it had abused a discretionary power which should only be used as a last resort in "grave, unforeseen circumstances" in order to prevent a miscarriage of justice. According to the Supreme Court, this standard had not been met in the Thompson case. The Court said that this standard "is altogether consistent with AEDPA's central concern that the merits of concluded criminal proceedings not be revisited in the absence of strong actual innocence showing".[126]

The US Supreme Court decision followed repeated public criticism by the Californian state authorities at the time of the Ninth Circuit Court's August 1997 ruling. Governor Wilson, who had earlier denied Thompson clemency[127], said the decision was made by a "coterie of liberal judges". Attorney General Lundgren said he hoped the US Supreme Court would put an end to the "Ninth Circuit circus". The state's appeal said that the Ninth Circuit Court's decision would invite "endless" federal court appeals in state death penalty cases, arguing that "at some point there must be finality".

This theme was taken up by the US Supreme Court in its April decision. It wrote that "it [is] necessary to impose significant limits on the federal courts' discretion to grant habeas relief. These limits reflect the Court's enduring respect for the State's interest in the finality of convictions that have survived direct [state-court] review.... finality is essential to the criminal law's retributive and deterrent functions" and that "only with an assurance of real finality can the State execute its moral judgement and can victims of crime move forward knowing the moral judgement will be carried out".

Governor Wilson praised the US Supreme Court's ruling, stating that "with these needless delays behind us, we should proceed to carry out the appropriate punishment... and not further delay justice to the family and loved ones of his victim". A spokesman for Attorney General Lundgren said that "it's about time for the victims and victims' family to finally have closure".

In a letter to the Washington Post on 19 May 1998, Larry W. Post, the father of a murder victim, responded: "How dare the court speak for me, my family and my murdered daughter..?". Mr Post criticized the Supreme Court for "talking about their brand of morality and their versions of victims' wishes." He concluded with a request that "judges and prosecutors and politicians cease and desist in their politicizing about victims' families who need 'closure' to move on...".

Creating more victims in the name of victims' rights: The families

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[126] *Calderon v. Thompson*. Four of the US Supreme Court justices dissented: "Whatever policy the Court is pursuing, it is not the policy of the AEDPA. Nor is any other justification apparent... while [the Ninth Circuit's decision to revisit the Thompson case] may have left some unfortunate impressions, neither its want of finesse nor AEDPA warrant the majority's decision...".

[127] The US Supreme Court noted in its April 1998 decision that Governor Wilson had denied clemency to Thompson prior to his August execution date, having "agreed with the view of the judge who presided over Thompson's trial, that it would be an absolute tragedy and a travesty of justice to even seriously consider clemency in this case."

"I've just now started to have the nightmares... I woke up crying because I was dreaming of my brother's execution.... I'm paying his funeral payment right now each month, you know, it's pretty sick and depressing."[128]

The comments of California's Governor and Attorney General are typical of many US officials who voice their support for the death penalty in terms of public demand for retributive justice and "victims' rights". Having for the most part rejected the largely discredited deterrence argument[129], political leaders speak instead of the peace, or "closure", that an execution will bring to the family of a murder victim, despite the absence of evidence that it can guarantee any such outcome, and ignoring evidence from those murder victims relatives' who say an execution only makes matters worse.

In his 1998 report on the USA, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions expressed his particular concern about the current approach to victims' rights. He stated that "while victims are entitled to respect and compassion, access to justice and prompt redress, these rights should not be implemented at the expense of those of the accused. Courts should not become a forum for retaliation. The duty of the State to provide justice should not be privatized and brought back to victims, as it was before the emergence of modern States." At the clemency hearing for Darrell Rich in California on 6 March 2000 family members of his victims spoke of the pain of losing their relatives and their wish to have Darrell Rich killed without further delay. Opponents of the death penalty spoke for clemency, drawing hisses and an angry walkout from relatives of the victims. One relative reportedly said "We're wasting time, just kill him", another: "I think we should take him out to that dump and use a rock, maybe a gun. No, a gun's too fast."[130] Governor Davis denied clemency on 10 March. Among his reasons, he said that the relatives of the murder victims "are not swayed by [Rich's] plea for clemency and plead that the State's laws be carried out." Darrell Rich was executed on 15 March.

Elected officials rarely turn their attention to the other, largely ignored victims, namely the family whose relative is condemned to death. In a letter to the Washington Post on 23 February 2000, a woman whose husband is on death row in North Carolina, wrote: "Our children have suffered greatly because of the actions of their father. Although our children recognize that their father did something terribly wrong, they still love and need their dad. The suffering of children whose parents are on death row has been completely ignored because these children suffer in silence. I know of one nine-year-old who writes on his calendar, "Daddy dies today," each time his father receives a new execution date. Although I understand the cry for justice after a murder has been committed, I cannot understand the howl for revenge that will leave more children devastated and parentless... I

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[128] Felicia Draughon, interview with Amnesty International, Dallas, June 1998. Her brother, Martin Draughon, was sentenced to death when she was 16, and remains on death row in Texas. See also: *Speaking out: Voices against death* (AMR 51/128/99, October 1999).

[129] On 20 January 2000, US Attorney General Janet Reno said: "I have inquired for most of my adult life about studies that might show that the death penalty is a deterrent. And I have not seen any research that would substantiate that point." Reuters, 20 January 2000.

[130] Sacramento Bee, 6 and 7 March 2000

pray that all children whose parents have been murdered will find comfort and peace. But my children may also lose their dad to murder, and I wonder who will weep for them."

A study published in 1999 found that families of the condemned can suffer serious stigmatization, social isolation, depression and "chronic grief". However, the study noted that while murder victims' relatives are allowed to testify at the trial about the impact of the crime on their lives, and may also receive state-funded psychotherapy, costs for attending trials, and other assistance, the relatives of the condemned receive no such support: "...no state-provided treatment options exist for families of the condemned. Further, the sentencing courts provide no support options, nor do prisons, victims' programs, or social service agencies.... Family members who choose to stand by their condemned relative are relegated to silence, usually feeling powerless to stop the machinery of death that operates to kill their loved one. Their powerlessness starts at the trial level, where most of them are ignored and unheard in the guilt or sentencing phase of the trial."[131]

Among relatives of death row defendants interviewed for the study was Trevor Dicks, who was 11 when his brother, Jeff, was sentenced to die in Tennessee's electric chair: "At that time, I didn't know when it would be carried out. I had an eleven-year-old imagination of electrocution. Those nightmares have haunted me for nineteen years now. I couldn't find anyone to express my feelings to. I was also condemned." Jeff Dicks died on Tennessee's death row on 10 May 1999, amidst allegations of medical neglect.

The study also quotes the father of Joseph Hudgins, a child offender on death row in South Carolina for a crime committed in 1992 when he was aged 17: "If they ever should execute Joseph it would probably kill me. I doubt if I could take that... There isn't a moment of the day when I don't think about Joseph and his case. It's there when I wake up in the morning and the last thought before I go to sleep at night... It is very devastating. It has impacted on my health... I live for the time when Joseph calls me or I go to visit him. He insists that I should take vacations and lead a normal life, but I am not living a normal life. There is no normalcy here." On 6 December 1999, the state Supreme Court granted Joseph Hudgins a new trial because his defence representation at his original trial had been inadequate.

The death penalty has more than just a human cost. From a fiscal perspective, an actual judicial killing costs the US public purse, on average, two to three million US dollars, far more than a prison term. In Washington State, Okanogan County reportedly had to draw on contingency funds, postpone employee pay rises, defer planning department upgrades and cancel new investments, in order to pursue the death penalty at a forthcoming trial (*The Spokesman-Review*, 10 January 1999). Governor Locke signed a bill into law in May 1999 allowing the state to pay some costs incurred by poorer counties pursuing capital cases.

A New York newspaper has estimated that by the time New York State, which reinstated the death penalty in 1995, executes its first prisoner several years hence, it will have spent between US$238 million and US$402 million on capital procedures (*New York Daily News*, 19 October 1999). Notwithstanding the fundamental unacceptability of the death penalty, this must beg the question of whether such resources could not be put to more constructive use, including in supporting crime prevention efforts and in attempting to help the relatives of murder victims come to terms with their loss.

Sixty-two year old Zane Hill was executed in North Carolina on 17 August 1998. He had been sentenced to death in 1991 for killing his 29-year-old son when he became violent during a prolonged spate of heavy drinking. Although still grieving for her son, Zane Hill's wife, Bonnie Hill, forgave her husband for the shooting, and over the next seven years regularly drove the 350 kilometres to visit him in prison. Members of the small rural community where she lived opposed the execution, as did the non-governmental Carolina

[131] What about our families? Using the impact on death row defendants' family members as a mitigating factor in death penalty sentencing hearings. By Rachel King and Katherine Norgard. Florida State University Law Review [Vol 26:1119, 1999].

Justice Policy Center, which said: "The state of North Carolina cannot show genuine concern for [Bonnie Hill] and other victims of family violence by killing the husband she has been visiting. Family tragedies such as this cry out for better prevention strategies. Family violence is far too common and preventive approaches - not executions - are desperately needed to reduce the level of violence...". After the execution, the District Attorney who had prosecuted Zane Hill said that it had taken courage for Governor Hunt to deny clemency because of pressure from people opposing the execution.

Many of those that have been executed in the USA were themselves victims of violence from an early age, within their own families or wider society. Others suffered from mental illness left inadequately treated (see Larry Robison, page 59). The backgrounds of many condemned prisoners, whilst not excusing the crimes for which they were sentenced to die, nevertheless suggest that society had failed them well before it decided to kill them. For example, in Texas Glen McGinnis repeatedly ran away from the physical and sexual abuse he was subjected to at home. The state authorities repeatedly returned him to his home, until he ran away for good at the age of 11 and lived on the streets of Houston. He committed a murder at the age of 17 and was executed on 25 January 2000, in violation of international law.

An increasing numbers of murder victims' relatives argue that executions represent an appalling memorial for murdered family members, create more victims, and deepen the culture of violence in society.[132] Dennis Wayne Eaton was executed on 18 June 1998 for the murder of Virginia police officer Jerry L. Hines in 1989. Trooper Hines' sister, Maria Hines, had appealed to Governor Gilmore to stop the execution: "Killing is wrong, whether it's a case of one individual killing another or if it's a state killing one of its citizens. I want other victims to know there is an alternative. That alternative is forgiveness and reconciliation."

At a press conference on 27 March 2000 in Tennessee, the daughter of death row inmate Philip Workman and the daughter of the police officer he was convicted of killing in 1981, united to appeal for the condemned man to be spared. "I cannot stand here and tell you that I'd like to see Philip Workman executed simply because he's been accused of killing my father", said the daughter of Lieutenant Ronald Oliver, who spoke of the pain of losing a father; "If I request that he be executed, I would be taking him away from Michele [Workman's daughter]. We suffered the same loss at the same time....". Philip Workman's daughter thanked her for her "huge capacity for compassion" and for "rising above revenge".

[132] In June 1998, two members of Amnesty International's International Secretariat joined murder victims family members and relatives of death row inmates on *The Journey of Hope* in Texas. *The Journey of Hope... From Violence to Healing*, and *Murder Victims' Families for Reconciliation* (MVFR) campaign tirelessly for an end to executions. See www.mvfr.org

On 1 September 1999, the US Supreme Court stayed the execution of Lonnie Weeks two hours before it was due to be carried out (see box). He was convicted of shooting a Virginia police officer, Jose M. Cavazos, in 1993. The son and daughter of the murder victim appealed to Governor Gilmore to grant clemency. The daughter, Leslie Cavazos-Almagia, now 27, wrote: “Please take into consideration the feelings my brother and I have in this matter. We have thought about this very carefully. In our hearts we have forgiven all that has been done to our family. [Execution] is not the band aid that will heal society. It only creates a higher level of animosity in our lives.” The son of Jose Cavazos, who was aged 16 when his father was shot dead, wrote: “At the time of my father’s death I personally would have loved to harm Lonnie Weeks, but that was pure hate. Now I know forgiveness is better than vengeance, and that love is better than hate. I never want to see anyone in my lifetime ever go through what I have, and currently the state is about to make another child fatherless. Yes, I mean Lonnie Weeks’ children will never have the chance to make contact with their dad later in life, and later in life is when it’s so necessary. Take it from someone who knows... Please, break this cycle of violence by sparing Lonnie Weeks’ life.”

> Lonnie Weeks was two hours from execution on 1 September 1999, when the US Supreme Court issued a stay to consider whether the jurors had understood their sentencing instructions. On 19 January 2000, a sharply divided Supreme Court ruled against Weeks. Four of the Justices dissenting, saying it was a “virtual certainty” that the jury had been confused. They said that, given the “unusually persuasive” mitigating evidence in the case, it was likely that the jurors had come to “a strong desire to spare the life of Lonnie Weeks”, and had voted death as a result of a misunderstanding of their duty under the law. The Justices noted that a majority of the jurors had been in tears when asked for their sentencing vote.
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> Two of the jurors signed affidavits that they had wanted to sentence Lonnie Weeks to life imprisonment, but the other jurors had mistakenly believed that the law required them to pass a death sentence because they had found an aggravating factor in his crime. Given that a jury must be unanimous to vote for death, if either of these two jurors had felt in a position to hold to their opinion, Weeks would likely have received a life sentence. Instead, he was executed on 16 March 2000 after Governor Gilmore denied clemency. In 1999 a study of the Weeks case conducted at Cornell University Law School, in which 154 mock jurors were empanelled in Virginia, concluded that in all likelihood, Lonnie Weeks was sentenced to death simply because the jury misunderstood the sentencing instructions, and that if the judge had clarified the sentencing instruction, as the jurors had requested, Weeks would have received a life sentence.

Leslie Cavazos-Almagia and Lonnie Weeks had tried to meet in person for over a year, but the Department of Corrections refused to allow it on the grounds that it could become a focal point for anti-death penalty protests. On 9 March 2000, they were allowed to speak by telephone, which they did for over an hour. After the conversation, Leslie Cavazos-Almagia repeated her hope that Lonnie Weeks’ life would be spared. Lonnie Weeks himself hoped for clemency: “I’m not asking to be set free. I should pay for what I did. I just don’t want to die. I don’t want to leave my kids.”[133] Governor Gilmore denied clemency, and Lonnie Weeks was executed on the evening of 16 March 2000.

Killing children who kill: The violation of international law

“*My son wanted to be here. They say he can’t because he’s 16 and that’s too young to witness an execution. If that is so, why can the state of Oklahoma convict, sentence to death and execute a 16-year-old child. I just don’t understand.*” Final statement of John Walter Castro, executed 7 January 1999, Oklahoma.

Less than a month after John Castro’s 16-year-old son was made fatherless by the State of Oklahoma, the same state killed Sean Sellers for crimes committed when he was a 16-year-old

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133 *Daughter seeks mercy for father’s killer.* Washington Post, 10 March 2000.

boy.[134] On 4 February 1999 Sellers became the first person put to death in the USA for a crime committed at aged 16 since 1959.

In 1998, a federal court had noted the "clear, strong and supportive" psychiatric evidence that a serious mental disorder lay behind Sean Sellers' crimes as a 16-year-old, and said that it was "not unconvinced that given an opportunity by a state court he could not cast doubt on the propriety of the sentence he faces." However, the court said that it was restricted to ruling whether a sentence violated the US Constitution, rather than to correcting errors of fact. It said that it could not act unless a claim of innocence was so great that it could be sure that no reasonable juror would vote to convict. The Court noted that it was "not unmoved" by the prisoner's situation, and denied the appeal.[135]

International law prohibits the use of the death penalty against child offenders -- those who commit crimes when under 18. Respect for this ban is now so widespread across the globe that it has become a principle of customary international law, binding on all countries regardless of which international treaties they have or have not ratified. On 16 June 1999, the UN High Commissioner for Human Rights reiterated this when she appealed to US authorities to prevent the execution of Chris Thomas in Virginia and to "reaffirm the customary international law ban on the use of the death penalty on juvenile offenders." The Virginia Supreme Court stopped the execution on a separate legal issue five hours before it was due, but Chris Thomas subsequently became one of three child offenders executed in January 2000.

[134] In his diary entry for 7 January 1999, Sean Sellers wrote: "As he lay dying, John Castro reached out and spoke for *me*. His last words were spoken on *my* behalf. Had I never known humility, had I never been stopped dead in my tracks and stunned to silence before, I could not say so now."

[135] See *Killing Hope: the imminent execution of Sean Sellers*, AMR 51/108/98, December 1998. The death sentence of Jerry DuWane Mooney, also convicted in Oklahoma of a murder committed at 16, was overturned on 31 August 1999. The Oklahoma Court of Criminal Appeals ruled that the state had erred when it failed to give the defence lawyers information about a prosecution witness. Mooney's sentence was modified to life imprisonment without parole, itself a violation of international standards.

The execution of Chris Thomas on 10 January was followed three days later by that of Steve Edward Roach in the same lethal injection chamber. Then on 25 January, Glen Charles McGinnis was executed in Texas.[136] These executions brought to 13 the number of child offenders put to death in the USA since 1990, whereas the combined total of the other five countries known to have carried out such executions in the same period was 10. Of these five countries -- Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen -- the latter has since abolished the death penalty for child offenders, as did China in 1997. The USA accounts for seven of the eight executions of child offenders known in the world since October 1997 (the eighth was carried out in Iran on 24 October 1999).

All seven had profiles typical of the teenagers condemned to death in the USA -- mentally impaired or emotionally disturbed individuals, from backgrounds marked by poverty, deprivation, violence or abuse (see box). The arbitrary nature of US death sentencing means that while such factors did not result in leniency in their and other cases, some child offenders are spared on similar evidence. In April 1999 the Florida Supreme Court overturned the death sentence against David Paul Snipes, on death row for a murder committed when he was 17 years old. The court concluded that the death sentence was disproportionate: "Snipes was only seventeen at the time he committed the murder. He was sexually abused for a number of years as a child, he abused drugs and alcohol beginning at a young age, and he had no prior violent history. He was raised in a dysfunctional, alcoholic family, suffered childhood trauma, and has many positive personality traits... Additionally, the crime was arranged by older individuals, and testimony reflected that Snipes was easily led by older persons."[137]

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[136] See *Shame in the 21st Century: Three child offenders scheduled for execution in January 2000* (AMR 51/189/99, December 1999)

[137] *David Paul Snipes v. State of Florida*, 22 April 1999. On 9 July, David Snipes was re-sentenced to life imprisonment without the possibility of parole (LWP). In May 1998, the Florida Supreme Court similarly reversed the death sentence of Ryan J. Urbin, convicted of murder committed when he was aged 17, and remanded him for a LWP sentence. The court cited Urbin's age, parental abuse and neglect during his formative years, and the fact that at the time of the crime his capacity to appreciate the criminality of his conduct was "substantially impaired" (due to cocaine and alcohol).

The following people (all male) are on death row in the USA for crimes committed when they were 16 or 17 years old. Their death sentences violate international law.

Alabama
Renaldo Adams
Willie Burgess, Jr.
Taurus Carroll
Timothy Davis
Mark Duke
Gary Hart
James Hyde
William Knotts
Marcus Pressley
Nathon Slaton
Shaber Wimberly
Gregory Wynn

Arizona
Martin Soto-Fong
Levi Jackson
Kenneth Laird

Arkansas
Damond Sanford

Florida
James Bonifay
Jeffrey Farina
Rodrick Ferrell
Cleo LeCroy

Georgia
Exzavious Gibson
Jose Martinez High
Alexander Williams

Kentucky
Kevin Stanford
Larry Osborne

Louisiana
Dale Craig
Cedric Howard
Lawrence Jacobs

Mississippi
David Blue
Kelvin Dycus
Ronald Foster
William Holley
Stephen McGilberry

Missouri
Antonio Richardson
Christopher Simmons

Nevada
Michael Domingues
Robert Servin

North Carolina
Kevin Golphin

Oklahoma
Scott Hain

Pennsylvania
Derrick Harvey
Kevin Hughes
Percy Lee

South Carolina
Robert Conyers
Herman Hughes
William Kelly
Ted Powers

Texas
Steven Alvarado
Randy Arroyo
Mark Arthur
Mauro Barraza
Napoleon Beazley
Johnnie Bernal
Edward Capetillo
Raymond Cobb
John Dewberry
Justin Dinkins
Anthony Dixon
Gary Graham
Eddie Johnson
Anzel Jones
T.J. Jones
Michael Lopez
Miguel Martinez
Gerald Mitchell
Jose Monterrubio
Toronto Patterson
Efrian Perez
Oswaldo Soriano
Raul Villareal
Bruce Williams
Nanon Williams
Geno Wilson

Virginia
Chauncey Jackson
Shermaine Johnson

Child offenders executed in the USA since 1977:
Charles Rumbaugh (Texas, 1985); James Roach (South Carolina, 1986); Jay Pinkerton (Texas, 1986); Dalton Prejean (Louisiana, 1990); Johnny Garrett (Texas, 1992); Curtis Harris (Texas, 1993); Frederick Lashley (Missouri, 1993); Ruben Cantu (Texas, 1993); Christopher Burger (Georgia, 1993); Joseph Cannon (Texas, 1998); Robert Carter (Texas, 1998); Dwayne Wright (Virginia, 1998); Sean Sellers (Oklahoma, 1999); Chris Thomas (Virginia, 2000); Steve Roach (Virginia, 2000); Glen McGinnis (Texas, 2000). All were 17 at the time of the crime, except Sean Sellers who was 16.

Note: The death sentences of Jeffrey Farina and Rodrick Ferrell (FL), 16 at the time of crime, are likely to be overturned following the *Brennan* decision (see page 53). Robert Conyers (SC) was granted a new sentencing in February 2000.

Seven child offenders were executed in the USA between April 1998 and January 2000

Joseph Cannon [Texas]. At the age of four, hit by a truck and left hyperactive, with a head injury and a speech impediment. Expelled from school at the age of seven. From the age of 10, diagnosed as suffering from organic brain damage, severe depression (attempted suicide at age 15), schizophrenia and borderline mental retardation. From seven to 17, he suffered repeated and severe sexual abuse from male relatives. Learned to read and write on death row. Executed on 22 April 1998 for the shooting of Ann Walsh in 1977.

Robert Carter [Texas]. One of six children in very poor family. The mother and stepfather whipped and beat the children with belts and electric cords. Suffered serious, untreated, childhood head injuries. Shortly before the 1981 shooting of Sylvia Reyes for which he was sentenced to die, Robert Carter was shot in the head by his brother. He afterwards suffered seizures and fainting spells. The jury, not invited to consider in mitigation his age, borderline mental retardation, brain damage or childhood abuse, took 10 minutes to sentence him. Executed on 18 May 1998.

Dwayne Wright [Virginia]. Grew up in a poor family in a deprived neighbourhood rife with criminal drugs activity, where he witnessed habitual gun violence and murder. From the age of four, lost his father to prison. When he was 10, his half-brother, to whom he was very close, was murdered. Developed serious emotional problems, and did poorly at school. Treated for mental illness. Mental capacity evaluated as borderline retarded, verbal ability as retarded. Executed on 14 October 1998 for the shooting of Saba Tekle in 1989.

Sean Sellers [Oklahoma]. Sentenced to death for shooting a shopkeeper, as well as his own mother and stepfather. Born to 16-year-old mother, and raised by various relatives. Exposure to violence and physical abuse from an early age, and became involved with drugs and satanism. In post-conviction examinations, found to be chronically psychotic and to have symptoms of paranoid schizophrenia and other major mood disorders. Diagnosed with multiple personality disorder in 1992. Executed 4 February 1999.

Chris Thomas [Virginia]. After his adoptive parents died when he was 12, Chris Thomas became involved in petty offending and drug abuse. Psychological reports described him as an isolated, angry, depressed, alienated teenager. His intense relationship with 14-year-old Jessica Wiseman culminated in their plan to kill her parents. Without an adult present, while still under the effects of alcohol and drugs, and having slept for only two hours in the previous 40, Thomas confessed to both murders. He later said he had not fired the second fatal shot at the mother, whose killing resulted in Chris Thomas' death sentence (he received a life sentence for the murder of the father). The jury never heard evidence that Jessica may have fired this shot. She was released in 1997 at the age of 21. He was executed on 10 January 2000, aged 26.

Steve Roach [Virginia]. Sentenced to death for the 1993 shooting of Mary Ann Hughes, his only recorded act of violence. Born into a family with frequently absent parents, Roach dropped out of school at 14 because they wanted him to do chores. An expert testified at trial that Roach had poor impulse control and was particularly immature as a result of the lack of structure in his home life. Arguing that Roach was a future danger, the prosecution cited his parole violation in possessing a shotgun as a sign of his future dangerousness, despite the fact that no adult, including the police, had seen fit to remove it from him. Executed on 13 January 2000, age 23.

Glen McGinnis [Texas]. Born to a mother who was addicted to crack cocaine and who worked out of their one-bedroom flat as a prostitute, Glen McGinnis, black, suffered repeated physical abuse at the hands of her and his stepfather, who raped him when he was nine or 10. Ran away from home at the age of 11 and lived on the streets, where he engaged in shoplifting and car theft. He was sentenced to death by an all-white jury for the shooting of Leta Ann Wilkerson, white, during a robbery in 1990. Various juvenile correctional officials testified that he was non-aggressive even in the face of taunting about his homosexuality from other inmates, and had the capacity to flourish in the structured environment of prison. Executed on 25

In July 1999, in the case of Keith Brennan, the Florida Supreme Court found that the use of the death penalty against defendants like Brennan who were 16 at the time of their crimes violated the state constitutional ban on cruel or unusual punishment. It based its decision on its 1994 ruling (*Allen v State*) in which it had found that the rarity of the use of the death penalty against defendants who were 15 at the time of the crime rendered the punishment unconstitutional against this age group. In *Brennan v. State*, it found a similar scarcity of the state's use of the death penalty against 16-year-olds. Its decision effectively raised to 17 the minimum age for capital defendants in Florida.[138] Keith Brennan's death sentence was modified to life imprisonment without the possibility of parole, a sentence for child offenders which violates article 37 of the UN Convention on the Rights of the Child, a treaty which the USA, alone with Somalia, has not ratified.

[138] In 1999, the Montana legislature raised to 18 the minimum age for death penalty defendants, becoming the 15th of the 38 US death penalty states to set 18 as the minimum age for capital defendants (see page 4). There have been legislative efforts in some of the other 14 states to reduce the age below the current minimum of 18. For example, in 1999 there was an unsuccessful attempt to reduce California's minimum age of death penalty eligibility from 18 to 16.

An example of the USA's selective contempt for international human rights standards was on display in late 1999. On 2 December, President Clinton, supporting an international convention against abusive child labour, described the convention as "a living example of how we can together come to level up global standards". He spoke of the importance of affirming the fundamental human rights of children, and of the world leadership to this end being offered by the USA: "[W]e can make tomorrow even a better day. We can do it by seeing that other nations also ratify this treaty and join in our cause...".[139] His words were greeted with applause by his audience at the Bell Harbor International Conference Center in Seattle.

Just two months earlier, the US Solicitor General had filed a brief in the US Supreme Court setting out the US Government's view that the USA is not obliged under customary international law or US treaty obligations to exempt children from the death penalty, a practice abandoned by virtually every other country in the world. The US Government believes that the USA can continue to execute child offenders because of the reservation it made to article 6(5) of the International Covenant on Civil and Political Rights (ICCPR). This is despite the fact that the UN Human Rights Committee has said that the US reservation is invalid, despite formal protests from several governments, and despite article 4 of the ICCPR forbidding derogation from article 6, even in times of emergency. The Solicitor General's brief concluded by urging the Supreme Court not to carry out its own examination of the issue. On 1 November, the government's wish was fulfilled when the Court announced that it would not consider the matter.[140] This joint failure of leadership means that state courts will continue to allow prosecutors to seek the death penalty against defendants accused of crimes when they were children.[141] For example, on 23 March 2000 a judge in Mohave County, Arizona, denied a pre-trial defence motion arguing that international law prevented the prosecution from seeking the death penalty against 17-year-old James Davolt, accused of a crime committed when he was 16, and scheduled for trial on 11 April. On 29 March in Washoe County, Nevada, a judge confirmed the death sentence handed down by a jury in October 1999 against Robert Servin, convicted of a crime committed when he was aged 16. The judge had earlier denied a pre-trial motion on the international law issue.

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[139] *Remarks by the President at signing of ILO Convention #182, the convention concerning the prohibition and immediate action for elimination of the worst forms of child labour.* White House news release, 2 December 1999.

[140] *Domingues v Nevada.* Michael Domingues, on death row in Nevada for a crime committed at 16, had challenged his death sentence as a violation of customary international law and US treaty obligations. In June 1999, the US Supreme Court ordered the US government to make known its position on this issue.

[141] Child offenders sentenced to death in the past two years include, in 1999: Geno Capoletti Wilson (Texas); Bruce Lee Williams (Texas); Robert Paul Servin (Nevada); Michael Lopez Jr. (Texas); Mark Anthony Duke (Alabama); Gregory Wynn (Alabama); Larry Osborne (Kentucky); Derrick Harvey (Pennsylvania). 1998: Renaldo Adams (Alabama); Shaber Chamond Wimberly (Alabama: sentenced overturned; re-sentenced to death in 2000); Lawrence Jacobs, Jr. (Louisiana); Kelvin Dycus (Mississippi); Kevin Golphin (North Carolina); William Kelly (South Carolina); Randy Arroyo (Texas); Mark Arthur (Texas); Shermain Ali Johnson (Virginia).

The US Supreme Court has set 16 (at the time of the crime) as the minimum age at which people can be subject to the death penalty, although this has not stopped some prosecutors and politicians from expressing their wish to see this minimum lowered.[142] For example in 1998, Texas State Representative Jim Pitts proposed a bill that would allow his state to impose the death penalty on children as young as 11 years old. In 1999, the First Assistant District Attorney of Pontotoc County in Ada, Oklahoma, indicated that he was willing to "make new law" in order to obtain a death sentence against Derrick Lester, accused of a murder committed when he was 15 years old. Following an Amnesty International appeal, in May the prosecutor informed the organization that he had decided not to seek the death penalty against the teenager. Also in May 1999, defence lawyers for Sean Dixon, facing a capital trial in Nevada for a murder committed when he was 16 years old, told Amnesty International of their belief that international appeals were a major contributory factor in the prosecution's decision to drop its pursuit of a death sentence against the teenager and negotiate a prison sentence with parole eligibility.[143]

Some 70 prisoners remain on death row in 16 states for crimes committed when they were 16 or 17 years old. After the execution of child offender Steve Roach in Virginia on 13 January 2000, his lawyer released a statement which told of the remorse Roach felt for his crime. The statement concluded: "And he was unable to grasp, even to his last breath, why we kill people to teach other people that killing people is wrong. The principal lesson he wanted his own death to communicate is that this makes no sense. Killing kids makes no sense, and it must be stopped."

An insult to decency - the death penalty against the mentally impaired

"*I don't know how the money just be able to pop up, but money just popped up. I got a lot of millions of dollars but I can't get a dime of it in my personal situation.*" Pernell Ford, 1999.

On 8 July 1999, Pernell Ford came within hours of being executed in Alabama's electric chair for a crime committed in 1983 when he was 18. He had waived his appeals and was asking to be executed. Pernell Ford has suffered from serious mental health problems since he was a child. His execution was stopped in order to evaluate Ford's competency to give up his appeals.[144] He remains on death row.

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[142] See *On the Wrong Side of History: Children and the Death Penalty* (AMR 51/58/98, October 1998), paged 11-14. The Supreme Court set the minimum in 1989 (*Stanford v. Kentucky).*

[143] Amnesty International took action for other teenagers facing death penalty trials in 1999 for crimes they were accused of committing when they were under 18, including: Jermaine Jones (aged 16 at crime, Florida, sentenced to life without parole [LWP]), Mazer Jean (17, Florida, LWP), Gregory Wynn (17, Alabama, death); Gregory Dickens (16, Indiana, LWP); Kenshawn Maxey (17, Nevada, LWP), Justin Burrell (17, Delaware, LWP); Bobby Purcell (16, Arizona, LWP); Johnnie Lee McKnight (17, North Carolina, trial postponed, see page 61); Dorthia Bynum (17, North Carolina, LWP); Brett Hollis (17, South Carolina, LWP).

[144] At the hearing, Ford told the court that since 1994, he has been able to transport himself anywhere on earth, by a method he calls "translation". He stated that one of his first "translations" from death row was to India. He claimed to have wives in India, Philippines, Colombia, Ecuador and Spain, that he has millions of dollars in a Swiss bank account, and that when he dies, he will become the Holy Spirit and sit on the left hand of God. Ford represented himself at his original trial. At his sentencing, dressed in a white bed sheet, he asked the judge to have the coffins of the murder victims brought into court, so that God could raise them from the dead in front of the jurors.

The execution of the legally insane (someone who does not understand the reason for, or reality of, their punishment) is unconstitutional in the USA.[145] However, the system has allowed people to be put to death whose sanity, at the time of the crime or the execution, was in serious doubt.

At a House of Representatives Criminal Justice and Corrections Council hearing in Florida in October 1999, state Representative Howard Futch suggested that because Thomas Provenzano, a delusional death row inmate, believed he was Jesus Christ, the state should "just crucify him". The legislator reportedly continued: "I'd make him a cross, and we could take it out there to Starke [death row] and nail him up." A subsequent editorial in a local newspaper described Rep. Futch's comments as "vicious, ill-judged and revealing. In his dimwitted way, Futch has laid bare the truth of the death penalty in Florida. It's not about justice. It's not about deterring crime. It's about vengeance, a barbarous attitude." *St Petersburg Times*, 13 October 1999. Thomas Provenzano, whose mental illness is reported to have seriously deteriorated during his 15 years on death row, came within 24 hours of execution in September 1999 before a stay was granted. He remains on death row.

Having come within hours of execution in August 1999, Larry Robison was executed in Texas on 21 January 2000. He was diagnosed as suffering from paranoid schizophrenia some two decades earlier, several years before the crime for which he was sentenced to die. He never denied the killings, but said that they were the result of his mental illness. His mother has campaigned tirelessly on his behalf, arguing that she had attempted without success to get him appropriately treated by the state before he turned violent. (*Time for Humanitarian Intervention: The Imminent Execution of Larry Robison*, AMR 51/107/99, July 1999)

Calls for clemency were [illegible] Appeals had pointed out that Virginia's Governor commuted the death sentence of Calvin Swann in May 1999, four hours before he was due to be executed, on the grounds of mental illness. Calvin Swann has suffered from schizophrenia for 25 years. On 7 October 1999, the Oklahoma Court of Criminal Appeals modified Brett Ulbry's death sentence to life imprisonment without parole, recognizing that the mitigating factors relating to his serious mental illness (schizophrenia) outweighed the aggravating circumstance of his 1993 crime.

The mental health of Tuan Anh Nguyen, a former child refugee from Vietnam on death row in Oklahoma, had deteriorated during the seven years that he was held in H-Unit of the State Penitentiary, with symptoms that included psychotic-like episodes in his cell where he would scream for extended periods. In October 1998 his defence lawyer wrote to the prison warden that a recent psychiatric evaluation indicated that there was "good reason to believe" that Tuan Nguyen was legally insane. Two weeks later, the warden responded that the inmate was not insane. Despite requests by Tuan Nguyen's lawyer, the warden did not make known what advice he had relied upon to make this determination. Tuan Nguyen was executed in the first few minutes of 10 December 1998, Human Rights Day.

[145] *Ford v Wainwright* (1986). Execution of the insane also violates Safeguard 6, UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted 1984, which prohibits the use of the death penalty against "persons who have become insane".

One year later, the State of Indiana demonstrated a similar reluctance for external scrutiny as it prepared to execute a prisoner whose legal sanity was in question. DH Fleenor[146], who had long shown signs of mental illness, had refused to see his lawyers in the weeks leading up to his execution because of his belief that they were part of a conspiracy against him. Several priests in recent contact with DH Fleenor had expressed concern that he was seriously delusional and did not understand his punishment. The prison's Catholic chaplain, who had signed an affidavit to this effect, was banned by the prison authorities from visiting DH Fleenor and other condemned inmates on the grounds of "philosophical differences", ie the chaplain's opposition to the death penalty. Two other priests, apparently intimidated by the prison authorities' hardline approach, decided against signing affidavits about DH Fleenor's mental health because they did not want to risk losing their access to death row prisoners. Legal attempts to have an independent psychiatric evaluation of DH Fleenor failed, and he was executed shortly after midnight on 9 December 1999.[147] The execution went ahead unwitnessed; prison officials afterwards told reporters that DH Fleenor had been "cooperative" when it took three attempts to find a vein into which to insert the lethal injection needle.[148]

Manny Babbitt was executed in California on 4 May 1999. He was a 51-year-old decorated Vietnam veteran whose capital crime appears to have been linked to combat-induced post-traumatic stress disorder (PTSD). Manny Babbitt's first taste of active service after joining the US Marines in 1967 was the siege of Khe Sanh, the longest and bloodiest battle of the Vietnam war. On his return to the USA, he experienced severe difficulties adjusting to civilian life and slid into serious alcohol and drug problems. He spent eight months in a mental hospital where conditions at the time were described by a federal judge as "shocking" and "unconstitutional". His declining mental health was diagnosed, but never treated. A leading expert on Vietnam combat-related PTSD concluded that Babbitt was suffering from a combat-related flashback, aggravated by hallucinogenic drugs, when he killed Leah Schendel in 1980, and hid and tagged her body as soldiers had hidden and tagged their fallen comrades in Vietnam. Many Vietnam veterans campaigned to save Manny Babbitt from execution, including one ex-Marine who identified him as the soldier who had saved his life at the siege of Khe Sang.[149]

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[146] "DH" was his full name, given to him by his parents.

[147] On 8 December 1999, dissenting from a court decision to allow Fleenor's execution to proceed, a judge wrote: "...one [cannot] dismiss easily the evidence of prison chaplains. Although not necessarily trained psychiatrists or psychologists, their experience, and in some instances training, ought to require that a judicial system give their views a respectful assessment, even if such respect is not found within the prison walls." Circuit Judge Kenneth F. Ripple. US Court of Appeals for the Seventh Circuit (99-4130).

[148] Indianapolis Star, 9 December 1999.

[149] Another 51-year-old Vietnam veteran, who had witnessed extreme violence during the war, was executed in 1999 for a crime which may have been PTSD-related. After a night of drinking on 27 October 1985, Joe Atkins dressed in military fatigues, armed himself with a machete and shotgun and engaged in other behaviour possibly indicative of a PTSD flashback, and killed his adoptive father and the 13-year-old daughter of his neighbours. Joe Atkins was put to death in South Carolina on 22 January 1999.

In 1989, the US Supreme Court ruled that the use of the death penalty against another group of mentally impaired prisoners -- the mentally retarded -- does not violate the constitution. Ten years on, the prisoner in this landmark case, John Paul Penry, was scheduled for execution in January 2000, but received a stay from the Fifth Circuit Court of Appeals in late December 1999.[150] At the time of the 1989 *Penry* ruling, which came in the same year that the international community formally codified its opposition to the execution of the mentally retarded[151], only one US state banned the use of the death penalty against such defendants, but by the end of March 2000, 13 of the 38 death penalty states prohibited it (see page 4). The most recent state to enact such legislation was South Dakota, whose governor on 14 March 2000 signed House Bill 1197 exempting mentally retarded persons from the death penalty.

Recent examples of state laws protecting learning disabled individuals from execution included the case of Vernessa Marshall, tried in Clarke County, Georgia, in September 1999 for the killing of her 10-year-old son in 1998. Prosecutors sought the death penalty, but the jury returned a life prison sentence after agreeing with expert testimony that Vernessa Marshall was mentally retarded, with an IQ of 62, and thereby exempt from the death penalty under Georgia law. Nebraska legislated against the execution of the mentally retarded in April 1998. In 1999, as a result of the new law making it illegal to execute anyone with an IQ below 70, Jerry Simpson (IQ 68) and Clarence Victor (IQ 65) were taken off the state's death row. The state's appeal against the decision in the Victor case, arguing that the law was not supposed to be retroactive, had not been heard by March 2000. One state which does not yet forbid the execution of learning disabled defendants is North Carolina. In 1999, Cumberland County announced that it would seek a death sentence, in violation of international law, against Johnnie McKnight for a crime he was accused of committing in 1997 when he was 17 years old. A psychiatrist has assessed Johnnie McKnight as seriously mentally impaired, with an IQ of 53. A pre-trial hearing to establish if he is competent to stand trial (that is, whether he would understand the nature of the proceedings against him and be able to assist in his defence), had not been scheduled by the end of March 2000.

Charles Boyd was executed in Texas on 5 August 1999. At his trial his defence lawyers had failed to investigate and present evidence of his mental impairment because they did not recognize that he might have such a problem. He had displayed signs of having learning difficulties from early childhood. His mother did not enroll him in Special Education Classes as advised because she was "embarrassed" to do so. Charles's nickname was "head" because he would regularly beat his head against walls and on the ground to receive attention. Charles was allegedly subjected to regular beatings by his stepfather and brother, often because the young boy was "slow" to respond to requests. It was only at the age of seven that it was discovered that he was deaf in one ear. Charles also suffered from seizures throughout childhood. On death row in 1992, his IQ was measured at 64 (an IQ under 70 is within the retardation range) and he was found to have significant memory deficiencies, an inability to

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[150] See *Beyond Reason: The imminent execution of John Paul Penry*, AMR 51/195/99, December 1999. A decision on his case was still pending in the Fifth Circuit at the end of March 2000.

[151] UN Economic and Social Council resolution 1989/64, adopted 24 May 1989, recommends that the death penalty not be used against people "suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution".

learn from his mistakes, and a diminished ability to think through his options and to control his impulses and behaviour.

Willie G. Sullivan was executed in Delaware on 24 September 1999 for the 1991 robbery and murder of 78-year-old Maurice Dodd. At the trial a psychologist testified that Willie Sullivan was mentally retarded and had the mental age of a nine-year-old. He also testified that the defendant had limited communication skills, and was easily confused, taken advantage of, and led astray. In 1995, an expert testified that Willie Sullivan was brain-damaged and met the criteria for fetal alcohol syndrome (FAS), a condition linked to a mother's heavy alcohol use during pregnancy and that can lead to mental impairment. Although Sullivan's trial lawyers had been aware of FAS and the mother's alcoholism, the lawyers failed to investigate or present any evidence on the issue.

On 5 April 1999, Alvaro Calambro was executed in Nevada. He had given up his appeals. Efforts to stop the execution by his mother and others, on the grounds of his reported borderline mental retardation and schizophrenia-induced auditory hallucinations, were unsuccessful. Alvaro Calambro, from the Philippines, was one of several foreign nationals executed in 1998 and 1999.

Taking liberties - Violating treaty rights of foreign nationals

"*Recent executions in Texas in Virginia have catapaulted the treaty into the international spotlight and spurred defense attorneys in at least 65 cases to test its weight in the courts.*" Texas news article referring to the Vienna Convention on Consular Relations[152]

As of 1 January 2000, 82 foreign citizens representing 30 nationalities were reported to be under sentence of death across the USA. In virtually every case, these individuals were put on trial for their lives without ever being informed of their right to seek legal assistance from their consular representatives.[153] The widespread failure of police to inform arrested foreign nationals of their consular rights is a serious violation of the US obligations under international treaty law, including Article 36 of the Vienna Convention on Consular Relations (VCCR).[154]

The US government continues to insist that protecting the consular rights of detained US nationals abroad is a matter of the highest importance, while at the same time opposing all efforts to obtain judicial remedies for domestic violations of those selfsame rights. This glaring double standard gained international attention with the case of Paraguayan national Ángel Francisco Breard. In blatant disregard of an order by the International Court of Justice (ICJ), the US Supreme Court allowed Breard's execution to proceed in Virginia on 14 April

[152] San-Antonio Express News, 25 October 1998.

[153] See *USA: Violation of the Rights of Foreign Nationals Under Sentence of Death* (AMR 51/01/98, January 1998).

[154] The purpose of Article 36 is to safeguard the human and legal rights of foreign nationals facing prosecution under another nation's legal system, by ensuring that all detainees are promptly informed of their right to seek consular assistance and that consuls may visit and assist their detained nationals unhindered.

1998.[155] The Supreme Court held that no remedy was available for the admitted violation of Breard's consular rights because he had failed to raise the issue at an earlier stage of his appeals.

US Secretary of State Madeleine Albright wrote to Virginia Governor James Gilmore, urging him to consider granting Breard a temporary reprieve. Albright wrote that a failure to comply with the ICJ order halting the execution "could be seen as a denial by the United States of the significance of international law". However, any potential benefit of Albright's letter was erased by her simultaneous assertion that Virginia had a legal right to proceed with the execution.

Jose Roberto Villafuerte, a Honduran national, was executed in Arizona on 22 April 1998, despite appeals from the President of Honduras and the Vatican. The US State Department, in a letter released 21 April, 1998, [illegible] acknowledged that Arizona officials had violated Villafuerte's VCCR rights, but did not call for the execution to be stopped. A Deputy Maricopa County Attorney was reported to have said that claims that the execution would harm foreign relations was "a little bit of psychological blackmail".

Jaturun Siripongs, a Thai national denied his VCCR rights, was executed in San Quentin State Prison, California, on 9 February 1999. He had come within six hours of execution in [illegible] reportedly a prison guard appealed for clemency on the basis of Siripongs' "contribution to the safety and well-being of correctional officers and other inmates." A former warden of San Quentin supported his unprecedented appeal on the same grounds. A Los Angeles Cardinal appealed, describing the death penalty "as a tool by which vengeance can be exacted and political advantage can be maintained." Governor Davis, for whom this was his first clemency decision, denied clemency: "Remorse is not sufficient...The fact that Mr. Siripongs may have been a model prisoner for 16 years while his duly imposed capital sentence has not been carried out is beside the central point: model behavior cannot bring back the lives of the two innocent murder victims. These capital crimes can only be satisfied by the duly imposed sentence." A Deputy District Attorney welcomed the Governor's denial of clemency "because it respects the wishes of family members", despite the fact that the husband of one of the murder victims had opposed the execution.

155 Under an optional protocol to the Vienna Convention, the ICJ has binding and compulsory jurisdiction over disputes concerning the enforcement of the treaty. See *USA: The Execution of Angel Breard: Apologies Are Not Enough,* AMR 51/27/98, May 1998.

After receiving a comprehensive apology from the United States on 3 November, Paraguay withdrew its case at the ICJ. The US apology noted that "failure to notify Mr. Breard was unquestionably a violation of an obligation owed to the Government of Paraguay...We fully appreciate that the United States must see to it that foreign nationals in the United States receive the same treatment that we expect for our citizens overseas."[156]

The subsequent executions of German nationals Karl and Walter LaGrand in Arizona generated attention across Europe and resulted in a new initiative to resolve violations of the Vienna Convention at the ICJ. Neither man was informed of his consular rights and German authorities only became aware of the cases seven years after the convictions.[157] Karl LaGrand was executed by lethal injection on 24 February 1999 after high-level appeals for clemency by German authorities were ignored. The execution and the treaty violation received extensive publicity in Europe; petitions supporting clemency, bearing some 50,000 signatures, were reportedly sent to Arizona authorities.

One day before Walter LaGrand was scheduled for execution, Germany filed a request for provisional measures at the ICJ. The International Court immediately issued a unanimous order requiring the USA to stay the execution, without holding the normal hearing to review arguments from both parties -- the first time the Court had issued such a summary order in its entire history. The Arizona Board of Executive Clemency voted to recommend a reprieve for Walter LaGrand so that Germany would have time to file an orderly request with the ICJ, but the recommendation was rejected by Governor Hull. A last-minute appeal to the US Supreme Court on the basis of the ICJ ruling was dismissed and Walter LaGrand was executed in the Arizona gas chamber on 3 March. Describing the executions of its nationals as “barbaric”, the German government has decided to pursue its legal claim against the USA. The response of the United States to Germany’s written submission before the ICJ was made on 27 March 2000, but will remain confidential for at least a year.

In October 1999, the Inter-American Court on Human Rights issued its long-awaited ruling on the significance of the right under Article 36 of the VCCR to consular assistance. Mexico had sought an advisory opinion from the Court in 1997, following the execution of two Mexican nationals in the USA who were not informed of their right to seek consular assistance in international human rights instruments (the Court specifically referred to the provisions of Article 14 of the International Covenant on Civil and Political Rights). To preserve those rights, consular notification must take place at the time of arrest and before any interrogation takes place.

The court's most important holding is that the execution of any individual whose consular rights have been violated is an "arbitrary" deprivation of life, which violates international law and renders the execution illegal.

Although the advisory opinions of the Inter-American Court are not legally binding (and the USA does not recognize the Court's authority), the ruling may have significant implications for the future litigation of this issue, both domestically and internationally. The international tribunal explicitly rejected the position of the US Department of State, which had argued that Article 36 does not confer rights on individuals and that the absence of consular assistance is not a human rights concern.

The United Nations has officially endorsed the Inter-American Court’s opinion by including reference to it in a resolution concerning the protection of migrants, adopted by the UN General Assembly. Only the USA voted against its inclusion. (A/RES/54/166, 24 February 2000).

[156] *Statement of the United States of America Concerning the Failure of Consular Notification in the Case of Angel Breard*, US Information Service, November 3, 1998.

[157] Although the US Ninth Circuit Court of Appeals later found that the treaty violation was "undisputed", the appeal was rejected because the defendants had failed to raise the claim during state court proceedings. *LaGrand v. Stewart,* 133 F.3d 1253, 1261 (9th Cir. 1998).

Canadian citizen Joseph Stanley Faulder was executed in Texas on 17 June 1999, after nearly 22 years on death row.[158] In the days leading up to his execution, Texas authorities were flooded with appeals for clemency from a host of prominent individuals and international organizations, including a request for a stay of execution issued by the Inter-American Commission on Human Rights. The facts in the Faulder case prompted an unprecedented intervention by the US Secretary of State Madeleine Albright, in which she expressed deep concern over the failure of Texas authorities to inform Faulder of his consular rights upon his arrest. In the final days before the execution, the State Department reportedly renewed its appeal for the serious consideration of clemency, including a personal call from the Secretary of State to Governor Bush. In her 2000 report to the UN Commission on Human Rights, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions noted that she had sent "repeated appeals" on behalf of Joseph Faulder.[159]

Wrong again: Repeated miscarriages of justice in capital cases

[158] See *Adding Insult to Injury: the case of Joseph Stanley Faulder*, AMR 51/86/98, November 1998.

[159] E/CN.4/2000/3, paragraph 67, 25 January 2000.

"*So the horrifying question goes unasked: Of the close to 600 people who have been killed since 1976 by states across America, how many of them were innocent? Ask yourself: How many would be too many? One? Five? Ten? Twenty?*"[160]

Although no capital justice system can ever guarantee freedom from fatal error, the USA's continuing use of the death penalty without meeting international safeguards leaves the risk of executing the innocent alarmingly high.[161]

In 1999 alone, eight condemned prisoners were released from US death rows after evidence of their innocence of any capital crime emerged.[162] This brought the total number of such releases since 1973 to 84. Contributing factors in these errors continued the pattern seen in earlier cases, including ineffective defence representation at trial, prosecutorial and police misconduct and the use of unreliable evidence, including coerced confessions. For example, Ronald Jones, a homeless man convicted of rape and murder in Illinois in 1989, always maintained that he was beaten by police into signing a confession. DNA evidence cleared him and he was released.[163]

In violation of international law, Shareef Cousin was sentenced to death in Louisiana in 1996 for a murder committed in 1995 when he was 16 years old. In April 1998, Cousin was granted a new trial by the state Supreme Court which ruled that the prosecutor had made improper use of the pre-trial statements of a witness. On 8 January 1999, the prosecuting authorities in New Orleans, dropped capital charges against him. Despite the District Attorney's comment that "[w]e think he did it and our opinion has not changed", there is overwhelming evidence that Shareef Cousin is innocent of the crime for which he was sentenced to die. See *On the Wrong Side of History: Children and the Death Penalty in the USA* (AMR 51/58/98, October 1998).

[160] Editorial, Pittsburgh Post Gazette, 23 November 1999.

[161] The UN Death Penalty Safeguards state that the death penalty may only be imposed when the guilt of the accused person "is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts."

[162] Ronald Jones (Illinois, convicted 1989); Shareef Cousin (Louisiana, 1996); Anthony Porter (Illinois, 1983); Steven Smith (Illinois, 1986); Ronald Williamson (Oklahoma, 1988); Clarence Richard Dexter (Missouri, 1991); Warren Douglas Manning (South Carolina, 1989); Alfred Rivera (North Carolina, 1997). Also, in 1998, Robert Miller (Oklahoma, 1988) and Curtis Kyles (Louisiana, 1984) were released. (see *A Macabre Assembly Line of Death*, AMR 51/20/98, April 1998)

[163] On 11 February 2000, US Senator Leahy proposed the Innocence Protection Act designed to prevent wrongful convictions in capital cases, through access to DNA testing and competent lawyers. On 30 March 2000 two members of the US House of Representatives, Congressmen Bill Delahunt and Ray LaHood, unveiled their "Innocence Protection Act" to mirror Senator Leahy's Senate bill.

The release of Anthony Porter in Illinois particularly caught public attention. He had come within 48 hours of execution in September 1998 after more than 16 years on death row. His execution was stayed in order to evaluate his competency for execution after his lawyer introduced evidence that Porter was learning disabled, with an IQ of 51. Students at Northwestern University, together with a private investigator and a professor then investigated the case, culminating in their obtaining a confession from the actual murderer. Porter's death sentence was officially reversed on 11 March 1999.[164]

In November 1999, US Senator Russ Feingold introduced a bill in the US Congress to abolish the federal death penalty, and called on individual US states to stop executions. In his statement he expressed concern at the number of wrongful convictions in capital cases: "Innocent, and yet they were about to be killed. Why? Because our criminal justice system is sometimes far from fair and far from just.... Some argue that the discovery of the innocence of a death row inmate proves that the system works.[165] This is absurd. How can you say that the criminal justice system works when a group of students -- not lawyers or investigators but students with no special powers, who were very much outside the system -- discover that a man about to be executed was in fact innocent?... The system doesn't work. It has failed us."[166]

Also in November, the Chicago Tribune published a five-part series on the state's use of the death penalty.[167] It investigated all 285 death sentences in the state since 1977, and found that "capital punishment in Illinois is a system so riddled with faulty evidence, unscrupulous trial tactics and legal incompetence that justice has been forsaken." The newspaper's findings included that, of the 285 cases:

- at least 33 defendants were represented at trial by lawyers who had since been disbarred or suspended for incompetent, unethical or criminal conduct;
- in at least 46 cases, the prosecution's evidence included testimony from prison informants, a notoriously unreliable source of evidence;
- in at least 20 cases, the prosecution's evidence rested partly on the visual comparison of hairs by laboratory technicians, a forensic method known to be unreliable;
- at least 35 black defendants faced all-white juries;
- as well as the 12 defendants who were subsequently exonerated, another 74 had their death sentences overturned to a lesser sentence on appeal.

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[164] On 9 March 2000, lawyers for Anthony Porter filed a lawsuit against the City of Chicago, Chicago Police Department and the individual officers who investigated the original crime. The lawsuit alleges that Porter was framed by police and prosecutors by coercing witnesses to identify Porter as the murderer.

[165] For example, "Our judicial system is the best instrument of truth we know. The fact that some people have been removed from death row when it was discovered they were innocent proves the system works. The chance of an innocent man being executed is infinitesimal." Mark R. Weaver, Deputy Attorney General, Ohio (Columbus Dispatch, 8 February 1999)

[166] One of the students whose investigation exonerated Anthony Porter later said: "I shouldn't be 21 and skipping classes to try and overturn murder convictions. That's not the way its supposed to work...It just terrifies me that that's the way the system works." Outlook, BBC World Service, 23 February 2000.

[167] 1. Death Row justice derailed; 2. Inept defenses cloud verdict; 3. The jailhouse informant; 4. A tortured path to Death Row; 5. Convicted by a hair. Chicago Tribune, 15-18 November 1999.

On 18 January 2000, Illinois prosecutors dropped charges against Steve Manning, who had spent over four years on death row before being granted a retrial. The prosecution's key witness at the 1993 trial was a jailhouse informant with a long history of telling lies. The prosecution's decision not to retry him meant that the State of Illinois had released from death row more prisoners than it had executed (13 to 12).

On 31 January, Governor Ryan announced a moratorium on executions in Illinois: "I have grave concerns about our state's shameful record of convicting innocent people and putting them on death row. And, I believe, many Illinois residents now feel that same deep reservation. I cannot support a system, which, in its administration, has proven to be so fraught with error and has come so close to the ultimate nightmare, the state's taking of innocent life... How do you prevent another Anthony Porter -- another innocent man or woman from paying the ultimate penalty for a crime he or she did not commit? Today, I cannot answer that question." The Governor said that he will not approve any more executions until completion of a review and reform of the state's capital justice system.

On 18 February, condemned prisoner Eric Clemmons was acquitted at a retrial in Missouri. Clemmons had been sentenced to death in 1987 for a murder committed in prison. He spent the next 11 years on death row, and had at one point even called his mother in order to make his funeral plans after losing a federal appeal and anticipating that his execution would happen within months. However, in 1997 he was granted a new trial, and he and his new lawyers set about gathering the evidence that another inmate had carried out the murder. Presented with this evidence, the jury acquitted him. Clemmons remains imprisoned for another crime, a sentence which he is also challenging.[168] Missouri's Attorney General, whose office fought Clemmons' retrial for years, reportedly said the case shows why Missouri does not need a moratorium on the death penalty, saying that Clemmons' acquittal "proves the system works".[169] On 25 February, Governor Carnahan said that he would not support a moratorium in Missouri.

[168] Clemmons has served 18 years of a 50 year life without parole sentence for murder. In May 1999, a federal judge wrote that this sentence "may amount to a great injustice", given evidence that Clemmons had acted in self-defence and that he may not have struck the fatal blows, coupled with the failure of the trial judge to instruct the jury on the lawful use of deadly force in self-defence. The federal judge, noting that the federal courts were unable to provide relief, has urged Governor Carnahan to grant clemency Eric Clemmons.

[169] *Inmate's legal fight overturns execution.* Kansas City Star, 28 February 2000.

Eric Clemmons and Joseph Green (see page 21) were the 86th and 87th people to be freed from the clutches of death row since 1973 after evidence of their innocence emerged. The figure of the number of prisoners sentenced to death and later exonerated is a conservative one, however. When a capital conviction is overturned, prosecutors will frequently offer a sentence of "time served" in return for a guilty plea. The prisoner thus "admits" their guilt as the price of their freedom. One such prisoner, Paris Carriger, was released in 1999, and may well be innocent of the crime for which he was sentenced to death in 1978. Another man, who had testified against Carriger at his trial in return for having his own charges dropped, confessed to the murder in 1987 (he died in 1991). Carriger came within hours of execution in Arizona in December 1995. In 1997 a federal court ordered a retrial saying it was "certain that no reasonable juror would vote to convict Carriger." Apparently unwilling to admit any error, the state charged him again, but then offered a plea bargain of "no contest" to second-degree murder in return for a sentence of time already served.[170] Carriger took the offer and after 21 years in prison he was released in January 1999. On 26 January 2000 he testified at a public hearing in New Hampshire on a bill to abolish the death penalty. He said that cases like his were reason enough to abandon the death penalty: "We are killing innocent people. The death penalty promotes and actually encourages murder." On 9 March, the New Hampshire House of Representatives passed the bill by a 28-vote margin. A day earlier, Governor Jeanne Shaheen had said that she would veto the bill if it was passed by the House and the Senate. The Senate had not voted on the bill by the end of March.

A step in the right direction: Moves towards a moratorium on executions

"*I have struggled with the pleas of our clergy and others who ask that I commute or stay the execution of Andrew Kokoraleis*." Governor Ryan, Illinois, 17 March 1999.

Andrew Kokoraleis was executed in Illinois in the early hours of 17 March 1999 after Governor Ryan denied clemency. It was notable how much support for clemency came from within the religious community for this prisoner convicted of brutal crimes. On 13 March, Chicago's new Episcopal Bishop, leader of 36,000 Episcopalians in northern Illinois, had used his introductory press conference to raise the Kokoraleis case, saying that he personally, and his church, opposed the death penalty. On 14 March a group of various religious leaders -- ministers, bishops, rabbis and priests -- led by officials of Andrew Kokoraleis' Greek Orthodox faith, had called on the Governor to commute the sentence and urged a moratorium on executions. They denounced the imminent execution as "a destructive symmetry of violence mirroring violence" and "a rush towards lethal injection".[171]

Randolph Reeves, a native American, was scheduled for execution in Nebraska's electric chair on 14 January 1999. He had been sentenced to death in 1981 for the murders of Janet Mesner and Victoria Lamm in a Quaker meeting house. Quakers oppose the death penalty and the victims' relatives campaigned against the execution. Janet Mesner's father told a legislative committee that the death penalty "only lowers the standards of government to the mentality of the murderer". Victoria Lamm's husband and daughter travelled from Oregon to publicly plead for Reeves' life to be spared. Frank LaMere, a native American, appealed for clemency saying that the execution would "tear open wounds" already suffered by the victims' family members.

[170] Kerry Max Cook, sentenced to death in 1978 in Texas, took the same option in February 1999 prior to the start of his fourth capital trial. He continues to maintain his innocence (a claim reportedly supported by recent DNA evidence) and says that he took the deal in order not to risk the possibility of another wrongful conviction. He had come within 11 days of execution in 1988. See *A Macabre Assembly Line of Death*, (AMR 51/20/98, April 1998).

[171] On 12 March, the state Supreme Court had rejected an appeal to stop the execution so that evidence of Kokoraleis' wrongful conviction could be investigated. One of the judges dissented, saying that his fellow judges had appeared to treat the appeal "as nothing more than a bureaucratic nuisance". Three days later he took it upon himself to issue an emergency stay of execution. However, the following day, the full Illinois Supreme Court convened to vote 4-3 to overrule the stay.

Governor Johanns, on his fifth day in office, voted with the two other members of the Pardons Board to deny Reeves a clemency hearing. Forty hours before the execution, the state Supreme Court granted a stay.

On 20 May 1999, the Nebraska legislature voted to impose a two-year moratorium on executions in the state while a study investigated if the death penalty was being applied fairly. On 26 May, Governor Johanns vetoed the bill, describing it as "poor public policy": "I feel strongly that part of my role as Governor is to do all that I can to carry out the law for the benefit of the victims and their families. The moratorium would be just one more roadblock to bringing closure for them." The legislature overrode the veto in as far as it applied to the investigative study, which may mean that, in effect, a *de facto* moratorium is in place pending the study's completion, due at the end of 2000.

On 7 January 2000, the Nebraska Supreme Court granted Randolph Reeves a new sentencing hearing.

Across the USA, the religious community, long viewed as the "sleeping giant" of US abolition, became increasingly active against the death penalty during 1998 and 1999. For example, in New Mexico in 1999, leading members of various faiths, including Jewish, Catholic, Buddhist, Quaker and Unitarian, brought a lawsuit claiming that the state discriminates against religious opponents of the death penalty by excluding them from capital juries.[172] Politicians are regularly finding themselves having to justify their support for the death penalty to religious leaders. In Tennessee, 15 religious leaders, including of the Buddhist, Christian, Muslim and Jewish faiths, appealed to Governor Sundquist not to allow executions to resume in the state. The coalition's activities included the distribution of 20,000 postcards, asking Tennessee citizens to make the same appeal. At the time of the execution of child offender Sean Sellers in February 1999, Governor Frank Keating of Oklahoma was criticized by the Bishop of Tulsa Diocese, after the Governor had said that Pope John Paul II was "wrong" in his teachings that the death penalty is both cruel and unnecessary. In 1999, after Governor Jeb Bush of Florida signed his first two death warrants, the state's Catholic bishops called on him to grant clemency: "Killing people to show that killing is wrong is a piercing contradiction.... Executions coarsen us".

Nationally, Catholic and Jewish leaders issued a joint statement in December 1999 committing themselves to "work together, and each within our own communities, toward ending the death penalty".[173] In early 2000 a group of religious leaders of different faiths wrote to President Clinton calling for a moratorium on the federal death penalty.[174]

More than any other issue, growing concern over the rate of wrongful conviction is fuelling calls for a moratorium on executions and may be contributing to a dropping off in support for the death penalty. A Gallup poll in early 2000 showed support for the death penalty at 66 per cent, the lowest level since 1981. Ninety-one per cent of those polled acknowledged that over the past 20 years, there has been at least one person sentenced to death who was innocent. In Illinois, the state where wrongful convictions have been most publicized, a poll conducted in late February 2000 for the Chicago Tribune found that support

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[172] The New Mexico Supreme Court rejected the claim, without comment, in December. *Albuquerque Journal*, 23 December 1999

[173] *To End the Death Penalty: A Report of the National Jewish/Catholic Consultation.*

[174] *Group seeks moratorium on federal death penalty.* Milwaukee Sentinel Journal, 9 March 2000.

for the death penalty among registered voters had fallen to 58 per cent, compared to 76 per cent in 1994 and 63 per cent in 1999.[175]

[175] A poll found that support for the death penalty in New Jersey had fallen from 72 per cent in 1994 to 63 per cent in 1999. A poll in Ohio found that 68 per cent of those surveyed thought the execution of an innocent person was somewhat or very likely (up from 46 per cent in 1997) (Survey Research Center, Ohio State University, 19 November 1999).

In 1998 a bill to reintroduce the death penalty in Massachusetts was defeated by just one vote. The Governor introduced another bill in 1999, but this was defeated by the larger margin of seven votes. Several legislators cited the risk of wrongful capital convictions as a reason not to resume executions in the state. According to the American Bar Association, bills to abolish the death penalty were introduced in 12 of the 38 death penalty states in 1999. Although none of the bills became law during the year, this number was an increase in the number of such bills introduced in 1998.[176] There was, and continues to be, legislative activity in several states aimed at establishing a moratorium on executions or authorizing studies of the administration of the death penalty.

A number of municipal authorities have called for executions to be halted. For example, on 10 February 2000, the Philadelphia City Council adopted a resolution calling on the state legislature to impose a moratorium on executions in Pennsylvania until it can be shown to be fairly and reliably applied. On 29 February, the Baltimore City Council in Maryland adopted a similar moratorium targeted at their state legislators.[177] Lawyers' associations continue to adopt resolutions calling for a moratorium following such a resolution on 3 February 1997 by the American Bar Association.[178] On 25 March 2000, the Texas Criminal Defense Lawyers Association adopted a resolution calling on Governor Bush to impose a moratorium on executions in Texas "until such time as the fair and impartial administration of the death penalty can be ensured." The resolution noted that the Texas capital justice system was "fraught with error and imposed in an arbitrary and discriminatory manner". Randall Dale Adams and Clarence Brandley, incarcerated for a combined total of 21 years in Texas for crimes they did not commit, and who respectively came three and five days from execution before being released in 1989 and 1990, joined the appeal to Governor Bush.

The risk of executing the innocent is one reason to abolish the death penalty. Capital punishment is irredeemably cruel, however, and its injustices are not confined to those who did not commit the crimes for which they were sentenced to die. A moratorium is a positive first step towards abolition.

Setting a bad example: The US death penalty on the international stage

"*Preserving the death penalty in Ukraine's system of criminal punishments... cannot but leave its imprint on the prestige of our state.*" Ukraine military official, 1997[179]

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[176] *A gathering momentum: Continuing impacts of the American Bar Association call for a moratorium on executions.* American Bar Association, Section of Individual Rights and Responsibilities, January 2000.

[177] Other municipalities which have adopted similar resolutions include: Charlottesville (Virginia), New Haven (Connecticut), Mount Rainer (Maryland) and Chapel Hill, Carrboro, Durham, and Orange County (North Carolina).

[178] See *A Macabre Assembly Line of Death* (AMR 51/20/98, April 1998).

[179] Major General Georghiy Radov, President of the Kiev Institute of Internal Affairs. Quoted in *Den* newspaper, 12 February 1997, cited in *The death penalty: Abolition in Europe.* Council of Europe 1999.

On 22 March 2000, the day that the United States executed its 26th prisoner of the year and its 192nd since 1 January 1998, President Leonid Kuchma of Ukraine signed into law his country's abolition of the death penalty. The following day, the USA executed another prisoner. The day after that, 24 March, President Joseph Estrada of the Philippines announced a moratorium on executions in his country for the rest of the year.[180] The USA's growing isolation on the death penalty becomes clearer by the day.

On 16 June 1999, the United Nations High Commissioner for Human Rights issued an appeal to the USA to recognize international law and stop the execution of child offender Chris Thomas. Not only was this imminent human rights violation one of a type which the USA is virtually the sole remaining perpetrator, but the High Commissioner's location at the time of her appeal also highlighted how far out of step the USA is on the death penalty. She was in Russia following the commutation of all 716 death sentences in that country.

The reservation the USA made to the International Covenant on Civil and Political Rights (ICCPR) is what it believes, wrongly, allows it to escape the global ban on the use of the death penalty against child offenders (see page 56). This reservation is part of a wider practice; the USA has consistently diluted the force of international treaties by lodging conditions upon ratification.[181] One of the "understandings" it made upon ratification of the Convention Against Torture was that "international law does not prohibit the death penalty". This is true: the death penalty is not yet prohibited outright, but countries which retain it must adhere to internationally-agreed safeguards and limitations, with a view to abolition. The USA regularly breaches these standards and the majority of its leaders continue to oppose efforts towards abolishing the death penalty.

The USA's attitude to international standards can only undermine the whole enterprise of creating a viable international system for the protection of fundamental human rights. When any state, let alone a country as powerful as the USA, insists on its right to adopt a pick and choose approach to international standards, the integrity of those standards erodes. Why should any other state not then claim for itself the prerogative to adhere to only those portions of international human rights law with which it feels comfortable? Amnesty International is concerned that in February 1999, for example, Attorneys General from 12 Caribbean countries joined in urging their governments to withdraw from the ICCPR and the American Convention on Human Rights (ACHR) and then re-accede to them with reservations on articles relating to the implementation to the death penalty.[182]

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[180] Also in March 2000, two scheduled executions in Lebanon were suspended after Prime Minister Salim El Hoss said: "I cannot act against my convictions. I cannot imagine signing anyone's death warrant. God gives life, and He alone can take it away."

[181] See *Double Standards: The USA and International Human Rights Protection.* Chapter Seven of *Rights for All*, AMR 51/35/98, October 1998.

[182] See *Unacceptably Limiting Human Rights Protection* (AMR 05/01/00, April 2000).

In March 1998, it was reported that Attorney General Ramesh Maharaj of Trinidad and Tobago had met with US Attorney General Reno in Washington, DC. They were said to have discussed the problems that the Government of Trinidad and Tobago was having overcoming international obstacles to executions. Attorney General Reno was reported to have pledged US support in assisting Trinidad's implementation of the death penalty. Attorney General Maharaj also met with a Legal Advisor in the US State Department, who reportedly provided him with documentation relating to how the USA had dealt with the execution of prisoners who had appeals to the Inter-American Commission on Human Rights pending.[183] Within weeks, on 26 May 1998, the Government of Trinidad and Tobago had moved to withdraw from the ACHR and the Optional Protocol to the ICCPR and to re-accede to the latter with a reservation eliminating the right of any death row prisoner to petition the Human Rights Committee about alleged violations of their rights under the ICCPR.[184] In June 1999, Trinidad and Tobago carried out its first executions in five years, hanging nine men in three days. Whether or not the Government of Trinidad and Tobago received direct advice or encouragement from US Government officials on how to avoid treaty protections, its resolve to pursue executions can only be strengthened by the example set by its powerful neighbour.

One region that stands in marked contrast to the USA in relation to the death penalty is Europe. In 1998 for the first time in European history, none of the then 40 member states of the Council of Europe carried out an execution. Since 1994 a precondition of accession to this intergovernmental organization has been the willingness of states to impose an immediate moratorium on executions with a view to abolition.[185] The USA is one of the countries that has been granted observer status with the Council of Europe, and during debates in its Parliamentary Assembly, several speakers have expressed concern that unlike member states, the USA has not been penalized for its use of the death penalty. The rapporteur on the death penalty for the Assembly's Committee on Legal Affairs and Human Rights wrote in 1998 that, given the Council's opposition to the death penalty as a violation of the right to life and freedom from cruel, inhuman or degrading punishment, "the Assembly must consider observer states which still apply the death penalty to be violating human rights, and therefore in contravention of Statutory Resolution (93) 26 on observer status."[186] While the rapporteur wrote that she did not necessarily question the USA's continuing observer

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[183] *Ramesh meets US Attorney-General Reno.* Newsday (Trinidad), 1 March 1998. Amnesty International has been unable to confirm the contents of either of the reported meetings. The State Department has confirmed that the meeting between the Legal Advisor and the Attorney General of Trinidad and Tobago took place on 20 February 1998.

[184] The Committee subsequently rejected the reservation on 31 December 1999. Trinidad's withdrawal from the ACHR took effect on 26 May 1999. Guyana and Jamaica have made similar moves.

[185] Russian parliamentarian Sergei Kovalev recently noted that "not a single state seems so far to have foregone the opportunity to join the Council of Europe under these conditions. Not a single state has so far suggested to other states that they should form a new association, a kind of "killers club", the honorary members of which would be China, Iran, Saudi Arabia, and, sad to say, the United States, that long-standing democracy." *The death penalty: Abolition in Europe.* Council of Europe Publishing, 1999.

[186] Statutory resolution (93) 26 reads: "Any state willing to accept the principles of democracy, the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, ... may be granted... observer status...".

status, the Council's contact with the US Government should be used to attempt to persuade it to impose a moratorium on executions.[187]

On 29 June 1998, the European Union announced a new policy, the *Guidelines to EU Policy Towards Third Countries on the Death Penalty*, to promote abolition of the death penalty in non-member states. The EU will raise the issue of the death penalty in its dialogue with third countries, will encourage ratification and adherence to international standards, and will raise the issue in multilateral fora with a view to moratoria and abolition. The EU has appealed on a number of impending executions in the USA.

Odell Barnes was executed in Texas on 1 March 2000, despite serious doubts about his guilt, raised by recent investigations into his case. In his final statement he thanked those who had worked on his behalf: "I thank you for proving my innocence, although it has not been acknowledged by the courts. May you continue in the struggle and may you change all that's being done here today and in the past."

The execution caused outrage in Europe, particularly in France. In February, French President Jacques Chirac had spoken with former US President George Bush about the case. Prime Minister Lionel Jospin wrote to the Texas Governor on 28 February to appeal for clemency in the spirit of "shared values of justice and respect for human dignity and human rights." According to the French press, a spokesperson for the Governor said "The letter from the French Prime Minister will not change anything because the State of Texas does not take into account external influences" (Libération, 1 March).

Jack Lang, Chairman of the French National Assembly's Foreign Affairs Committee and now Minister of Education, who had visited Texas and met with Odell Barnes in February, issued a forthright statement expressing his "disgust" at the execution: "Odell Barnes gave us an extraordinary lesson in humanity and courage which contrasts with the savagery of the Huntsville killing factory which executes humans on an assembly line. In his name and to perpetuate his memory, we will continue the fight against the legalised murder of innocents, juveniles and the mentally impaired, and against the death penalty in general."

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[187] Renate Wohlwend. *The efforts of the Parliamentary Assembly of the Council of Europe.* In: *The death penalty: Abolition in Europe*. Council of Europe Publishing. June 1999.

The EU, Switzerland and the Holy See all raised the case of Sean Sellers during a meeting on 4 February 1999 of the Permanent Council of the Organization for Security and Cooperation in Europe (OSCE), the OSCE's highest level political decision-making body.[188] Amnesty International had focussed on the USA's use of the death penalty in its address to the plenary session of the OSCE's Human Dimension Implementation Meeting in Warsaw, Poland, on 26 October 1998. At that meeting, the head of the US delegation used his right of reply to reject what he described as Amnesty International's "overzealous accusations" that the USA regularly breaches international standards in its use of the death penalty, and explained to the gathered governmental and non-governmental delegates that US public opinion supported retention of the punishment.

[188] See *Open Letter from Amnesty International to All Ambassadors to the Organization for Security and Co-Operation in Europe, concerning the Imminent Execution of Sean Sellers in the USA* (AMR 51/17/99, 29 January 1999).

On 28 April 1999 the UN Commission on Human Rights renewed its call for a worldwide moratorium on executions.[189] Seventy-two countries co-sponsored the resolution, up from 65 in 1998. On 24 August 1999, the UN Subcommission on the Promotion and Protection of Human Rights adopted a resolution which included a call on all countries to commute all death sentences and to commit to a moratorium throughout the year 2000.[190] The resolution "condemn[ed] unequivocally the imposition and execution of the death penalty on those aged under 18 at the time of the commission of the offence". It singled out the USA for particular mention in this regard. The US delegate stated his government's "grave concern" that the Sub-Commission had strayed beyond its mandate.[191]

Article 6 (2) of the ICCPR require that the death penalty be limited to the most serious crimes in those countries which have not yet abolished the punishment. On 17 July 1998, the United Nations adopted the Statute for a permanent International Criminal Court (ICC), which will try what are generally considered to be humanity's most serious crimes -- genocide, other crimes against humanity and war crimes. The USA was one of the seven governments which voted against adopting the ICC Statute; 120 governments supported it. Once the ICC is set up (upon ratification of the Statute by 60 states) it will not be able to impose the death penalty. Under Article 77 of the Statute, the maximum penalty which the Court can impose is life imprisonment, subject to review after 25 years. Although an article protecting national laws was added at the insistence of a small number of states concerned that this should not be seen as a general endorsement for the abolition of the death penalty, it is nonetheless another strong indication of the progress towards a world without the death penalty.

Is the USA's use of the death penalty in the face of such global progress the action of a country which, according to its Secretary of State, sees "further than other countries into the future"?[192]

Poisoning the present, failing the future: Conclusion

"*It seems like to me, this country is going backward. While the United States as a whole is increasing use of the death penalty, it's at a time when other countries are abolishing the death penalty. The reason they're abolishing the death penalty is that they've discovered it's unjust.*" Ronald Jones, freed from Illinois death row, 1999[193]

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[189] Resolution 1999/61 "calls upon all States that still maintain the death penalty... to establish a moratorium on executions, with a view to completely abolishing the death penalty."

[190] Resolution 1999/4

[191] Statement by John D. Long, Counselor for Political Affairs, Mission of the United States of America. On the issue of the death penalty, he said: "[I]t is clear that capital punishment does not violate international law or any treaty to which the United States is a party, provided it is carried out with due process. Our legal system ensures that this occurs... Some [US states] allow juveniles to be treated as adults...".

[192] "We are the indispensable nation. We stand tall and we see further than other countries into the future...". Madeleine Albright. Interview on NBC-TV *The Today Show*. 19 February 1998.

[193] Reuters, 8 February 2000.

National and international concern will continue to grow as executions continue apace in the United States and the human reality of its resort to this outdated punishment becomes apparent to more and more people.

- The concept that killing is an appropriate and effective response to killing is a symptom of a culture of violence, and can never be a solution to it.

- Violating international standards on the death penalty, whether by design or ignorance, undermines the whole enterprise of building a viable global system for the protection of fundamental human rights.

- An execution creates more victims and according to many relatives of murder victims actually exacerbates the grief of losing a loved one.

- Just as public opinion would not be used to justify torture, it should not be used to justify the death penalty. Bringing about abolition requires courageous political leadership. The decision to abolish can be taken even though a majority of the public favours the death penalty, as has probably almost always been the case. Besides, public support for the death penalty is more likely being driven by society's fear, frustration or anger about violent crime, than by a considered response about humane alternatives to executions.

- The politics of the death penalty regularly threatens to undermine the independence of the judiciary. This and repeated wrongful capital convictions are likely to undermine respect for, and confidence in, the criminal justice system as a whole.

- No number of studies, no amount of tinkering with the machinery of death, can ever guarantee against the possibility of executing the wrongfully convicted.

- Choosing who, from the thousands of people annually convicted of murder in the USA, will die for their crimes, is always likely to lead to an arbitrariness in sentencing, reflecting underlying prejudices and inequalities in society as a whole.

- No attempts to sanitize the execution process can cleanse the death penalty of its inherent cruelty.

In 1988 this cruelty was articulated in a petition presented to South Africa's then President Botha by relatives of condemned prisoners: "To make a person sit, day after day, night after night, waiting for the time when he will be led out of his cell to his death is cruel and barbaric... To be a mother or father and watch your child going through this living hell is a torment more painful than anyone can imagine." This plea was made at a time when abolition of the death penalty seemed an impossibility for South Africa. Yet, in 1995, it rid itself of judicial execution, as part of its continuing efforts to escape its history of racial and social conflict.

In the South African Constitutional Court's landmark decision recognizing that the death penalty violated the right to life and freedom from cruel, inhuman or degrading treatment, Justice Mahomed, who was to become his country's first black Chief Justice, wrote: "The death sentence must, in some measure, manifest a philosophy of indefensible despair in its execution, accepting as it must do, that the offender it seeks to punish is so beyond the pale of humanity as to permit of no rehabilitation, no reform, no repentance, no inherent spectre of hope or spirituality... The finality of the death penalty allows for none of these redeeming possibilities. It annihilates the potential for their emergence... [Moreover] it is not necessarily only the dignity of the person to be executed which is invaded. Very arguably the dignity of all of us, in a caring civilization, must be compromised by the act of repeating, systematically and deliberately, albeit for a wholly different objective, what we find to be so repugnant in the conduct of the offender in the first place."[194]

Justice Mahomed's colleague on South Africa's Constitutional Court, Justice Kentridge, referred to US Supreme Court Justice Scalia's dissent in *Thompson v Oklahoma* (1988), the case in which the majority had decided that the use of the death penalty against a 15-year-old offender violated the "evolving standards of decency that mark the progress of a maturing society" (see introduction). Justice Scalia had said that "the risk of assessing evolving standards is that it is all to easy to believe that evolution has culminated in one's own views." Justice Kentridge said that he had kept this in mind, but had nevertheless reached the conclusion that "there is ample objective evidence that evolving standards of civilisation demonstrate the unacceptability of the death penalty in countries which are or aspire to be free and democratic societies... Although one cannot say that the death penalty is as yet contrary to international law... that is the direction in which international law is developing."

Five years later and now into a new century, the highest court in the USA, a country whose leaders repeatedly proclaim it to be a champion for human rights, has yet to reach the same conclusion. The US Supreme Court's position is reinforced by a reluctance to look to international norms and practices for insight into "evolving standards of decency". In March 2000, Justice Sandra Day O'Connor reminded a conference audience that just such a rejection of international standards had been part of the Court's 1989 ruling in *Stanford v Kentucky* that US courts could impose the death penalty on 16 and 17-year-old children: "[The Court's] approach reflects the idea that in matters of domestic criminal law, the national sovereignty interests weigh more heavily in the balance than do international

[194] *The State vs. T Makwanyane and M Mchunu*, 6 June 1995.

norms."[195] In 1999, 10 years on from *Stanford* the US Supreme Court, in *Domingues v Nevada*, refused to consider the claim that the ban on the use of the death penalty against children has become a principle of customary international law, with the USA its principal violator. Amnesty International deeply regrets that the US Government encouraged the Court not to consider this issue.

[195] Conference on Democracy and the Rule of Law in a Changing World Order. Library of Congress, Washington, D.C., 7 March 2000.

It was not always thus. In 1968, the US Government supported a draft resolution in which the death penalty was declared to be in violation of the rights to life and freedom from cruel, inhuman or degrading treatment or punishment guaranteed by the Universal Declaration of Human Rights.[196] Four years later, in the US Supreme Court's decision to stop executions, one of its Justices wrote: "In recognizing the humanity of our fellow human beings, we pay ourselves the highest tribute. We achieve a major milestone in the long road up from barbarism and join the approximately 70 other jurisdictions in the world which celebrate their regard for civilization and humanity by shunning capital punishment."[197]

At the beginning of a new century, the number of countries which have turned their backs on the death penalty has climbed into three figures. It is time for the USA to join them. By clinging to a punishment which belongs to centuries now past, the USA is poisoning its present and failing its future.

[196] See, Ramsey Clark (former US Attorney General): *Crime in America: Observations on its Nature, Causes, Prevention and Control*, New York, Simon and Shuster, 1970, 330-37. Cited by Hugo Bedau in *Capital Punishment: Global Issues and Prospects*, Waterside Press, 1996.

[197] *Furman v Georgia* (1972), Justice Marshall, concurring.

CAMPAIGNING AGAINST THE DEATH PENALTY IN THE USA

This is one of numerous reports issued by the International Secretariat of Amnesty International as part of a worldwide campaign against the death penalty in the USA. Others issued since March 1998 include:

Ángel Francisco Breard: Facing Death in a Foreign Land
(AMR 51/14/98, March 1998)

The Death Penalty in Texas: Lethal Injustice
(AMR 51/10/98, March 1998)

"A Macabre Assembly Line of Death": Death Penalty Developments in 1997
(AMR 51/20/98, April 1998)

The Execution of Ángel Francisco Breard: Apologies are not Enough
(AMR 51/27/98, May 1998)

On the Wrong Side of History: Children and the Death Penalty in the USA
(AMR 51/58/98, October 1998)

Adding Insult to Injury: The case of Joseph Stanley Faulder
(AMR 51/86/98, November 1998)

Fatal Flaws: Innocence and the Death Penalty in the USA
(AMR 51/69/98, November 1998)

Killing Hope: The Imminent Execution of Sean Sellers
(AMR 51/108/98, December 1998)

Killing with Prejudice: Race and the Death Penalty in the USA
(AMR 51/52/99, May 1999)

Killing without Mercy: Clemency Procedures in Texas
(AMR 51/85/99, June 1999)

Time for Humanitarian Intervention: The Imminent Execution of Larry Robison
(AMR 51/107/99, July 1999)

Speaking out: Voices against Death
(AMR 51/128/99, October 1999)

Shame in the 21st Century: Three child offenders scheduled for execution in January 2000
(AMR 51/189/99, December 1999)

Beyond Reason: The imminent execution of John Paul Penry
(AMR 51/195/99, December 1999)

A Life in the Balance: The case of Mumia Abu-Jamal
(AMR 51/01/00, February 2000)

See also: *United States of America: Rights for All*
(AMR 51/35/98, October 1998)

Since March 1998 Amnesty International has also published many other documents on a wide range of human rights violations, including police brutality and torture and ill-treatment in prisons and jails. It has also issued scores of action documents on individuals facing imminent execution.

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