

News Service 215/98

3 NOVEMBER 1998

## **USA: No getting away from it - the risk of lethal error in death penalty cases**

*I can't tell you how it is to stand outside of that cell and have a gentleman come and put a tape measure around your chest, around your waist, the inseam of your legs, and measure you for your burial suit. (Joseph "Shabaka" Green Brown)*

Joseph "Shabaka" Green Brown spent more than 14 years on death row in Florida, USA, for a crime he did not commit. His case is by no means unique. Since 1973, 74 other condemned prisoners have been released from US death rows after proof of their wrongful conviction was uncovered. Many, like him, had come within hours of their execution before being exonerated.

On the weekend of 13 November in Chicago, Joseph Green Brown and more than half of these 74 others will attend a conference on innocence and the death penalty – the first-ever such meeting in the USA. Amnesty International will also attend to launch its new report *Fatal Flaws: Innocence and the Death Penalty* highlighting the risk to the innocent of the current use of the death penalty in the most powerful economy in the world.

How many of the approximately 7,000 prisoners executed in the USA in this century were innocent will never be known, but one prominent study claims that at least 23 innocent prisoners have been put to death between 1900 and 1984. For every six prisoners executed since the reinstatement of the death penalty in the USA, one innocent person was condemned to die and later exonerated. Equally blameless but less fortunate prisoners may still be awaiting execution – or have already gone to their deaths.

In recent years, Amnesty International has recorded numerous cases of prisoners who went to their deaths despite serious doubts over their guilt. The USA – unlike several other countries including the United Kingdom and Russia – has never admitted to executing an innocent person.

"The death penalty is too often the 'privilege' of the poor," Piers Bannister said. Most of the people released from death row were indigent defendants who could not afford competent representation at their trials. Poor legal representation, coupled with racial prejudice and the presentation of erroneous evidence – often based on testimony by jail-house informants who bargain for leniency – are frequently at the root of potentially fatal errors.

Walter MacMillian, a black man accused of murdering a white woman, was sentenced to death after a trial lasting just one and a half days. The jury refused to believe the 12 black witnesses who testified that he was attending a church fundraising event at the time of the murder. Instead, they chose to believe the induced testimony of three prosecution witnesses, including a convicted murderer.

Mental illness and a previous criminal record are other factors which can heavily influence the courts into passing a death sentence – including against innocents.

The report cites numerous cases where the authorities appear to have simply decided that someone was guilty of the crime and made the evidence "fit" that conclusion. In other cases police officers fabricated

confessions. One thing they all had in common was the complete refusal of the prosecuting authorities to even contemplate that a mistake had been made.

The Attorney General of Georgia went on record as stating that no one on death row is innocent: "There is rarely any question about the guilt of these people, virtually none. That is a myth...these guys on death row are the pits."

The recent removal of many levels of legal appeal in the USA greatly increased the chances of the innocent being put to death. Drastic cutbacks in the protections offered by the appeal courts are a result of the high public support for the death penalty.

Many politicians – whose support for the death penalty reflects the public attitude towards it – cite the release of the 75 men and women from death row as showing that the system is working. Besides ignoring the unique suffering of a person sentenced to death, this argument also denies the fact that in most cases innocence was only proved after the work of a few dedicated individuals, often working for little or no pay.

"The majority of the appeal courts of the USA will not look at the simple question of whether a death row inmate is innocent of the crime for which he or she was sentenced to die," Piers Bannister said. "Their main concern seems to be whether the legal procedures and the constitution were followed."

In numerous cases, prisoners with credible claims of innocence have been refused clemency by politicians who deny the possibility of error by placing complete but misguided faith in the courts. Yet the highest court in the USA, the US Supreme Court, is on record as saying that executive clemency is the "historic" remedy for preventing miscarriages of justice where the judicial process has been exhausted.

Other politicians have stated that the risk of putting to death an innocent prisoner is the acceptable price of retaining the death penalty. In 1997, the Chair of the US House of Representatives Judiciary Committee said, while supporting the death penalty, "We have enormous protections, the best by far, but we're never going to have a system that will never execute an innocent person."

"Few mistakes made by government officials can equal the horror of executing an innocent person," said Piers Bannister, researcher on the USA at Amnesty International. "No criminal justice system is immune from error and the execution of an innocent is an ever-present risk where the death penalty is used. The USA is no different in this regard."

"For many people, this risk is reason enough to abandon the death penalty altogether. But in the USA the government has recently increased the danger of lethal error by reducing the legal safeguards against it," Piers Bannister continued. ENDS.../

**Many of the most prominent death penalty lawyers in the USA and international experts will attend the 13 November conference at Northwestern University, Illinois, USA, the first major conference to examine innocence and the death penalty. Most importantly, over half of those released from death row after being exonerated in the USA over the last 20 years will be present to tell their stories. The event will be launched with a press conference on the morning of the 13. For more information on the conference call Jeanine Bell on 312 503 1559 (e-mail: j-bell@nwu.edu) or visit the website at [www.ncwcdp.com](http://www.ncwcdp.com)**