

UNITED STATES OF AMERICA

Shame in the 21st Century

Three child offenders scheduled for execution in January 2000

A question of leadership

"I don't think we should be proud of the fact that the United States is the world leader in the execution of child offenders." US Senator Russ Feingold, 11 November 1999¹

The USA is set to open the 21st century with a triple human rights violation of a type which almost every other country has consigned to history. Three prisoners in their 20s - Douglas Christopher Thomas, Steve Edward Roach and Glen Charles McGinnis - are facing execution in January 2000 for murders committed when they were children. All were 17 years old at the time of the crimes for which they are scheduled to die, making their planned executions a blatant violation of international law.²

A global consensus against executing child offenders -- those under age 18 at the time of their crimes -- is not hard to demonstrate. A total of 191 countries -- all but the USA and the collapsed state of Somalia -- have ratified the 10-year-old UN Convention on the Rights of the Child, which forbids the death penalty against such defendants. Article 6(5) of the International Covenant on Civil and Political Rights (ICCPR), a treaty which came into force in 1976 and was ratified by the USA in 1992, carries the same non-derogable prohibition.³ Violations of this ban have become almost unknown in recent years, raising it to a principle of customary international law binding on all countries regardless of which international instruments they have or have not ratified.

¹ Statement on the Federal Death Penalty Abolition Act of 1999.

² For more information see: *On the Wrong Side of History: Children and the Death Penalty in the USA* (AMR 51/58/98, October 1998).

³ Article 4 of the ICCPR states that there can be no derogation from Article 6, even in times of "public emergency which threatens the life of the nation".

The USA has earned the shameful distinction of leading a tiny and dwindling group of perpetrator states.⁴ Only five countries outside the United States are known to have executed child offenders since 1990. One of them, Yemen, has since outlawed this practice, as has China, the country responsible for the world's highest annual judicial death toll. In contrast, the USA has executed 10 child offenders in the past decade, more than the five other countries combined.⁵ All four child offenders known to have been put to death in the world since October 1997 were killed in the USA.⁶ Such statistics alone give the lie to claims that the United States is a paragon of respect for human rights and international law.

The double standards operated by the US government are remarkable. Among the best known treaties in the world are the Geneva Conventions, which the United States ratified in 1955, and which it has cited and relied upon countless times since. Article 68(4) of the Fourth Geneva Convention explicitly forbids a party that occupies foreign territory from applying the death penalty to a foreign national "who was under eighteen years of age at the time of the offence". The US accepted this prohibition without reservation, thereby agreeing for the past 45 years not to execute other states' children -- even in wartime. Yet it refuses to offer children this very protection within its own borders.⁷

The government of the world's most powerful economy remains unwilling to turn its resources or imagination away from allowing certain children to be labelled as beyond redemption and led to the execution chamber.⁸ This was again demonstrated in October 1999 when the US Solicitor General filed a brief in the Supreme Court setting out the federal government's view that the USA is not obliged under international law or its

⁴ Within the USA, 15 of the 38 death penalty states have set 18 as the minimum age for the death penalty. The 15th, Montana, raised its minimum age for capital defendants from 16 to 18 in 1999.

⁵ Since 1990, Amnesty International has documented 19 executions of child offenders in six countries - 10 in the USA, and nine in Iran, Nigeria, Pakistan, Saudi Arabia and Yemen.

⁶ In October 1999, 17-year-old Ebrahim Qorbanzadeh was reported to have been executed in Iran. At the time of writing, Amnesty International was unable to confirm this report.

⁷ This includes non-US children. Two Mexican nationals, Martin Raul Fong Soto and Oswaldo Regalado Soriano are on death row for crimes committed at 17. Felipe Petrona Cabanas, a Mexican national accused of a crime committed at 17, is facing a capital trial due to begin in Texas in June 2000.

⁸ While federal capital laws do not allow the use of the death penalty against children, the federal government continues to insist in replies to Amnesty International that it cannot or will not intervene in such use of the death penalty in individual US states. However, there is a long-standing principle of international law that the state is the subject of international law, regardless of whether its system is unitary, decentralized or federal, and is responsible for ensuring that all government authorities in the country abide by international law. The US Constitution expressly establishes that powers to sign and ratify treaties reside with the federal state and not with the individual states.

treaty obligations to exempt children from the death penalty. The Solicitor General maintained that the USA's express rejection of the prohibition on the execution of child offenders made when the US government ratified the ICCPR, is valid. The UN Human Rights Committee, the expert body which oversees countries' compliance with the treaty, disagrees, as do many other international monitors.⁹

The US government's position amounts to more than just a question of the morality, or even the legality, of killing children who kill. How can it be interpreted as anything less than a deliberate attack on 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 US, 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? How can any legitimate international system of law be established and sustained when undermined by domestic politics?

⁹ When the USA ratified the ICCPR in 1992 it reserved the right to ignore Article 6(5)'s ban on use of the death penalty against children. The Human Rights Committee has stated that the US reservation contravenes the object and purpose of the ICCPR and should be withdrawn. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, whose mandate includes the death penalty, has reiterated that the US reservation should be considered void and that the country's use of the death penalty against child offenders violates international law. On 16 June 1999, the United Nations High Commissioner for Human Rights called on the US and Virginia governments to stop the execution of Chris Thomas and "reaffirm the customary international law ban on the use of the death penalty on juvenile offenders".

The Solicitor General's October brief concluded by urging the Supreme Court not to carry out its own examination of the USA's international obligations on the use of the death penalty against children. On 1 November 1999 his government's wish was fulfilled -- and a joint failure of leadership at the highest levels of US officialdom was confirmed -- when the Court announced that it would not consider the matter.¹⁰ Three days later, a Texas jury sent a 17-year-old to death row to join the 70 other such prisoners in 16 states under sentence of death for crimes committed when they were 16 or 17.¹¹

These 70 individuals, including Chris Thomas, Steve Roach and Glen McGinnis, were convicted of appalling crimes, with tragic consequences for the loved ones of the victims. The global consensus against executing them, however, is not an attempt to condone their crimes or belittle the suffering of the victims and their families. It is to demand a world where the immaturity of children and their potential for positive change are recognized, where the rule of international human rights law is respected, and where each and every state seeks to demolish, rather than deepen, the culture of violence.

On 11 November 1999, Senator Russ Feingold of the United States Congress called for abolition of the federal death penalty "to mark the new millennium". In his nine-page statement he said: "*With each new death penalty statute enacted and each execution carried out, our executive, judicial and legislative branches, at both the state and federal level, add to a culture of violence and killing. With each person executed, we're teaching our children that the way to settle scores is through violence, even to the point of taking a human life.*" Senator Feingold's statement is a courageous act of human rights leadership, sadly lacking in a country where unflinching support for the death penalty is too often seen as a prerequisite for electoral success.

More than half a century ago, the USA was one of the leading actors in the drafting of the Universal Declaration of Human Rights (UDHR). Punctuating the middle of a bloody century, the UDHR drew a vision of a world where the rights to life and freedom from cruel, inhuman and degrading punishment were guaranteed to all. As we move into the next century, what better way for leaders in the USA to honour that vision than by stopping the executions of Chris Thomas, Steve Roach and Glen McGinnis as a genuine first step to abolition of this outdated punishment.

¹⁰ *Domingues v. Nevada*. Michael Domingues, on death row in Nevada for a crime committed when he was 16, had appealed to the US Supreme Court on the grounds that his death sentence is illegal under customary international law and the USA's obligations under the ICCPR. Prompted by the appeal, in June 1999 the Court ordered the Solicitor General to present the government's position on the issue. For more information, see Urgent Action 150/99 (AMR 51/102/99, 29 June 1999) and updates.

¹¹ Bruce Lee Williams, a 17-year-old African American, was sentenced to death in Dallas County on 4 November 1999.



Douglas Christopher Thomas - scheduled for execution on 10 January 2000 - Virginia

“To tell you the truth I don’t know what to do. I’m really starting to get scared. I’m too damn young to die...” Chris Thomas, letter from death row, Virginia, 1992.

Chris Thomas, who has lived under an official death threat his whole adult life, was five hours from execution on 16 June 1999 when the Virginia Supreme Court granted him a reprieve.¹² He was “tearful” and “very joyous” when his lawyers told him the news, and immediately rang his parents (with whom he has reconciled over recent years) to tell them. An hour earlier he had said his final goodbyes to them. He is now facing execution again.

Chris Thomas, an only child, was born on 29 May 1973. His parents divorced before the birth, and the boy had no contact with his father until 1996 when he visited him on death row. When he was two, his mother moved away and he was adopted by his maternal grandparents. Apart from displaying a marked fear of being left alone,

¹² The defence lawyers had made a last-minute appeal based on the Court’s ruling a few days earlier, in a separate case, that both parents had to be informed when a juvenile is brought to court. The state Supreme Court granted the stay and heard Chris Thomas’ appeal at a hearing in September. It ruled against him on 5 November. It also ruled against Steve Roach, whose own execution, scheduled for 25 August 1999, had been stayed by the Court on 6 August on the same issue.



Century: Three child offenders scheduled for execution in January 2000

Chris Thomas is said to have been a happy child until he was 12, in 1985, when several of his family died in rapid succession. An uncle with whom he was particularly close was killed in an accident, and his grandparents (his adoptive parents) died shortly after from cancer.

Chris Thomas went to live with his mother. They were not close, and she did not respond to her son's insecurities as his grandparents had. He became involved in petty offending, such as shoplifting, and drug abuse. He would often miss school and his grades plummeted.

Psychological assessments of him during this period describe an isolated, angry, seriously depressed teenager who was alienated from school and home. In 1989 he attempted suicide. In January 1990 he went to live with his paternal uncle and aunt, who threatened to return him to his mother when his offending continued.

In the summer of 1990 Chris Thomas met 14-year-old Jessica Wiseman and the two children became involved in an intense emotional and sexual relationship. Jessica's parents, Kathy and James Wiseman, disapproved of this relationship, and this disapproval escalated to James Wiseman allegedly threatening to kill Chris if he continued to see Jessica. The children devised a plan to kill the parents. On the night of 9 November 1990, after consuming large quantities of alcohol and marijuana, Chris Thomas took his grandfather's shotgun, and joined Jessica in her room at the Wiseman home in Piankatank Shores in Middlesex County. In the early hours of 10 November James and Kathy Wiseman were shot in their bed. Two shots were fired in the parent's bedroom. One shot killed James Wiseman. The second shot hit Kathy Wiseman, but she survived and managed to come along the corridor to Jessica's room. As she stood in the doorway to her child's bedroom, she was hit and killed by a third gunshot.

Any plan the children had to escape detection rapidly fell apart and on the evening of 10 November Chris Thomas was questioned by the police at his uncle and aunt's home. Without a lawyer or an adult present, while still under the effects of alcohol and drugs¹³, and having slept for only two hours in the past 40, he confessed to both murders: "...I fired the gun into their bedroom twice - I really couldn't see them. After that I really don't remember.... Her mom was coming in [to Jessica's bedroom]... it didn't appear she had been wounded.... Jessica said "Oh God Chris please shoot her again". That is when I shot..." He subsequently retracted part of the confession, saying

¹³ His aunt was present for part of the questioning. She has said that she had earlier given Chris Thomas some medication (one of her own sleeping pills or tranquilizers) and was concerned what effect this might have had on him during the interrogation. Chris Thomas' mother was at the house when the police arrived, but was not allowed to be present during questioning.

that he had not fired the final shot. He said later: *“I thought I would take the rap. I didn’t know anything about capital punishment. I thought I would get 10 or 12 years in prison and at least she [Jessica] could come and see me”*.

In January 1991, Chris Thomas was transferred to adult court to be tried as an adult. Because she was only 14, Jessica Wiseman could not be tried as an adult under Virginia law in existence at that time. In June 1991 she was tried separately as a juvenile and sentenced to incarceration in a juvenile facility until her 21st birthday. She was released in 1997.

Chris Thomas’ trial began on 21 August 1991 in Middlesex County Circuit Court. The judge denied a motion for a change of venue which the defence argued was necessary given the extensive pre-trial publicity of the murders and the possibility that many of the potential jurors in this small rural community might know the defendant and the victims. Chris Thomas pleaded guilty to the first-degree murder of James Wiseman and not guilty to the capital murder of Kathy Wiseman, after his lawyers, who had little experience of capital trials, advised him that if he pleaded guilty to one murder, he could not be tried for the second on double jeopardy grounds.¹⁴ Their subsequent double jeopardy motion was summarily dismissed by the court, indicating that the lawyers had wasted a large amount of their pre-trial preparation time on developing this theory.

Chris Thomas’ confession was ruled admissible, despite the circumstances under which it had been given to the police. The defence failed to develop or present any evidence -- witness or forensic -- that Chris Thomas may not have fired the third shot at Kathy Wiseman, despite the alleged availability of such evidence. The jury found the teenager guilty of capital murder and the trial moved into a separate sentencing phase to establish if he should live or die.

In Virginia, the jury must find at least one of two conditions before they can impose a death sentence: that the defendant would probably commit “criminal acts of violence that would constitute a continuing serious threat to society” if allowed to live (“future dangerousness”), or that his or her conduct in committing the crime was “outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or an aggravated battery to the victim” (“vileness”). After hearing evidence

¹⁴ On the eve of the trial, Chris Thomas signed a statement prepared by his attorneys saying that if he *“pleaded guilty to one charge of first degree murder, double jeopardy would certainly prevent me from being tried on the charge of capital murder. I understand that Double Jeopardy - if successful - would prevent me from being electrocuted and would likely reduce my sentence a full life term. I understand my options and elect to go forward with the trial and intend to plead not guilty to all indictments.”* However, by the next day he had changed his mind and pleaded as the lawyers wanted under their double jeopardy theory.



Three child offenders scheduled for execution in January 2000

from the defence and prosecution, the jurors found the “vileness” condition, but not the “future dangerousness” one. Chris Thomas was sentenced to death for the murder of Kathy Wiseman, and received a 65-year prison sentence for the murder of James Wiseman.

The defence lawyers had employed a psychologist to do an assessment of him for use during the sentencing phase. The psychologist found that Chris Thomas was a developmentally immature teenager, who in taking the full blame for the crime was trying to protect Jessica. However, the defence lawyers became worried that this psychologist would be an ineffective defence witness. On the eve of the sentencing hearing they approached the prosecution’s psychological expert and asked him to testify on Chris Thomas’s behalf, including that Jessica Wiseman had been the motivating factor behind the boy’s actions. The prosecution’s expert agreed, and thereby testified for both the defence and the prosecution. In an affidavit in 1993, he stated that “with no adequate evaluation and with literally less than 24 hours to prepare, it was impossible to do anywhere close to a decent and adequate job”. He further stated that in his opinion, based on experience in over 20 capital cases, the defence attorneys’ presentation of mitigating evidence at the sentencing hearing had been “grossly inadequate”.

Shortly after the trial the defence attorneys received an anonymous phone call from a woman who stated that she had personal knowledge that several of the jurors had known James and Kathy Wiseman. She identified one juror by name, but refused to name others for fear of being identified by them. The attorneys then received an anonymous letter making similar allegations. They contacted the juror named in the phone call. He admitted that he had known the victims, on a first-name basis, and said that he thought he had said so at the jury selection process (which he had not). In December 1991, the defence attorneys filed a motion for a mistrial, but this was denied, as have all Chris Thomas’ subsequent appeals against his death sentence to higher courts.

In the days preceding Chris Thomas’ scheduled execution in June 1999, the local media reported growing support for clemency, including from the psychologist who had testified for both the defence and prosecution at the teenager’s trial. He reportedly stated that the death sentence against Chris Thomas represented “the worst defeat of my career”. He added that he supports the death penalty, but that he would “hate to see this boy get executed”. It was also reported that the trial judge, who died in 1998, had long been concerned by the death sentence against Chris Thomas. A lawyer who was a close

friend of the judge said the latter had “expressed to me many times in the years after this conviction that he was very disturbed by the outcome. He said he did everything he could to suggest to the lawyers representing Thomas that if he pleaded guilty, he wouldn’t have sentenced him to death.”¹⁵

¹⁵ Hampton Roads Daily Press, 15 June 1999

Two women -- "Nicolle" and "J."¹⁶ -- separately contacted Chris Thomas' lawyers after learning of the imminent execution in the local media. They related how when they were teenagers they had been held in juvenile detention at the same time as Jessica Wiseman (a claim which has since been confirmed). Their affidavits stated that Jessica Wiseman had said that she and Chris had killed her parents because of the abuse they had subjected her to, and because they were barring her relationship with Chris. Nicolle claims that Jessica had said that Chris had actually wanted to run away rather than go through with the shooting. Both women claim that Jessica Wiseman had told them that she had fired the second shot at Kathy Wiseman after Chris froze. Jessica Wiseman has denied the claims.¹⁷

In an interview from death row a few days before his scheduled June execution, Chris Thomas expressed his remorse for the 1990 shootings: "*I've re-lived that night over and over in my head for eight and a half years. I don't say that because I'm here [in a death cell]. I say that because what happened was out of character for me.*" He reiterated his claim that he had not fired the second shot at Kathy Wiseman. He said that he was "trying to maintain hope" that the governor would grant clemency.

Governor Gilmore, who allowed the execution of child offender Dwayne Wright to go ahead in 1998, had not announced his clemency decision for Chris Thomas when the Virginia Supreme Court granted its stay in June 1999. In the absence of another court stay, he will shortly have to decide if he will permit his state, and the USA, to violate international law once again by executing Chris Thomas. The Governor is set to face the same decision -- for Steve Edward Roach -- three days later.

¹⁶ The women's full identities and contact details were provided to Governor Gilmore as part of the petition for clemency presented to him.

¹⁷ The state has argued that it is irrelevant who fired the second shot at Kathy Wiseman as either shot would have proved fatal. However, the appeal lawyers argue that the medical testimony at trial indicated that the first wound may have been fatal *only if left untreated*. The appeal lawyers also state that it was the second shot against Kathy Wiseman which made Chris Thomas eligible for the death penalty because it made it possible for the jury to find the "vileness" condition (on the grounds that the time between the two shots fulfilled the "aggravated battery" condition in the definition of "vileness"). In March 1999, the Fourth Circuit Court of Appeals disagreed saying that the jury could have found that the crime involved "depravity of mind" even if Chris Thomas had not fired the second shot.

Steve Edward Roach - Scheduled for execution on 13 January 2000 - Virginia

"I don't know what went through my mind.... I wish I could bring her back". Steve Roach expressing remorse at his sentencing for the murder of Mary Hughes

At a sentencing hearing in 1995 lasting less than a day, a jury decided that Steve Roach would always be a threat to society and should be killed for a murder committed when he was 17. The teenager had no prior record of violence.

Steve Roach was born in May 1976 into a dysfunctional family where the parents were frequently absent. When he was six his father sustained a shotgun injury and was in hospital for six months, where he contracted hepatitis C from a blood transfusion and developed mood swings as result of the medication. His parents separated and reconciled repeatedly during his childhood. His father has said that whenever his wife left him, he took to drinking and life "got worse" for the children, who were often left unsupervised. He has admitted that Steve Roach had access to all the guns in the house.

When Steve Roach was 14, he dropped out of school after his parents requested that he be released from compulsory education because he was needed for chores around the house and to take care of his brothers. The teenager volunteered his time to help redecorate the local church and to work at a camp for children in the George Washington National Forest in northwestern Virginia. He also helped neighbours and relatives with chores such as chopping wood, cooking and laundry.

On 3 December 1993, one of the neighbours Steve Roach used to visit and help, 70-year-old Mary Ann Hughes, was shot and killed with a single shotgun blast in the doorway of her home in the small rural town of Stanardsville, in Greene County, Virginia. Her credit card, some cash, and her car were taken.

Three days later, having been spotted in North and South Carolina and after being urged on the phone by his aunt to come home and give himself up, Steve Roach returned to Virginia and turned himself in to the Greene County Sheriff. In the presence of a witness, but not a lawyer, he admitted shooting Mary Hughes: *"I went over there and saw her counting the money and as I was leaving, I had the shotgun laying at the door and I shot her, took the money, the car and left, went to North Carolina. And I cashed, I tried to use, use the credit card but, about four times, but it wouldn't work."* Steve Roach has said that he made the confession in the mistaken belief that it would lead to a lesser punishment.

Fifteen months after the shooting Steve Roach was tried for capital murder in Greene County Circuit Court after the judge denied a motion for a change of venue. The defence had argued that the widespread pre-trial publicity of this high-profile crime in a small rural community had been prejudicial to the defendant. On 2 March 1995, the jurors found Steve Roach guilty and the trial moved into a separate sentencing phase. As outlined above in the Chris Thomas case, a Virginia jury must find

at least one of two conditions -- "future dangerousness" or "vileness" -- in order to pass a sentence of death. In Steve Roach's case, the judge withdrew the "vileness" condition from the jury's consideration because there was not enough evidence to support it. As appalling as the crime was, it appeared to have been committed on impulse, there was one victim only, she had been shot a single time, probably died instantly, and there had been no struggle or other assault on her. The jury was therefore left to weigh up evidence to decide Steve Roach's "future dangerousness" only.

The defence presented evidence of Steve Roach's dysfunctional childhood, and his good record in helping other people. A forensic psychologist, who had repeatedly interviewed the defendant and his family, testified that the defendant was "particularly immature" for his age, had poor "impulse control", and "did not show very good ability in many situations to control his emotions or behaviour like 17-year-old or 18-year-old individuals should do." The expert related Steve Roach's immaturity to the fact that he had not received the guidance or structure that children need in order to mature.

In order to persuade the jury of Steve Roach's "future dangerousness", the state prosecutor presented evidence of the teenager's prior run-ins with the law, none of which involved acts of violence against people and all of which occurred during a period of his family's "disintegration". A few months before the December 1993 shooting, Steve Roach had got into trouble with the police for the first time in his life. In May he had been found guilty of car theft, reckless driving and failure to stop for the police after he had driven off in a car he found with keys in its ignition. In June he was found guilty of breaking and entering an unoccupied private residence and stealing a gun. In August he was again convicted of stealing a car which had been left with the keys in it.¹⁸ He was sentenced to house arrest for these juvenile offences, and assigned a probation officer.

¹⁸ The defence psychologist described both these incidents of car theft as "joyriding", rather than offences which could be taken as predictors of future violence.

To bolster the state's argument, the prosecution presented Steve Roach's probation officer who testified that the teenager had violated the terms of his probation by possessing a shotgun. However, the police had allowed him to keep the gun when the teenager had taken it in to the Greene County Sheriff's Office days before the shooting because he had wanted to scotch rumours in the community that it was a stolen weapon. The day before the shooting, Steve Roach and two friends had used the gun in a neighbour's back yard for target practice. It seems that guns were such a natural part of life in Greene County that no adult saw Steve Roach's possession of one as any more than a technical violation of probation. His mother told the sentencing phase of the trial that she had not realised that possessing a gun violated the terms of her son's probation because the probation papers did not explicitly state this fact.¹⁹

After hearing the evidence presented by the state and the defence, the jurors retired to decide if Steve Roach should live or die. One of the jurors asked the Court to clarify if Steve Roach would be eligible for parole if they chose life imprisonment instead of death. The Court refused to answer the question, telling the jury that it was not to concern itself "with what may happen afterwards". The jurors were therefore denied the knowledge that if they voted for life imprisonment, Steve Roach would be held for 25 years before he even became eligible for parole. It is therefore possible that the jurors based their final decision -- that the teenager should be killed -- in part out of fear that he would be released within a short period of time if they allowed him to live. In fact he would not have had any chance of release before he was a 44-year-old man, in 2020.

Although Steve Roach's appeals against his sentence have been unsuccessful, his case has caused some concern within the higher courts. In 1998, a District Court judge characterized the case against Steve Roach's death sentence as "persuasive", indicated that "this court might not have reached the same conclusion" as the jury, and described the death sentence against Steve Roach as "disturbing".²⁰ However, neither he nor any other judge has seen fit to grant a judicial remedy. In the absence of a court-issued stay, it will fall upon Governor Gilmore to decide whether this 23-year-old is executed, in violation of international law and standards of decency.

¹⁹ Denying an appeal that the prosecution had failed to present enough evidence to prove "future dangerousness", the Virginia Supreme Court seems to have viewed the parole violation involving the shotgun as a major predictor of future dangerousness: "Violent behavior arose from this probation violation when Roach used the shotgun to kill Mrs Hughes. Therefore both the fact of the violation and its particular nature were relevant evidence in the jury's determination of "future dangerousness". *Steve Roach v Commonwealth of Virginia*, 1996

²⁰ As cited in petitioner's appeal brief to the US Court of Appeals for the Fourth Circuit.

Glen Charles McGinnis - scheduled for execution on 25 January 2000 - Texas

“Can you seriously expect to rehabilitate someone who was never ‘habilitated’ to start with?” District Attorney, arguing for a death sentence at trial of Glen McGinnis, 1992²¹

Glen McGinnis, a 26-year-old African American, was born in Houston, Texas, on 11 January 1973. He is scheduled to die on 25 January 2000 in Huntsville, where some 200 prisoners have been executed since Texas resumed judicial killing in 1982.

Glen McGinnis had little contact with his natural father, who lived separately. His mother worked as a prostitute out of the one-bedroom apartment that she shared with her son. She was addicted to crack cocaine -- he remembers her drug abuse from when he was about eight or nine years old -- and she spent several periods in jail on drug possession charges. The young boy would often be left alone to fend for himself. He suffered abuse, including beating with an electric cord, at the hands of his stepfather, who lived in the apartment for about two years. The state Child Protective Services (CPS) intervened on three occasions, once after the boy was raped by his stepfather when he was about nine or 10 years old, a second time when he was beaten on the head with a baseball bat, and thirdly after his mother and stepfather burned his stomach with hot sausage grease. Each time the CPS returned him to his mother’s home after he had been treated for his injuries, and each time he ran away, only to be caught shoplifting and returned home again by the authorities. He ran away from home for good when he was 11, and his formal schooling ended around this time. He alternated between the streets of Houston and state juvenile facilities, where he was sent when he was caught stealing cars. During his time on the streets, he has said that he lived in cars and empty apartments, and sometimes with adult friends. He continued to shoplift clothing and food.

²¹ Psychologist backs rehabilitation. *The Courier* (Conroe), 30 July 1992

At the age of 17 he stole a car in an incident in which the vehicle ran over the owner's foot as the teenager drove away. Now considered an adult under state law, he spent three months in Montgomery County Jail for the offence. He was released on probation and went to stay with his aunt who lived in Conroe, a small town in Montgomery County about 20 miles north of Houston. A few days later, on 1 August 1990, the 17-year-old decided to rob Wilkins Cleaners and Laundry in Conroe, apparently on the encouragement of a neighbour.

He twice entered the laundry, but hesitated and left. He says that he then fetched his aunt's gun to "scare" the attendant, and brought some clothes with him in order to pretend to be engaged in legitimate business at the laundry. A few minutes later Leta Ann Wilkerson, the 30-year-old white attendant, was shot dead. Glen McGinnis left the premises, leaving a bag of clothes marked "McGinnis" behind. A little after 7am on the following morning, he was arrested at his aunt's house and charged with capital murder.

For the next two years he was held in Montgomery County Jail before coming to trial in July 1992. The trial lawyer told Amnesty International in November 1999 that he had "tried and tried and tried" to obtain a plea bargain from the District Attorney, whereby Glen McGinnis would plead guilty to two crimes (robbery and murder) and receive consecutive life prison sentences. The lawyer said that he had achieved this before, but in this case the District Attorney appeared set on obtaining a death sentence.

The pool from which jurors were to be selected for the trial initially consisted of 102 individuals. Three of them were African American, the rest were white. Although this was approximately representative of the Montgomery County population at the

time²², what happened next ensured that none of the three blacks would appear on the jury.

²² According to the 1990 census, the population of Montgomery County was 203,674, of whom 7,763 (3.8 per cent) were African American. Across Texas as a whole, approximately 75 per cent of the population are white and 12 per cent African American.

Under Texas law, prior to actual jury selection by the defence and prosecution, the judge considers reasons from any of the potential jurors as to why they should be excused from jury duty. All three black jurors in the McGinnis jury pool asked to be excused, two for medical reasons and one because she was going on holiday. Over the defence lawyer's objections, the judge excused all three after little or no consideration of their excuses. The judge excused 19 of the 33 white jurors who asked to pull out of jury duty.²³ His action meant that Glen McGinnis was given no opportunity to have African Americans serving on his jury, as his defence lawyer was faced by a pool of 80 whites from which he and the prosecutor would select 12 jurors.

Amnesty International has long voiced its concern that death sentences in the USA are handed out disproportionately against the poor and members of ethnic minority groups from an overwhelmingly white judicial and law enforcement system. Many blacks have been sentenced by all-white juries after blacks have been removed during jury selection. Studies have consistently shown that the colour of a defendant's skin, or that of the victim, appears to be a factor in death sentencing.²⁴ Whilst it is almost impossible to prove actual racial discrimination in any one individual case -- the standard set by the US Supreme Court for a capital defendant to win an appeal against their sentence on racial grounds -- the history of racism in the application of the death penalty alone places an obligation on the authorities to ensure that all steps are taken to ensure that the process is free, and seen to be free, from any hint of racial prejudice. By any measure, the Montgomery authorities failed to meet this obligation in the jury selection for Glen McGinnis' trial.²⁵

²³ The dismissal of one of the white jurors served as a reminder of an earlier Montgomery County case. This potential juror at the McGinnis trial asked to be excused because his father, as a juror, had been responsible for the hung jury in an earlier death penalty trial - that of Clarence Bradley. The potential McGinnis juror stated that this had caused a lot of problems in his home, and that he did not want further such problems by sitting as a juror on the McGinnis case. The juror was dismissed without proper consideration of the merits of this excuse and over the objections of the defence lawyer. After a hung jury at his first trial, Clarence Brandley, black, was sentenced to death by an all-white jury at a second trial for the murder of a white 16-year-old girl in 1980. His conviction appears to have been motivated solely by the colour of his skin. Brandley was released in 1990 after evidence of his innocence came to light. A judge wrote that "no case has presented a more shocking scenario of the effects of racial prejudice". (see *Fatal Flaws: Innocence and the Death Penalty in the USA*, AMR 51/69/98, November 1998, page 13-14).

²⁴ See *Killing with Prejudice: Race and the Death Penalty in the USA* (AMR 51/52/99, May 1999). In a telephone call with Amnesty International on 23 November 1999, the lawyer who represented Glen McGinnis at trial speculated that if the case had involved a white teenager accused of killing a black person, a prison sentence would have been the outcome. The lawyer said that he still considers the death sentence against Glen McGinnis to be the worst courtroom loss of his career.

²⁵ It appears that the underrepresentation of blacks in the jury pool in this case was not a one-off as far as Montgomery County trials have been concerned. In nine death penalty trials in the county between 1985 and 1995, the only such trials for which the relevant statistics are available, African Americans were underrepresented by 40 per cent in the pools of jurors presented to attorneys for the

selection process. From a total of 781 potential jurors in the trials of Jesse Jacobs, John Weathered (2 trials), Daniel Corwin, Gerald Casey, Dennis Dowthitt, Frank Williams, James Colburn and Glen McGinnis, only 18 (2.3 per cent) were African American. As cited in petitioner's brief for Appeal of Denial of Petition for Writ of Habeas Corpus, 1998 (for Glen McGinnis).

The jury convicted Glen McGinnis of capital murder and the proceedings moved into a sentencing phase. In a Texas capital sentencing, jurors are required to decide whether the defendant had acted deliberately in killing the victim and whether he or she represented a continuing threat to society. If their answer to both questions is unanimously “yes”, then they are asked to consider if there are any mitigating factors which should result in leniency. If the answer to this is “no”, the defendant is sentenced to death.

The District Attorney (DA) argued vigorously for a death sentence, depicting Glen McGinnis as an habitual criminal who would represent a continuing threat to society if allowed to live. The local press reported the DA as stating: “this guy’s been a criminal since he was 13 years old... It’s been one crime after another, with capital murder just kind of being the inevitable result”. The judge even allowed the prosecutor to introduce evidence of a crime of which Glen McGinnis had never been identified as the perpetrator.

In Houston in 1988 a woman had her van stolen at gunpoint by a black male. Over a week later, 16-year-old Glen McGinnis was found in possession of the van. The woman had not been able to identify the teenager as the gunman, and had described an individual of different appearance. At Glen McGinnis’ trial, over the objections of the defence, the woman’s testimony of the incident was presented to the jury, thereby linking the defendant to a crime (armed robbery, as opposed to possession of a stolen vehicle) of which he had never been convicted. It is unknown what weight the jury attached to this evidence in weighing up the teenager’s “future dangerousness”.

For its part, the defence presented evidence of the defendant’s childhood of abuse and neglect, as well as his apparent capacity to flourish in a structured environment. Four employees at the juvenile detention facility where he had been held in 1989 and 1990 testified that he had a good disciplinary record in the institution, and that he was polite and respectful to adult staff members. They told the jury that he was not violent or aggressive, even in the face of repeated taunting and aggression from other juveniles in the facility aimed at his open homosexuality. They also testified that they believed that it was not in Glen McGinnis’ character to deliberately enter a store with the intent to kill someone. One of the staff members told the jury that she had considered adopting Glen McGinnis after working with him during his time in detention.

The defence also presented an expert witness, a former head of the state prison system’s psychology program, who argued that Glen McGinnis was a product of his environment, and an impulsive teenager who had acted without deliberation when he shot Leta Wilkerson. Based on interviews with the teenager, psychological tests, and a review of the state’s records, he argued that Glen McGinnis was not likely to be a continuing threat to society, especially when held in the structured environment of a prison, and that he had the capacity for remorse. The expert sought to support his opinion with testimony from an interview he had conducted with Glen McGinnis, in

which the teenager had told him that he had become “panicked and hysterical” when Leta Wilkerson told him that she did not have the key to the cash register and that he had only fired the gun in her direction “to prove to her that it was real” and “to scare her”. The judge refused to allow the jury to hear this evidence on the grounds that it was hearsay, and therefore unreliable, despite the fact that an experienced professional psychologist had assessed it as being valid supporting testimony. The jurors were unable to consider this testimony in their deliberations at which they decided that the teenager should be sentenced to death.

Whatever led to the shooting inside Wilkins Laundry on 1 August 1990, whether the teenager’s panic and confusion as Glen McGinnis claims, or as the result of calculated deliberation as the prosecution asserted, the end result was that Leta Ann Wilkerson lay dead, shot four times. She left a husband and two young daughters, more victims of gun violence. Amnesty International does not seek to excuse the crime or its tragic consequences. It seeks only that the state not compound the violence by carrying out another killing.

President George Bush ratified the International Covenant on Civil and Political Rights (ICCPR) in June 1992, with a proviso worded by the US Senate that the country’s prosecutors and courts could ignore the treaty’s ban on the use of the death penalty against child offenders. One month later, just such a defendant -- Glen McGinnis -- was sentenced to death, possibly the first such sentence passed after US ratification of the ICCPR. The Governor of Texas, George W. Bush Jr, son of the former president and himself a would-be US President, will have the last word in whether Glen McGinnis is executed in violation of international law.

Time for action

“Crimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults. Moreover, youth crime as such is not exclusively the offender’s fault; offenses by the young also represent a failure of family, school, and the social system, which share responsibility for the development of America’s youth”. Presidential Commission, reporting on US youth crime, 1978.

Anyone asked to list characteristics they associate with childhood would likely include at least one of the following: immaturity, impulsiveness, lack of self-control, poor judgement, an underdeveloped sense of responsibility, and a vulnerability to the domination or example of elders. Common agreement about such attributes -- at least some of which were apparent in the crimes for which Glen McGinnis, Steve Roach and

Chris Thomas are set to die -- lies behind the global ban on the use of the death penalty for the crimes of children. For such traits render the would-be goals of deterrence or retribution unachievable in such cases, and lead to the inescapable conclusion that executing child offenders is a shameful exercise in state-sanctioned vengeance.

The consensus against putting child offenders to death for their crimes also reflects a universal recognition of something else associated with children -- namely their capacity for growth and change. The life of a child, it is agreed, should never be written off, no matter what he or she has done. Rather, the guiding principle for officialdom must be to maximize the child offender's potential for eventual successful reintegration into society. Execution is the ultimate denial of this principle.

Such use of the death penalty also rejects any notion that wider adult society should accept even minimal responsibility in the crime of a child. The profile of the typical condemned teenager is not of a youngster from a stable, supportive background, but rather of a mentally impaired or emotionally disturbed adolescent emerging from a childhood of abuse, deprivation and poverty. A glimpse at the backgrounds of the child offenders executed in the USA since 1990 (see appendix) suggests that society had failed them well before it decided to kill them. And as US society agonizes over recent school shootings by children, it may wish to reflect upon the ease with which three children obtained guns to shoot Leta Wilkerson, Mary Hughes and Kathy and James Wiseman. It is an element of these crimes, and those for which other child offenders have already been executed in the USA, that is difficult to ignore.

All executions carry the message that killing is an appropriate response to killing, which can only undermine efforts to teach children, or adults, the value of life. The execution of child offenders sends the additional message that it is acceptable for countries to flout international law regardless of what harm that does to the system of international human rights protection as a whole. It is time for other governments -- partners in this global system of human rights protection -- to speak out loud and clear for an end to US double standards. It is time for all citizens concerned for human rights to demand that the USA stop this injustice and abide by the rule of international law as it moves into the 21st century.

Appendix: Child offenders executed in the USA since 1990²⁶

“I don’t think it’s dawned on you yet that you are totally responsible for your conduct. [You are] a street terrorist... hellbent on destroying America, piece by piece and neighbourhood by neighbourhood.” Texas District Judge, sentencing Michael Lopez Jr to death on 25 May 1999, for shooting a police officer at age 17.²⁷

All the condemned prisoners listed below were 17 at the time of the murders of which they were convicted, except Sean Sellers who was 16.

Dalton Prejean [black, Louisiana]. Abandoned by mother at the age of two weeks. From the age of 13 was diagnosed as suffering from various mental illnesses including schizophrenia. At age 14 he was committed to an institution for killing a taxi driver. IQ measured at 71. Medical opinion recommended long-term hospitalization under strict supervision. He was nevertheless released after three years, reportedly because of lack of funds. Sentenced to death by an all-white jury for the murder of a police officer. Executed on 18 May 1990.

Johnny Garrett [white, Texas]. Sentenced to death for the murder of a 76-year-old nun. History of mental illness and severe sexual and physical childhood abuse was not revealed at the trial. Post-conviction, medical experts reported him to be chronically psychotic and brain-damaged as a result of childhood head injuries. Executed on 11 February 1992.

Curtis Harris [black, Texas]. One of nine children brought up in extreme poverty. Regularly beaten by an alcoholic father. His low IQ (77) and organic brain damage resulting from childhood beatings, were not raised at his trial. Sentenced to death by an all-white jury for the murder of a white man. Executed on 1 July 1993.

Frederick Lashley [black, Missouri]. Represented by a lawyer who had never handled a capital case. Sentenced to death by an all-white jury in 1982 for the murder of his cousin in 1981. He was under the influence of drugs at the time of the killing. He had been abandoned at a young age by his mother and had been brought up by relatives. He began drinking alcohol heavily at the age of 10 and at the time of the crime was homeless. Executed on 28 July 1993.

Christopher Burger [white, Georgia]. Represented by an inexperienced lawyer who presented no mitigating evidence at the sentencing. His jury was not told of his low IQ, that he was mentally ill and brain damaged from physical abuse received as a child, or that he

²⁶ Between 1977, when the USA resumed executions, and 1990, three US inmates were executed for crimes committed at 17 years old: **Charles Rumbaugh** [white, Texas], executed in 1985. **J. Terry Roach** [white, South Carolina], executed in 1986. **Jay Pinkerton** [white, Texas], executed in 1986.

²⁷ Teen gets death in slaying of lawman. *Houston Chronicle*, 25 May 1999.

suffered from a highly disturbed, unstable upbringing and had attempted suicide at the age of 15. Executed on 7 December 1993

Ruben Cantu [Latino, Texas]. Represented by an inexperienced lawyer. Cantu had a troubled family upbringing and was of limited intellectual capacity. Executed on 24 August 1993.

Joseph John Cannon [white, Texas]. Sentenced to death for the shooting of Ann Walsh in 1977. 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 7. Turned to glue sniffing and solvent abuse. At age 10 was diagnosed as suffering from organic brain damage. Diagnosed with severe depression and attempted suicide at age 15. Diagnosed as schizophrenic and borderline mentally retarded. From the age of 7 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.

Robert Anthony Carter [black, Texas]. One of six children in very poor family. The mother and stepfather would whip and beat the children with wooden switches, belts and electric cords. Physically abused throughout childhood. Suffered serious, untreated, childhood head injuries. Shortly before the murder of which he was convicted, Robert Carter was shot in the head by his brother, the bullet lodging near his temple. He afterwards suffered seizures and fainting spells. Jurors, who were not invited to consider in mitigation his age, borderline mental retardation, brain damage or brutal childhood abuse, took 10 minutes to decide that he should die for the shooting of Sylvia Reyes in 1981. Executed on 18 May 1998.

Dwayne Allen Wright [black, Virginia]. Sentenced to death for the shooting of Saba Tekle in 1989. 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 23-year-old half-brother, to whom he was very close, was murdered. Developed serious emotional problems, and did poorly at school. Between the ages of 12 and 17, treated for mental illness. Mental capacity evaluated as borderline retarded, verbal ability as retarded; signs of organic brain damage. Executed 14 October 1998.

Sean Sellers [white, 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, evidence of which was recognized by federal court, but never heard in state court. Executed 4 February 1999.