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UNITED STATES OF AMERICA

Dead Wrong

The case of Nanon Williams, child offender facing execution on flawed evidence

"*Our founders dedicated this country to the cause of human dignity, the rights of every person, and the possibilities of every life*."

President Bush, State of the Union address, 28 January 2003

1. Human rights begin at home

"*Because the promotion of human rights is an important national interest, the United States seeks to hold governments accountable to their obligations under universal human rights norms and international human rights instruments*". US State Department[1]

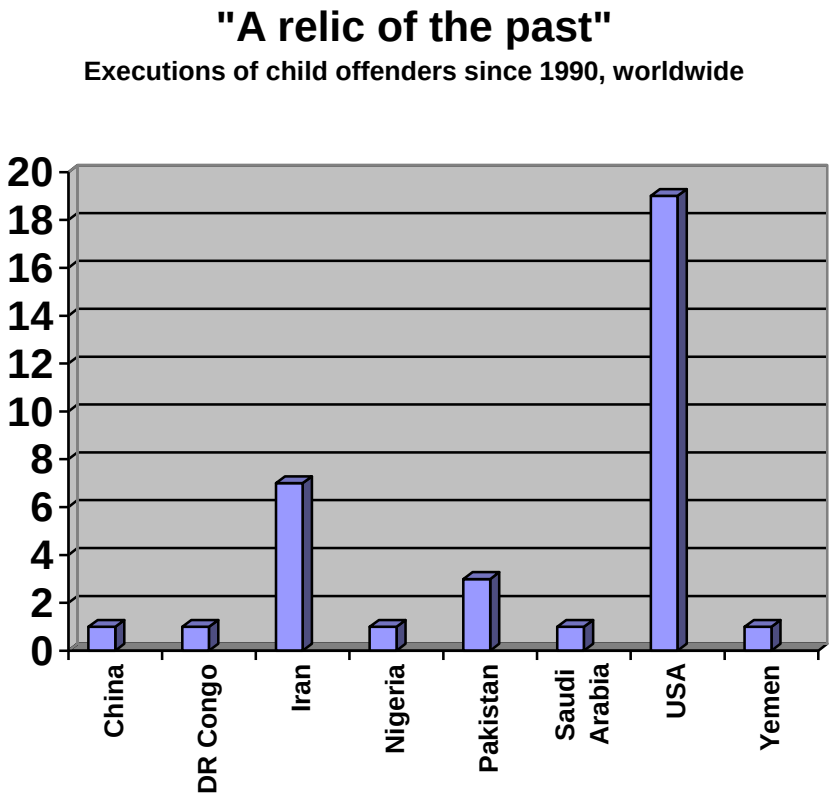
It is a practice widely condemned. Four current US Supreme Court Justices have called it "shameful" and a "relic of the past"; a recent meeting of more than 20 Nobel Peace Laureates described it as "unconscionable"; the United Nations Human Rights Committee "deplores" it; and the Secretary General of the 45-member state Council of Europe has said that it must be "vehemently criticized". China has legislated against it. So too have Yemen and Pakistan. Iran is considering such legislation. The Soviet Union did not practice it. The United Kingdom stopped doing so in 1933. Yet, today Nanon Williams and dozens of other prisoners await execution in the United States of America for crimes committed when they were still children.

There are 192 state parties to the Convention on the Rights of the Child, a treaty banning the imposition of the death penalty against child offenders, those who were under 18 at the time of the crime. The United States is not one of them, joining only Somalia in so far failing to ratify this treaty. The USA has ratified the International Covenant on Civil and Political Rights, which contains the same prohibition, but lodged a reservation purporting to exempt itself from the ban. The US reservation has been widely condemned as invalid, including by the body set up by the treaty to oversee its implementation. In October 2002, the Inter-American Commission on Human Rights concluded that the ban on the use of the death penalty against child offenders had become a *jus cogens* norm of international law, from which there can be no exemption: "The acceptance of this norm crosses political and ideological boundaries", wrote the Inter-American Commission, "[T]his proscription binds the community of States, including the United States".[2]

[1] See US State Department website, http://www.state.gov/g/drl/hr/

[2] Report Nº 62/02, Merits, Case 12.285 Michael Domingues, United States, 22 October 2002.

Nanon Williams was sentenced to death in 1995 for a murder committed in 1992 when he was 17. He is one of more than 70 people who are threatened with execution in the United States for crimes committed when they were younger than 18 years old. It is no idle threat. The USA accounts for over 70 per cent of such executions known since 1998 – including four of only five reported in the world in the past two years. It is an aspect of the death penalty which has become an almost exclusively US practice.

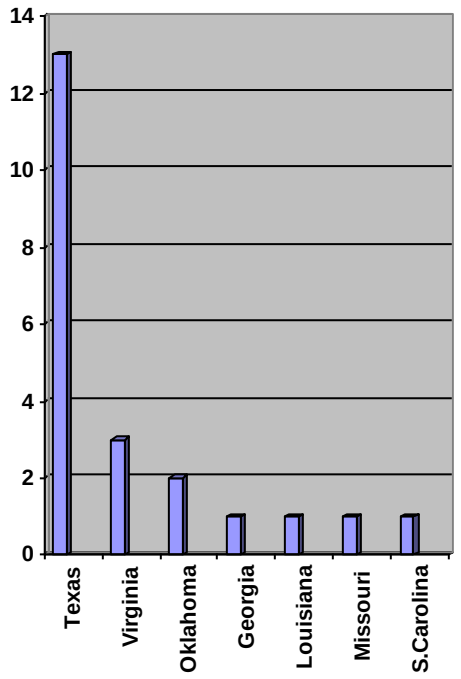


Seven countries other than the USA are reported to have carried out executions of child offenders since 1990. The USA has carried out 19 times as many such executions as five of these countries (China, Democratic Republic of Congo, Nigeria, Saudi Arabia and Yemen, one execution each), six times more than Pakistan (3), and nearly three times more than the next worst offender, Iran (7). At the time of writing, Iran was considering legislation to abolish the death penalty for child offenders. Yemen, China and Pakistan have abolished this use of capital punishment – the recent executions recorded in the latter two countries indicate problems in enforcing nationwide compliance with the law. The Democratic Republic of Congo has abolished the special military courts which led to the execution of a child offender in 2000. "If we act wisely", the US State Department has asserted, "future historians looking back at this millennium will identify the growth and consolidation of democracy and human

rights as both our greatest achievement and our most important legacy."[3] On the question of the death penalty and child offenders, the USA is today situated on the wrong side of history.

Texas: perpetrator-in-chief

Executions of child offenders in the USA since 1977



Nanon Williams himself is on death row in Texas, which accounts for a third of the country's condemned child offenders, and 13 of the 22 executions of child offenders in the USA since 1977. Six of the last seven such executions were carried out by Texas executioners, and three more are scheduled there for the first half of 2004.[4] If the USA is the world's worst offender on this fundamental human rights issue, Texas is clearly its perpetrator-in-chief.

The affront to international standards goes deeper in Nanon Williams's case. There are serious doubts about his guilt in the crime for which he was sentenced to die. The United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty (which also prohibit the execution of child offenders) hold that the death penalty may only be imposed "when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts".

There is an alternative explanation in this case, an alternative to which the jury was unable to give serious consideration due to a breakdown in the adversarial system. False ballistics evidence presented by the state – a possible sign of systemic problems at the Houston Police Department's crime laboratory outlined in this report – went unchallenged by an unprepared defence lawyer. Two of the original trial jurors have suggested that the outcome of the case would have been different if the jury had been provided with the evidence as it is known now. The UN Safeguards require that capital defendants receive adequate assistance "at all stages of the proceedings", a standard not met in this case. After hearing the post-conviction evidence, a state judge found that it had been the state's prime witness, not Nanon Williams, who had first shot the victim. The judge decided that Nanon Williams should receive a new trial because he had been

[3] Bureau of Democracy, Human Rights and Labor. http://www.state.gov/g/drl/

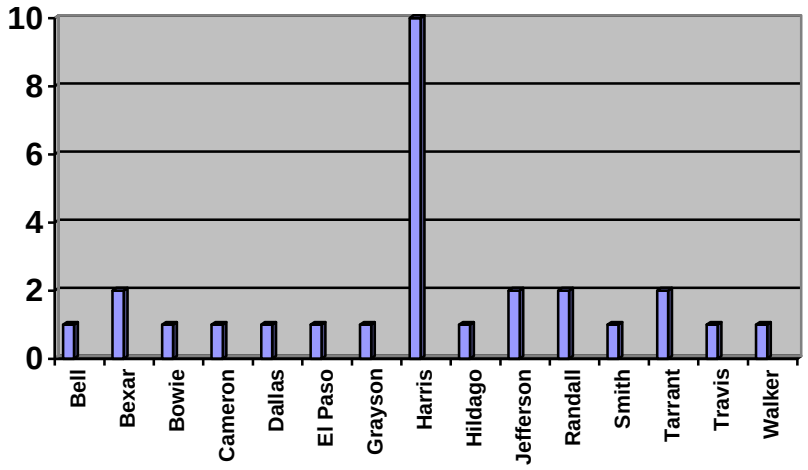
[4] At the time of writing, Edward Capetillo, Efrain Perez, and Raul Villarreal were scheduled to be executed in Texas on 30 March, 23 June, and 24 June respectively. All were convicted of crimes committed when they were 17 years old.

denied his right to effective assistance of counsel. In 2002, however, the Texas Court of Criminal Appeals rejected her recommendation with minimal explanation.

In 1998, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions emphasised that the finality of the death penalty demands that all possible safeguards be strictly respected at every step, and stated that "all mitigating factors must be taken into account". A mental health expert has said that Nanon Williams suffered from post-traumatic stress disorder as a result of his violent upbringing. The jury was presented with no such expert evidence, and received a limited account of his abusive past and its impact on him. At the same time, the prosecutor made arguments for execution that were not only potentially inflammatory, but also flouted a central principle underlying the international ban on the execution of child offenders, namely a young person's potential for rehabilitation and change.

Prosecutors in Harris County, where Nanon Williams was tried, have made a habit of obtaining death sentences against people for crimes committed when they were under 18 years old. More than a third of the child offenders on death row in Texas, and about one in seven of those currently condemned nationwide, were prosecuted in Harris County. No whole *state* in the USA, apart from Alabama (and the rest of Texas), has more child offenders on death row than this single Texas jurisdiction. At the time of writing, Harris County had set three execution dates for child offenders in the first half of 2004 (see footnote 4).

Child offenders on death row in Texas, by prosecuting county



Whether Nanon Williams is innocent or guilty of the crime for which he was sent to death row, or whether he "deserves" to die under US law, Amnesty International opposes his execution in any event, as it does all executions. The death penalty not only runs the risk of irrevocable error, it is costly – to the public purse, as well as in social and psychological terms; it has no special deterrent effect; it tends to be applied discriminatorily on grounds of race and

class; it prolongs the suffering of the murder victim's family, and extends that suffering to the loved ones of the condemned prisoner. It is a symptom of a culture of violence, not a solution to it. It is an affront to human dignity. It should be abolished.

The fact that the USA is willing to use the death penalty against children when a majority of countries have stopped executing anyone directly contradicts US claims to be a progressive force for human rights. Indeed, on the issue of the death penalty and child offenders, the United States could be said to be the least progressive country in the world.

2. The conviction

"*Did that defendant kill Adonius Collier? You know that he did.*" Prosecutor, closing argument at the trial of Nanon Williams, 1995.

Nineteen-year-old Adonius Collier was shot dead in a wooded area of Hermann Park in Houston, Texas, on the night of 13/14 May 1992. Three years later, on 26 July 1995, a jury convicted Nanon Williams of his murder. The state argued that he had shot Collier, first with a .25mm calibre handgun, and then, from close range, with a shotgun to the head. Nanon Williams has consistently maintained that he did not shoot Adonius Collier.

Seven young people drove to Hermann Park on the night in question for the purpose of a drug deal. The trial record reflects that Nanon Williams went with Vaal Guevara, Patrick Smith and Elaine Winn to buy crack cocaine from Adonius Collier and Emmade Rasul, whose girlfriend Stephanie Anderson was also at the scene. Apart from Stephanie Anderson, who was 14 at the time, Nanon Williams was the youngest of these seven African Americans.

According to the state's theory at trial, Nanon Williams, Vaal Guevara, Emmade Rasul and Adonius Collier got out of their cars and went into the wooded area, while Patrick Smith, Elaine Winn, and Stephanie Anderson remained in the two parked vehicles. Emmade Rasul and Adonius Collier were unarmed. At some point shots were fired. Two hit 19-year-old Emmade Rasul, one passing through his face and out of his neck, and the other lodging in his foot as he fled the scene. He survived. Adonius Collier was killed – shot twice in the head, first from a small calibre pistol and then by a shotgun.

The only physical evidence collected at the scene was a bag of cocaine found next to Collier's body; one live, unfired .25mm calibre bullet; a baseball cap, and a pair of flip flops (sandals) shed by Emmade Rasul as he fled the shooting. The police recovered a single gun involved in the crime – Vaal Guevara's .22 Derringer Magnum, found at his apartment. The .25 handgun and the shotgun were never located.

Arrest warrants were issued for Vaal Guevara and Nanon Williams. After securing a lawyer, 21-year-old Vaal Guevara turned himself into the police. He admitted that the Derringer was his, that he used it in drug transactions, and that he had taken it to Hermann Park that night. In a subsequent audio-taped statement to the police, Vaal Guevara said that he had fired his .22 Derringer at Adonius Collier.

Nanon Williams was arrested in August 1992 in his home state of California, and extradited to Texas. In a police line-up soon after Williams's extradition, Emmade Rasul identified Nanon Williams as the person who had shot him in the face.[5]

The defence theory at the trial was that Vaal Guevara had fired the first shot that struck Adonius Collier, that this shot had been fatal, and that whoever fired the shotgun had shot a corpse and was therefore not guilty of murder. The defence presented no expert testimony to support this or to refute the state's theory that Nanon Williams had fired both shots. This allowed the Harris County prosecutor, in his closing argument urging the jury to convict Nanon Williams of capital murder, variously to characterize the defence as "*implausible*", "*ridiculous*", "*absolutely ludicrous*", "*about the stupidest thing you ever heard*", and so "*absurd*" that to present the arguments against it was "*almost to insult your intelligence*". He told the jurors that the defence lawyer was allotted 45 minutes to give her closing arguments, but that even she spoke "with you for 45 years, I don't think anyone ever would, you would ever believe any of that for one second".

The jury sided with the state and voted to convict. If the jurors had heard the evidence as it is known now, would it have viewed the defence position as implausible?

2.1 Accomplice testimony: Vaal Guevara and Elaine Winn

"*Keep a couple of things in mind if you didn't like some of the witnesses I brought you. I didn't write this script and I didn't cast this play. Nanon over there did. He wrote this script, he cast the characters. I didn't.*" Prosecutor, closing argument.

Vaal Guevara was initially charged with capital murder. However, he agreed to plead guilty to a reduced charge of "illegal investment" (in drugs) with a recommended 10-year prison sentence, in exchange for his testimony against Nanon Williams. Testimony provided under such circumstances is notoriously unreliable. Serious questions have been raised about the reliability of Vaal Guevara's trial testimony, which formed the primary evidence against Williams. Even the prosecutor has since admitted that it was "apparently not at all truthful".

Before the trial, the prosecution offered Nanon Williams a deal to plead guilty in return for a 45-year prison sentence. He refused. He recalls: "My attorney believed me to be innocent of the crime, but asked me to seriously consider taking a life sentence instead of risking a trial and being condemned to death. Needless to say, I did not take it, but did I consider it? HELL NO!!! I am no choir boy, and yes, I am guilty of many things, but not of killing anyone."[6] In a post-conviction affidavit, his trial lawyer suggested that "the impetus behind the state's offer

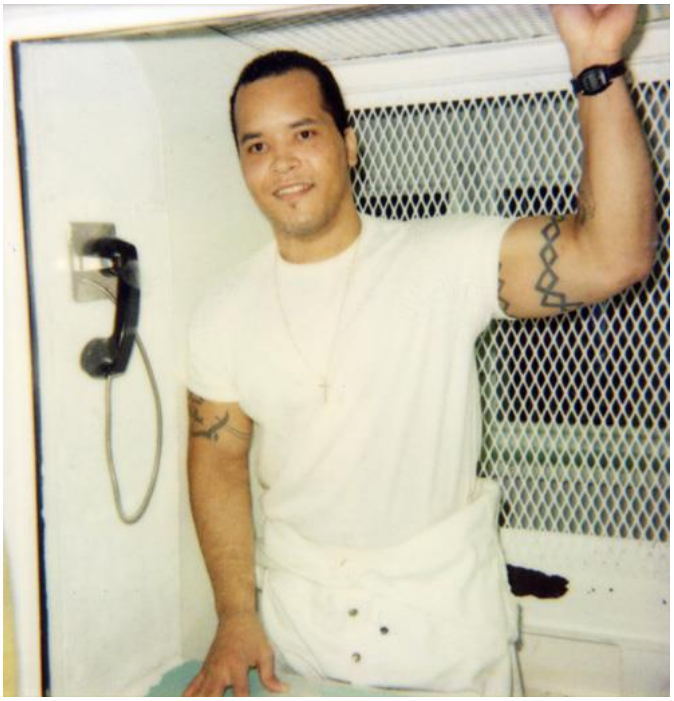
[5] In a recent reply brief, the state mistakenly writes that Rasul identified Guevara as the person who shot him in the face. In fact, Rasul was unable to identify Guevara from a police line-up. At the trial, Guevara testified that when he, Williams, Rasul and Collier had walked into the woods to conduct the drug transaction, they had split into pairs. Guevara said he had gone with Rasul, and Williams had gone with Collier. Under such circumstances, it would be expected that Rasul would have remembered Guevara rather than Williams.

[6] *Still Surviving*. Nanon McKewn Williams. Breakout Publishing, May 2003, page 149.

of a life sentence could have been that they realized that they had no physical evidence to present against my client, and they were reliant on accomplice witness testimony."[7]

Vaal Guevara's testimony identified Nanon Williams as the person who had shot Adonius Collier, the only witness to do so at the trial. Guevara testified that he himself had not shot at Collier. The state did not seek to correct him, despite the fact that Guevara had earlier told police that he had fired at the victim. On cross-examination by the defence lawyer, Guevara said that he did not remember telling the police that he had shot at Collier. The jury was removed from the courtroom, and Guevara's taped statement to the police was played back to him. After the jurors had returned, Guevara told them that he had shot at Collier with his .22 Derringer as Collier had come towards him. He said that he was absolutely positive that he had not hit anyone because "my Derringer couldn't reach that far".

The prosecution presented Elaine Winn to corroborate Vaal Guevara's testimony. Although she said that she had not seen anything of the shooting, her testimony suggested that Nanon Williams had gone to the park with a .25 handgun and a shotgun, that he had robbed the victim (see "a tenuous aggravator", below), and that he had returned to the car with the shotgun. Elaine Winn was Vaal Guevara's girlfriend and Adonius Collier's former girlfriend. She had arranged the drug deal. She was not charged with any offence.



Nanon Williams, death row 2002. © Private (AI use)

The prosecutor recognized that the jury might question Winn and Guevara's credibility. Of Elaine Winn, he suggested in his closing arguments to the jury that "100 per cent or the very least 98 or 99 per cent of what she told you rang true." He said that if the jurors, however, wanted "to give that capital murderer, that stone cold killer every benefit of the doubt, we have the corroboration. You

[7] Affidavit of Loretta Muldrow, 16 April 1998. The defence lawyer also stated that "during punishment deliberations, the victim's mother approached me and told me that she did not agree with the prosecution of Nanon on a charge of capital murder where the state was seeking the death penalty while the others went unpunished. Her position was that if the other individuals were not also prosecuted, he should not have been singled out for the death penalty. She was unaware this had happened until she arrived on the first day of the trial and she was very upset with the prosecutor."

don't need to agonize over it for hours or days… if you want to give the defendant the benefit of the doubt, though he certainly does not deserve any benefit of the doubt, there is a bunch of corroboration". However, there was no other witness who put Nanon Williams in possession of the shotgun. Emmade Rasul, who had walked into the crime scene with Williams, said that he had never seen him with the weapon.

The prosecutor also told the jurors not to worry if they were concerned about Guevara's veracity: "If you want, you can go ahead and disregard everything [Vaal Guevara] said… I still have enough. There's still more than enough evidence to convict the defendant beyond a reasonable doubt, maybe even pretty close to all doubt." He explained to the jury that the state did not have enough evidence to prove Vaal Guevara guilty of aggravated robbery or capital murder: "How could we ever prove to folks like you beyond a reasonable doubt that he's guilty of aggravated robbery or capital murder? What can we do with him? We can make him a deal. We try to get the best testimony out of him we can."

Five days after the end of Nanon Williams's trial, Vaal Guevara was convicted of "illegal investment". As agreed, he was sentenced to 10 years in prison (he had already been in jail for three years). When he came up for parole in 1999, the prosecutor from the Williams trial protested. In a letter to the Pardons and Parole Division of the Texas Department of Criminal Justice in August 1999, he wrote:

"Prior to my becoming involved in the case [Guevara] entered a plea bargain for which he was to receive 10 years in prison... in exchange for his cooperation and truthful testimony in William's [sic] trial. Evidence showed the defendant and Williams were purchasing drugs from Adonius Collier and Collier's friend at the time of the murder. [Guevara] claimed to have been involved only in the drug transaction and that he did not know that Williams planned a robbery. At trial Guevara was very evasive and apparently not at all truthful. We could not prove his story false at the time. During this year subsequent firearms testing was performed and an additional witness was located in preparation for a writ hearing on Williams [sic] case. The additional evidence indicates that [Guevara] rather than merely being a witness, likely participated in Collier's murder." [8]

The prosecution's case in 1995 was built using the "best testimony" it could extract from Vaal Guevara and the "expert" testimony of Robert Baldwin. It is now known that Adonius Collier was first hit in the head by a bullet from Vaal Guevara's handgun. Robert Baldwin's trial testimony to the contrary was simply wrong.

2.2 The "failsafe" evidence: Robert Baldwin, the state's expert

"*There's a fail-safe involved in all of this. That's why we forwarded all of the firearm's evidence to Bob Baldwin*." Prosecutor's closing argument

[8] Letter from Vic Wisner, Assistant District Attorney, Harris County, Texas to Pardons and Parole Division of the Texas Department of Criminal Justice, 4 August 1999. Despite the prosecutor's plea that Vaal Guevara "remain incarcerated for as long as possible", he was released on parole. In 2003, his parole ended.

An important part of the "more than enough" evidence to which the prosecutor referred came from Robert Baldwin, a Houston Police Department ballistics expert. Robert Baldwin told the jury that he was in no doubt that the bullet found in Adonius Collier's head was .25 caliber, thereby indicating that Nanon Williams was the shooter. Questioned by the prosecutor, Baldwin testified that it was not possible that the bullet could have come from Vaal Guevara's .22 Derringer:

> **Q:** Is there any way in the world based on your training, your expertise, and the examinations that you made, that the bullet… was shot out of that Derringer?
>
> **A:** No sir. It's the wrong caliber…

Robert Baldwin also stated that the bullet from the victim's head and the bullet found in Emmade Rasul's foot had both been fired from a .25 automatic weapon, even though they looked different.[9] In his closing arguments, urging the jury to convict Nanon Williams, the prosecutor suggested that the jury "*need not agonize*" in its decision-making because "*there's a fail-safe involved in all of this. That's why we forwarded all of the firearm's evidence to Bob Baldwin*." The prosecutor stressed the importance of Baldwin's testimony:

> "*Robert Baldwin, uncontradicted, told you both were .25 caliber bullets… He told you absolutely, positively certain that they couldn't be fired out of the Derringer*."

Robert Baldwin's testimony remained "uncontradicted", not because it was "fail-safe" evidence, but because the defence lawyer had come to the trial unprepared on the ballistics issue. In a post-conviction affidavit, she admitted: "*I did not do any testing of the firearms evidence. I did not ask the trial court for any funding for ballistics, firearms or forensic pathology experts. I reviewed the state's file, talked to my client, and talked to the co-defendant's attorney about the weapons that were involved*." It has become clear that this was not enough.

2.3 A question of caliber: The handgun evidence unravels

"*I do not know what the functional condition of that Derringer is, I have never checked it*". Robert Baldwin, trial testimony.

Robert Baldwin had never test-fired Vaal Guevara's .22 Derringer. Such testing, to allow comparison of the test bullets with those recovered from the crime, is routine. It beggars belief that the state came to trial intending to seek the defendant's execution without having tested the only weapon recovered from the crime. The incomprehensibility of this failure is compounded by the fact that Vaal Guevara had admitted to firing the gun at the crime scene, *at the victim*. As Nanon Williams's appeal to federal court argued:

> "*It is unfathomable that the only weapon recovered in a capital murder was never tested. It is doubly hard to believe in Mr Williams' case, wherein identity of the shooter was a central issue affecting both guilt and punishment. Even if the firearms inspector had absentmindedly omitted to test-fire the gun, it is hard to comprehend*

[9] The bullet that hit Emmade Rasul's face was never found.

> *how the case would have proceeded to trial without the prosecutor having alerted to the omission and corrected it. From the pre-trial perspective of the prosecutor, this would have been a case about ballistics, because ballistics was the central physical evidence in a case otherwise heavily reliant on accomplice-witness testimony*".[10]

Whatever the reason for the state's failure, it should have been revealed at the trial if the defence lawyer had been alert to it. However, as this lawyer has since admitted, she was not.

At the post-conviction evidentiary hearing in 1998, the trial lawyer acknowledged that it had been a fundamental lapse on her part to proceed to trial without having secured the proper testing of the Derringer. She stated that, as a former prosecutor, she had assumed that the testing had been carried out. She said: "*that is probably my failing, because as an ex-prosecutor that is the practice that I did. I mean, it's normal to presume, in a homicide case, that all missiles and all firearms are submitted for testing*."

The moment during Robert Baldwin's testimony that the defence lawyer now admits should have struck her like "a lightning bolt" was instead allowed to pass unchallenged. During his trial testimony, Robert Baldwin had stated that he did "not know what the functional condition of that Derringer is, I have never checked it". At the post-conviction evidentiary hearing three years later, the defence lawyer said:

> *It was the first time that I learned that it hadn't been checked, and had I thought it through, you know, at that particular moment, I would also – I would have reached the conclusion that he obviously couldn't have made a comparison… So I just felt like it should have been a lightning bolt at that point that the Derringer was not submitted.*

Nanon Williams and his mother, before 1998 post-conviction hearing
© Private (AI use)

The defence lawyer admitted that at this point she should have asked the judge to halt the proceedings so that the Derringer could be test fired. In an affidavit she stated:

> *It was negligence on my part not to attempt to stop the trial at this point, after Mr Baldwin had given evidence that the bullet could not*

[10] *Williams v Cockrell*, Petition for a writ of habeas corpus, in the US District Court for the Southern District of Texas, Houston Division. May 2003.

> *possibly have come from Vaal Guevara's Derringer, but then admitted that he never checked the gun. It was definitely not trial strategy to do nothing – I missed the importance of his testimony at the trial.*

After the trial, Nanon Williams's appeal lawyer requested independent testing of Vaal Guevara's .22 Derringer Magnum and the bullets. Before these items were released by the Harris County authorities, the prosecutors asserted that they would have Robert Baldwin test fire the Derringer. In a letter to the prosecutor's office, he wrote that the bullet taken from the murder victim's head had been fired from the bottom barrel of the .22 Derringer – in direct contradiction to what he had testified at trial. His January 1998 letter also stated that the Derringer "had not been previously submitted to the laboratory for testing or comparison to the fired evidence". Robert Baldwin also confirmed that the bullet extracted from Emmade Rasul's foot was not fired from the Derringer, but was consistent with a .25 automatic weapon.[11]

This was bolstered by further expert evidence. At post-conviction hearings held in September 1998 and December 2000,[12] forensic firearms expert Robert L. Singer, who was the laboratory director for the Tarrant County (Fort Worth) Medical Examiner's Office, testified that the bullet in Adonius Collier's head and the bullet in Emmade Rasul's foot were clearly of different calibers. He said that this "should have been noted by a competent firearms examiner at the beginning of any examination", adding that "certainly to the trained naked eye, it should be obvious without very much difficulty at all" that the two bullets were of different caliber. He testified that the bullet from the victim's head had been shot from the .22 Derringer, and the one extracted from the survivor's foot was a .25mm caliber bullet.

In an affidavit in 1998, Ronald Singer stated that Robert Baldwin's trial testimony that both bullets could have been fired from the same gun "at best demonstrates extreme carelessness on his part, and at worst calls into question his expertise." Correct identification of the bullet taken from the victim's head, Singer continued, "might have materially affected the outcome of the trial".

Would the jury's verdict at the guilt phase of the trial have been different if it had heard this evidence? One of the jurors from the trial has stated:

> "*Had I known that the other bullet found in the head of the victim came from the co-defendant Vaal Guevara's .22 Derringer, that information would have raised a reasonable doubt that Nanon Williams was guilty of capital murder. Consequently, I would have acquitted*."[13]

Another of the jurors has said,

[11] Letter from Robert D Baldwin, Criminalist III, Houston Police Department, 15 January 1998.
[12] In September 1998, Judge W.R. Voigt conducted an evidentiary hearing, but never entered his findings before his term as judge expired in 1998. In December 2000, Judge Joan Campbell held an evidentiary hearing on the same issues.
[13] Affidavit of Collete Cox, 14 April 1998.

> "*As a juror, this information, had I known about it at the trial, would have changed the trial. It would have changed the effectiveness of the defense and it would have altered the jury's deliberation. As we jurors were held to the high standard of "beyond a reasonable doubt", this evidence may have changed our verdict*."[14]

In her ruling after the evidentiary hearing of 18 December 2000, Judge Joan Campbell of the 248th District Court of Harris County wrote that: "The Court finds that Vaal Guevara shot [Adonius Collier] in the head with Guevara's .22 Magnum Davis Derringer." While she held that Nanon Williams had failed to establish his actual innocence (because of the testimony suggesting that he had fired the shotgun) she recommended that he be granted relief because he had been denied his right to effective assistance of counsel at the trial. She found that the trial lawyer had been ineffective for failing to conduct the necessary firearms and ballistics testing. She held that "the failure to hire an independent firearms examiner prejudiced the Defendant because a reasonable probability exists that but for the failure to hire, the outcome of the proceedings would have been different".

However, on 24 April 2002, the Texas Court of Criminal Appeals rejected the judge's recommendation. In an unpublished two-page order, the Court said that it did not believe that the judge's findings were supported by the evidence presented at the evidentiary hearing. It gave no further explanation for its decision.

2.4 Unreliable expertise – the HPD crime lab

"*The result remains the same though the HPD crime lab has only recently been criticized for its handling of ballistics evidence in other cases*." State reply brief in Nanon Williams' appeal[15]

In March 2003, an independent audit of the Houston Police Department (HPD) Crime Laboratory revealed serious defects in the lab's DNA analysis section, including poorly trained staff relying on outdated scientific techniques. The report found that the lab was "not designed to minimize contamination", and that "on one occasion the roof leaked such that items of evidence came in contact with the water".[16] The DNA section was shut down, and hundreds of criminal cases opened for review. In a number of cases, discrepancies between new tests and the original HPD analysis emerged. One man, Josiah Sutton, was released from prison after the DNA test used to convict him was shown to have been wrong, and a retest exonerated him.[17] Sutton was 16 years old when he was arrested.

[14] Affidavit of Dianna Kay Lindsey, 6 April 1998.
[15] *Williams v Dretke*, Respondent Dretke's answer and motion for summary judgment with brief in support. In the United States District Court for the Southern District of Texas, Houston Division, November 2003.
[16] *Auditors find problems with HPD's crime lab*. Houston Chronicle, 15 March 2003.
[17] *Crime lab scandal leaves prosecutor feeling betrayed*. Houston Chronicle, 16 March 2003. The *Chronicle* wrote: "With the retest showing that Sutton could not have been the rapist, Harris County prosecutors, known across the country as tough, once again faced the perception that they go for quick convictions and long prison sentences first, and ask questions about justice and evidence later".

On 16 October 2003, a Harris County grand jury completed its investigation in the crime lab, concluding that it had suffered "inexcusable, wholesale mismanagement" and "incompetence". The jury said that "there seemed to be a total lack of concern about profound errors committed by certain members of the lab staff."[18]

In June, Houston Police Chief C.O. Bradford, himself under attack for failing to act on the crime lab's problems, characterized the Texas criminal justice system as "trial by ambush" and the Harris County prosecutorial ethos as one which emphasized winning rather than justice. He urged an inquiry into the entire crime lab, not just its DNA section.[19] A few days earlier, he had disciplined seven of the lab's staff. One of the seven was Robert Baldwin, the criminalist who testified at Nanon Williams' trial.[20] The police chief described the move as "necessary to bring accountability".[21]

At least two other capital convictions obtained by Harris County prosecutors suggest that the HPD crime lab's problems extended beyond its DNA section. Like Nanon Williams, Johnnie Bernal and Anibal Rousseau are on death row in Texas, sent there by Harris County prosecutors. Their cases also involved ballistics evidence processed at the HPD crime lab.

2.4.1 Johnnie Bernal

Like Nanon Williams, Johnnie Bernal was sentenced to death in 1995 for a shooting murder committed when he was 17 years old. He was prosecuted by the same prosecutor. At the trial, the same HPD criminalist, Robert Baldwin, testified for the state that the .38 bullet taken from the victim's body came from a .357 revolver found at Bernal's home at the time of his arrest, several weeks after the murder. Robert Baldwin testified that he had test-fired eleven .38 bullets taken from Johnnie Bernal's room, and that none of them matched the bullet from the victim. He then test-fired two bullets of his own from the .357 revolver. When these did not match, he applied a solvent to the barrel of the gun, an inappropriate procedure. He then fired another 12 shots, and said that he obtained a match. He did not keep a record of which of the 12 bullets provided the alleged match. The head of Harris County firearms laboratory has said that common procedure is for an examiner to test fire a gun two or three times: "If I had to fire a gun 10 times and did not get conclusive results, that would be it. Game over".[22]

As in the Nanon Williams case, Johnnie Bernal's trial lawyers did not hire a ballistics expert for the trial. One of them signed a post-conviction affidavit to the effect that if the state had informed him of the "unconventional manner in which the gun had been tested", he would have "vigorously pursued" a request for an expert to "challenge and discredit" Robert

[18] *Lab probe finishes with no indictments*. Houston Chronicle, 17 October 2003.
[19] *Chief: Texas justice unfair*. Houston Chronicle, 24 June 2003.
[20] *Discipline in HPD Crime Lab Investigation*. HPD News Release, 12 June 2003.
[21] *HPD crime lab officials resign to avoid firing*. Houston Chronicle, 12 June 2003.
[22] *Cases cast doubt on ballistics work at HPD lab*. Houston Chronicle, 23 March 2003.

Baldwin's testimony. Johnnie Bernal, who did not match a witness description of the gunman, maintains that he did not shoot the murder victim.[23]

2.4.2 Anibal Rousseau

Anibal Garcia Rousseau also maintains his innocence. He is a Cuban national who was sentenced to death in Harris County in 1989 for the murder in 1988 of David Delitta. A dozen years later, his appeal lawyers discovered that before Rousseau's trial, the HPD lab had matched the bullet that killed Delitta with one that killed Leo Williams, who was shot to death four months after Rousseau's arrest. Two weeks after Williams was shot, Juan Guerrero was arrested, and police found a .38 revolver on him. The gun was sent for testing at the HPD crime lab. A month after Rousseau was sentenced to death, firearms examiners at HPD reported that the bullets recovered from Leo Williams's body, which matched the fatal bullet in the Delitta case, were fired from Guerrero's gun. Leo Guerrero was imprisoned for the Leo Williams murder. He was paroled in January 2002 and deported to the Dominican Republic. Anibal Rousseau remains on death row.

Rousseau's appeal lawyer has said: "When we heard about the concerns about the crime lab, this case came to mind because it demonstrates a failure to communicate exculpatory evidence. It underscores the fact that the problems at the crime lab may go beyond testing to communication with the district attorney's office". In February 2002, one of the prosecutors from Annibal Rousseau's trial called for him to be granted a new trial, saying that the ballistics reports from the Guerrero case should have been turned over to Rousseau's trial lawyers.[24] She has said that the Rousseau case "bothers me tremendously.. I'm terribly afraid the wrong guy is in jail."[25]

2.5 Not watertight: The shotgun evidence

"*I think we can all agree that of the five or so billion people on this earth only two people could have done the killing, only two people could have done the capital murder, Vaal Guevara and that defendant over there… [I]n this case it just ain't Vaal*". Prosecutor, closing argument

At Nanon Williams' trial, the prosecutor suggested that the sequence of events was as follows: that Williams shot Emmade Rasul in the face, shot Adonius Collier in the head, shot again at Rasul as he was running away, and then shot Collier in the head from close range with the shotgun. As is now known, this was not true – Collier was shot by a bullet from Guevara's .22 Derringer, not from Williams' .25 caliber pistol. This is enough, in Amnesty International's opinion, to undermine the reliability of the jury's verdict. The question remains, however: who shot Collier with the shotgun, and was the victim alive at the time he was shot?

[23] *Williams v Cockrell*, Petition for a writ of habeas corpus, in the US District Court for the Southern District of Texas, Houston Division. May 2003.
[24] The information on the Anibal Rousseau case is drawn mainly from: *Fingers pointed at HPD crime lab in death row case*. Houston Chronicle, 24 April 2003.
[25] *Reasonable doubt. Death row inmate's trial may have had fatal flaw*. Houston Chronicle, 21 April 2002.

Nanon Williams has always denied carrying or firing the shotgun. The evidence against him cannot be described as watertight.

Again the state's prime witness was Vaal Guevara. He claimed that he saw Adonius Collier move and heard him mumble after he had first been shot. He claimed that Nanon Williams had said "no more witnesses" and had shot him from close range with the shotgun.

Elaine Winn testified at the trial that on the night of the crime, she had seen Nanon Williams hiding the shotgun under a large football jacket that he was wearing. However, she admitted that the weather had been too hot to wear such a heavy item of clothing. She claimed that Nanon Williams returned to the car after the shooting, carrying the shotgun, still wearing the jacket. She also testified that she had been present at Vaal Guevara's apartment about a week after the murder and that Nanon Williams had sold the shotgun. A post-conviction witness, who did not testify at the trial, has said that "after the shooting, Vaal Guevara sold the shotgun to a pawn shop called Cash America on South Main in Houston".[26]

Emmade Rasul testified that he had not seen a shotgun at all on the night in question. He identified Nanon Williams as the person who had shot him in the face. He said that he had not seen how Adonius Collier was killed, and that he had not discerned a shotgun blast, but had "just heard shots" as he fled. Emmade Rasul not only denied having seen Nanon Williams with a shotgun, but he had also told police that the 17-year-old was wearing jogging trousers and a T-shirt, rather than a heavy jacket. Under questioning by the prosecutor at trial, he said that he supposed that it was possible that Williams was wearing "the type of clothes he could have hid a shotgun under". However, on cross-examination by the defence, he confirmed what he had told the police.

Dr Tommy Brown, the state's medical examiner, had conducted the autopsy on Adonius Collier. However, he missed the bullet that was in the victim's head, and found only the shotgun pellets. An autopsy worker found the bullet and put it with the pellets. Dr Brown testified that prior to the autopsy he had X-rayed Collier's head and had not seen the bullet. The X-ray was not admitted as evidence during the trial, and after being ordered to produce it for the purpose of post-conviction proceedings, the state asserted that it could not be located.

In his closing arguments urging the jury to convict Nanon Williams, the prosecutor made light of Dr Brown's failure to notice the bullet, while at the same time relying on his conclusions:

> "*I don't understand this big fuss about the autopsy. Obviously nobody is perfect and obviously Dr Brown should have found that there was a bullet in there… What's the big deal? He should have, but what is the big deal he missed a bullet?" After all, the prosecutor reminded the jury, the evidence was forwarded to the Houston Police Department "where somebody like Baldwin* [whose testimony on the bullet has since been shown to have been wrong] *looks at it*".

[26] Affidavit of Troy Lymuel, 16 April 1998.

Dr Brown testified that, in his opinion, Collier was alive when he was shot by the shotgun. Dr Brown said that the shotgun had been fired from close range and that, by a "reasonable medical probability", it was this shotgun blast that was the cause of death.[27]

At the post-conviction evidentiary hearing in 2000, Dr Marc Krouse, a forensic pathology expert, testified that the injury to Adonius Collier could not have been caused from such a close distance. He said that, given the injuries, the shotgun would have had to have been between six and 15 feet from the victim when fired, ruling out that the gunman had been standing over the victim as Vaal Guevara had suggested at the trial.

In a 1998 affidavit, Dr Krouse disputed Dr Brown's claim on the cause of death, stating that "the shotgun wound is obviously a lethal wound, but it is not clearly or convincingly the only cause of death of Adonius Collier". Dr Krouse stated that the .22 bullet could have caused death: "Such a penetrating injury from a .22 magnum weapon, especially one that does not exit, has a high probability of fatality, that is, there is a high probability that the .22 wound caused a lethal injury." At the evidentiary hearing, Dr Krouse testified that, in his opinion, the first bullet fired at the victim could have caused his death. He said that nothing in the evidence ruled out the possibility that Collier had died from the initial bullet.

It is now established that this first bullet was fired from Vaal Guevara's .22 Derringer, and not from a .25 caliber weapon, as the jury was told. In her affidavit, Nanon Williams' trial lawyer said: "With the evidence that the first bullet to enter [Adonius Collier's] head was fired by Vaal Guevara, I could have raised a winning defense that Nanon Williams did not murder Mr Collier. Further, the motive for firing the shotgun was argued by the state at trial as a 'cover-up' measure – to destroy the evidence of the first shot. The person with the motive to hide the .22 bullet was either Vaal Guevara, who fired it, or Elaine Winn, Guevara's girlfriend, who Nanon has always told me had the shotgun in the car and is the person he believes fired the shotgun".[28]

In her decision following the evidentiary hearings, Judge Joan Campbell found that "the great importance of an independent pathologist is based on knowing that [the bullet from Collier's head] is a .22 bullet from Guevara's gun and that Guevara was the first person to shoot [Collier]. Certainly with the knowledge that [it] is a .22 bullet, the testimony of a pathologist such as Krouse is vital to defensive argument that [Williams] either was not guilty, or punishment should be different."

Based on the trial testimony of Vaal Guevara and the post-conviction testimony of Patrick Smith (see below), Judge Campbell found that Adonius Collier had been alive at the time he was shot with the shotgun. However, she also found that if the jury had known that Guevara had first shot Adonius Collier, the jurors "would have assessed the credibility of Guevara differently". She also found that the trial jury could have decided to believe the part of Dr Krouse's testimony in which he stated that Adonius Collier was dead before he was shot with

[27] In his 1998 affidavit, Dr Marc Krouse stated: "Dr Tommy Brown's use of the terminology "reasonable medical probability" that the shotgun blast was the cause of death is the standard applied to civil cases and is commonly used where the expert cannot state with certainty the conclusion asserted".
[28] Affidavit of Loretta Muldrow, 16 April 1998.

the shotgun. This was the very same defence theory which the prosecution had been able to ridicule at the trial because of the absence of expert evidence presented to support it.

2.5.1 Antonio Joseph and Troy Lymuel, new defence witnesses

Other witnesses who had not appeared at the trial were contacted by the post-conviction lawyers. One was Antonio Joseph, who lived with Vaal Guevara at the time of the crime. He told a defence investigator that he had seen a shotgun in the apartment on several occasions. He said that the shotgun belonged to Vaal Guevara, and that he knew this because he had seen Guevara return home one night, before the incident in Hermann Park, with the shotgun in one hand and a large bag of money.[29] The state has responded that "Williams could have used the shotgun regardless of who owned it and the combined and consistent testimony of Rasul, Winn, Guevara and Smith was that he did."[30] However, Emmade Rasul testified that he never saw a shotgun, Guevara and Winn's testimony might have been assessed differently by the jurors if they had known that Guevara had fired the first shot that hit Collier. Patrick Smith's post-conviction testimony displays inconsistencies with the state's trial witnesses (see below).

Troy Lymuel testified at the post-conviction hearing in December 2000 that he knew Vaal Guevara and Nanon Williams personally and that he had been in Guevara's apartment on the morning of 14 May 1992, that is, the morning after the crime. Lymuel stated in an affidavit: "While I was in the apartment, I saw a woman there who I now know to be Elaine Winn. At that time I knew her as Vaal Guevara's girlfriend. I heard her say: 'I can't believe I shot that nigger in the face.' She repeated this over and over. I also heard her say, 'What if I have to go to jail, what will happen to my baby?' Vaal Guevara and other people who were in the apartment were trying to get her to calm down. Vaal Guevara said that he was going to buy a ticket and fly to Trinidad. He said: 'If I go down, I'll make sure everyone goes down'."[31]

The state has suggested that Troy Lymuel had a motive to lie about Winn's involvement in the crime, namely to protect Nanon Williams, who is his cousin.[32] Under this reasoning, the state must also accept that Elaine Winn had a motive to protect Vaal Guevara, her boyfriend. Nevertheless it continues to rely upon Elaine Winn's testimony to corroborate Guevara's.

In her decision in 2001, recommending relief for Nanon Williams because of his trial lawyer's failures, Judge Joan Campbell said that Troy Lymuel's evidence suggesting that Elaine Winn had shot Collier with the shotgun was not credible because there was no evidence elicited at the trial that Elaine Winn had got out of the car at the scene.

[29] Declaration of Ben Gold. 2 May 2003.
[30] *Williams v Dretke*, Respondent Dretke's answer and motion for summary judgment with brief in support. In the United States District Court for the Southern District of Texas, Houston Division, November 2003.
[31] Affidavit of Troy Lymuel, 16 April 1998.
[32] *Williams v Dretke*, Respondent Dretke's answer and motion for summary judgment with brief in support. In the United States District Court for the Southern District of Texas, Houston Division, November 2003.

2.5.2 Patrick Smith, new witness for the state

At the post-conviction hearings, the state presented Patrick Smith in an attempt to bolster its weakening case. Smith had been the person who had driven Nanon Williams, Vaal Guevara and Elaine Winn to Hermann Park on the night of the crime. He had not appeared as a witness at the 1995 trial and he had had no contact with the state authorities on the case until 1998. Until then, he had been known in proceedings only as "Xavier", and the evidence elicited at trial was that he and Elaine Winn had stayed in his car during the crime.

Reminiscent of the deal struck with Vaal Guevara for his trial testimony, the state granted Patrick Smith immunity from prosecution in relation to the 1992 crime in return for his testimony against Nanon Williams at the post-conviction hearings.

Smith testified that at the time of the 1992 crime, he and Guevara were good friends, having known each other for about seven years. He said that he, Smith, never went by the name of "Xavier", but that Guevara had given this name to the police in order to protect him.

Patrick Smith's testimony supported the state's trial theory, namely that Collier had been alive after being hit by the first shot, and that Nanon Williams had been the person to shoot him in the head with a shotgun from close range. Smith testified that as he sat in the car, he saw what occurred. This contradicted what Elaine Winn had said at the trial. She had said that after the shooting began, "Xavier" moved the car closer but that they could not see what was occurring in the wooded area beyond the car park. A recent state's reply brief notes Winn's trial testimony that when the four youths walked away from the cars, they "walked toward the wooded area and out of sight of the others."[33] The police report of the crime scene noted that it was "located within a dark wooded area", and the police drawing of the crime scene shows that there were trees between the car park and where the victim's body was found.

In contrast to this, at the post-conviction hearing Patrick Smith said that after the shooting began he looked over and saw a person on the ground with Nanon Williams standing by him. Smith said that he heard the man on the ground shout that he had been shot, contradicting what Vaal Guevara had claimed at the trial, namely that Adonius Collier had mumbled after being first shot. Smith said that as he watched Guevara chase the other man, he heard a shotgun blast, and turned back to see Nanon Williams standing over a body with a shotgun in his hand. When Guevara and Williams returned to the vehicle, Smith testified that Nanon Williams had said that he had put the shotgun in the victim's mouth and pulled the trigger. Yet at the trial, Elaine Winn had said that neither Vaal Guevara nor Nanon Williams had said anything about what had happened, and that she did not know whether anyone had been shot. Patrick Smith's evidence also contradicts the trial testimony of the state's medical examiner who stated that the shotgun had been fired from a distance of two to four feet from Collier's head. At the evidentiary hearing, Dr Krouse said that there was "absolutely no way" that the shotgun was in contact with the victim's head when fired, and that it was most likely fired from a distance of six to 15 feet away.

[33] *Williams v Dretke*, Respondent Dretke's answer and motion for summary judgment with brief in support. In the United States District Court for the Southern District of Texas, Houston Division, November 2003.

Nevertheless, in her findings, Judge Joan Campbell found that Patrick Smith was a credible witness. She found that, while Vaal Guevara had fired the first bullet that struck Adonius Collier, Nanon Williams had not proved that he had not fired the shotgun.

3. The punishment

"*To sentence someone to die for a crime committed as a child, one has to believe that – in the long natural life the defendant would otherwise have before him – meaningful change and some measure of redemption are either impossible or unimportant. There are good reasons why the rest of the world has rejected executions of children*". Washington Post.[34]

Regardless of Nanon Williams' guilt or innocence in this crime – he himself admits that he was present at the drug deal – he was ineligible for the death penalty. The fact that he was under 18 at the time of the crime meant that the prosecution pursued and obtained an internationally illegal punishment against him. There are additional concerns over the penalty, however. Firstly, did the murder genuinely qualify as a capital crime under Texas law? Secondly would the jurors have voted for life rather than death if they had been presented with a true picture of the defendant's violent upbringing and its psychological impact on him to weigh in mitigation against the state's case for execution?

3.1 A tenuous aggravator

In Texas there are eight statutory "aggravators" – factors which make murder committed in the state punishable by the death penalty. One of these aggravating factors is murder during the course of an actual or attempted robbery.[35] This is what the prosecution alleged in Nanon Williams' case. If robbery could not be proven beyond a reasonable doubt, there could be no punishment of death.

Elaine Winn, who was never charged with any crime, and her boyfriend Vaal Guevara, whose capital murder charge was dropped in exchange for his testimony, were the state's key witnesses to establish the robbery theory. Vaal Guevara testified that after the shooting, Nanon Williams rifled through Adonius Collier's pockets from which he took some drugs and a pager which he placed in a baseball cap.

Elaine Winn said after the shooting that Nanon Williams had returned to the car with a baseball cap and a pager, and a bag with a couple of rocks of cocaine in it. She added that Nanon Williams had said, "I can't believe this is all we got". Elaine Winn further testified that Nanon Williams had thrown the pager out of the car window.

Several factors raise questions about the reliability of this testimony heard by the jury:

[34] *Legal but wrong*. Washington Post editorial, 19 September 2003.
[35] Texas Penal Code §19.3. (a)(2). "The person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, arson, or obstruction or retaliation".

- Police found a bag of cocaine right by the dead body. Nanon Williams had allegedly rifled through Collier's pockets. If Williams had been so intent on robbery, why had he not picked up this unhidden bag of drugs?

- A Houston Police Department report of 21 May 1992 notes that Adonius Collier's stepfather had called to say that he had found his son's pager at home. This information was not made available to the defence.

- If the jurors had known, as is now established, that the bullet that first hit Adonius Collier in the head had been fired from Vaal Guevara's gun, would they have believed his and his girlfriend's evidence of the alleged robbery?

At Nanon William's trial, the jury had been faced with a stark option as they retired for deliberation at the guilt stage. They could vote to convict Nanon Williams of capital murder, or they could vote to acquit. They had no other option, as the prosecutor repeated during his closing arguments at the guilt stage: "Is the defendant guilty of capital murder…yes or no? If he's guilty, we go on. If not, he walks… Finding him guilty of ordinary murder…is not an option".

The US Supreme Court has held that, as a matter of due process, "the jury [in a capital case] must be permitted to consider a verdict of guilt of a non-capital offense in every case in which the evidence would have supported such a verdict."[36] Given that the evidence of robbery was weak, Nanon Williams' lawyer had asked the trial judge to allow the jury to consider the offence of non-capital murder as an additional option. The judge refused. In her 1998 affidavit, Nanon Williams' lawyer recalled that: "When I talked to the jurors after the trial, at least five of them told me that they would have considered murder." She recalled that at least two of the jurors had come out of the jury room in tears.

The post-conviction judge, Judge Joan Campbell, found that if the jurors had known that Adonius Collier had first been shot by Vaal Guevara, it might have caused them to find Nanon Williams guilty of a crime of less than capital murder.

3.2 Future dangerousness: inciting moral panic

"*He's a predator… He's evil. He's just flat-out evil. What else can I say*?" Prosecutor, closing arguments.

In Texas a death sentence cannot be handed down unless the jury unanimously decides that, if allowed to live, the defendant will likely commit future acts of criminal violence that would constitute a continuing threat to society – the so-called "future dangerousness" question.

At the sentencing phase of Nanon Williams's trial, the prosecution presented evidence of his other run-ins with the law, including possession of firearms, burglary and robbery. It presented testimony from an elderly Californian man who had been the victim of an armed burglary committed by three black males in March 1992, an offence to which Nanon

[36] *Hopper v Evans*, 456 U.S. 605 (1982).

Williams had pleaded guilty.[37] The state also presented evidence that the defendant had displayed aggression during his time in jail pending trial, and had beaten another inmate at the Harris County Jail.

Two Texas professors have written that "the successful application of the label "dangerous" serves to set the defendant aside... Jurors caught up in a situation akin to a moral panic have little choice but to protect society by incapacitating these "dangerous sociopaths". Ambivalence is easily overcome, thus justifying the state's ultimate form of social control - the death penalty".[38]

Urging the jury to vote for a death sentence for Nanon Williams, the prosecutor encouraged the jurors to view the defendant as "evil" and irredeemable. Amnesty International believes that his comments threatened to bring his profession into disrepute and undermined international standards applying to prosecutors.[39] His closing arguments for execution included the following comments:

> "It is almost incredible how evil, how vicious, how cunning, what utter disregard the defendant has for life, for property. It's almost mind-boggling".
>
> "…his intelligence and cunning are the things that make him so dangerous. Imagine running into a dark alley somewhere. Imagine him in your house. Imagine coming home and finding him in your house… It is absolutely frightening to think what this defendant is capable of. Imagine being locked in a cell with him."
>
> "He's a predator… He's evil. He's just flat-out evil. What else can I say? If we are all in agreement that in certain instances the death penalty is appropriate, if not this case, if not this defendant, then when?"
>
> "…if this defendant isn't a future danger, nobody is a future danger…It almost insults your intelligence to try to argue with you that he is not a future danger".
>
> "I am asking you for one thing, folks. I am asking you for justice… Did we give the defendant a fair trial? We gave him all of his rights. But don't we, as a society, have any rights? Don't we have the right to be safe and secure? Don't other inmates have the right to be safe and secure in prison?"

The international consensus against putting child offenders to death for their crimes reflects the widespread recognition of an attribute associated with young people – namely their capacity for growth and change. The life of a child offender, it is agreed, should never be written off, no matter what he or she has done. Rather, the guiding principle for officialdom

[37] Nanon Williams had made the plea, while still a juvenile, without a lawyer or parent present.
[38] Jon Sorensen and James Marquart, *Future dangerousness and incapacitation*. In, America's experiment with capital punishment, James Acker et al (ed). Carolina Academic Press, 1998.
[39] "Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system". Guidelines on the Role of Prosecutors, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 189 (1990).

must be to maximize the child offender's potential for eventual successful reintegration into society. Execution is the ultimate denial of this principle.

Nevertheless, Nanon Williams' prosecutor told the jury that handing down a life prison sentence in such a case would be "the absolute worst decision that any responsible person could ever make." Urging the jurors to impose a death sentence on Nanon Williams, the prosecutor suggested that not to vote for death "is just kind of see no evil, hear no evil, 'I know what he's going to be like, but somehow, some way maybe he will change' when you know he won't." He suggested that the defendant's "prospects of rehabilitation… are nil. They are none. He has no desire to do anything to improve himself."

Nanon Williams is now 29 years old. He has sought to improve himself and to channel his emotions into socially acceptable ways. He has taken to writing, and has published poetry as well as a book about life on death row. He has written: "I learned that the ability to use language can create something very beautiful, that written words can take everything to a new realm… Words, unlike anything else, can tear away the veil of reality and create an illusive state that forces us to explore ourselves, our minds and hearts, and the world around us. The more information we receive from words, the more clearly we see the ways of the world that we don't understand, and that gives us a vision more intense than we care to possess. In order to share our lives here on Death Row and to become a better writer, I began to read, read, read…. The more I read, the more knowledge I gained."[40]

Nanon Williams, grade 7 (age 13)
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At the post-conviction evidentiary hearings in 1998 and 2000, a mental health expert, Dr Gary Aitcheson (see below) testified that Nanon Williams was a remarkably different person then than he had been at 17, and that he was learning "that confrontation with the system is not the best way, but spreads his message through his writing and even reaches people outside the prison with a message to help others".[41] Nanon Williams himself writes: "My words often reflect an angry young man. Indeed, as an innocent young man imprisoned for a crime I did not commit, I am often angry. My anger is sometimes the motivating factor in what I do. I have attempted not to misdirect my anger but rather to direct it toward something positive."[42]

[40] Still Surviving, page 71.
[41] *Williams v Cockerell*, Petition for a Writ of Habeas Corpus, In the United States District Court for the Southern District of Texas, Houston Division, May 2003.
[42] *Still Surviving*, p.221

The prosecutor violated international law by pursuing the death sentence against Nanon Williams. His arguments that the defendant should be viewed as beyond rehabilitation were an affront to the fundamental principles behind that legal prohibition.

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 judgment, an underdeveloped sense of responsibility, a susceptibility to peer pressure, and a vulnerability to the domination or example of elders. Common agreement about such attributes 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.

Indeed, the prosecutor in this case resorted to a barely concealed appeal to vengeance in his call upon the jury to vote for Nanon Williams to be put to death:

> "What about Donnie [Adonius] Collier's rights? The defendant insists on his. What about Donnie Collier's rights? He never got the same chance… Let's exercise our rights…"
>
> "Do you want to put a roof over his head? Do you want to feed him three times a day? Do you want to let him watch TV? He gets to watch the sun come up, come down. His mother, sister and friends can come visit him. Is that appropriate punishment…?"

The Oklahoma Court of Criminal Appeals, for one, has condemned such arguments by prosecutors. That court has agreed that for the prosecution to argue that it is unfair for the defendant to live because the victim is dead creates a "super-aggravator applicable in every death case. No amount of mitigating evidence can counter this argument, and if the jury agrees, they may not even consider mitigating evidence".[43]

With a prosecutor presenting such inflammatory arguments, it was even more important that Nanon Williams' jurors were presented with a thorough account of the defendant's life and its impact on him for the purposes of mitigation. However, they were not provided with a full picture on which to base their life-or-death decision.

3.3 Mitigation: jury denied expert evidence

"*I have learned that, that is what hope is, to bloom under circumstances that are not ideal. Inside each of us, that flower only needs a little water and it will give the breath to our soul that prepares us for whatever may come*". Nanon Williams[44]

In Texas, once the jurors have answered 'yes' to the future dangerousness question, they are then asked whether, after taking into consideration all of the evidence about the crime and the defendant, there are sufficient mitigating circumstances to warrant a sentence of life imprisonment rather than death.

[43] *Le v State*, 1997 OK CR 55
[44] *Still Surviving*, p 222.

Nanon Williams's mother and older sister testified as mitigation witnesses. The jury learned that the defendant's parents were both drug dealers, that both had served time in prison during their son's childhood, and that the father was killed by another drug dealer over a dispute over territory. The mother had then married another man who was also a drug dealer, and the family moved to California. The jury learned that Nanon Williams had witnessed the shooting of his uncle when he was seven or eight years old, and that a few years later he learned that his father had been shot to death. When he was 11, a federal agent had put a gun to the young boy's head when the FBI had raided his mother's house on a drug raid. Both the mother and sister testified that he had been angry, depressed and had talked about suicide. The mother testified that her son was intelligent and athletically gifted. The third mitigation witness was a probation officer, who knew Nanon Williams from when he was held at a juvenile facility in California at the age of 16. He testified about Williams's good character, his intelligence, and his good disciplinary record at the facility.

Nanon Williams, aged seven
© Private (AI use)

The US Supreme Court wrote in a case involving a 16-year-old offender, but which applies equally to 17-year-olds: *Evidence of a difficult family history and of emotional disturbance is typically introduced by defendants in mitigation. In some cases, such evidence properly may be given little weight. But when the defendant was 16 years old at the time of the offense there can be no doubt that evidence of a turbulent family history, of beatings by a harsh father, and of severe emotional disturbance is particularly relevant....[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage. Even the normal 16-year-old customarily lacks the maturity of an adult... All of this does not suggest an absence of responsibility for the crime of murder, deliberately committed in this case. Rather, it is to say that just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered in sentencing.*[45]

Nevertheless, Nanon Williams' prosecutor took to ridiculing the evidence presented by the defence. He referred to the mitigating evidence as "malarkey". He demeaned the evidence by suggesting that it was routine in capital cases: "There's always mitigating evidence. Think about it. 'I was sexually abused as a child, I was tortured, I was physically abused as a child, I

[45] Eddings v Oklahoma (1982).

am mentally ill, I have a low IQ, I am learning disabled, I never even knew my parents, I never even knew who my parents were, I was always in foster homes.' There's always mitigating evidence." He suggested that the mitigating evidence was an excuse for murder: "He could kill you or me or the judge or the President or wipe out our families, he can do anything he wants, he's got this 'I can commit any capital murder from now on because seven years earlier there was some bad stuff that happened in my family'".

The use of the death penalty against child offenders rejects any notion that wider adult society – family, community or state – 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 suggests that society had failed them well before it decided to kill them.[46]

Nevertheless, the prosecutor suggested that the evidence presented by Nanon Williams' defence lawyer amounted to little of worth – "think about the lack of true mitigating circumstances and you know what your verdict must be" – but that "even if this somehow is mitigating, haven't we as a society bent over backwards for him?... What else can we do as society?"

Although many people on death row were subjected to serious abuse and deprivation when they were children, the younger the offender, the closer in time they are to such abuse. The fact that their emotional trauma is more raw may make them less likely to divulge such information to their trial lawyer, or more likely to refuse to have such information divulged at trial.[47] According to his trial lawyer, Nanon Williams refused to meet with a psychiatrist

[46] In recent years, US society has agonized over school shootings by children. Should it not also reflect upon the fact that 12 of the 13 child offenders executed in the USA since 1998 were put to death for crimes involving guns? It is an element of these crimes that is difficult to ignore. The Texas Attorney General's office implicitly acknowledges this in a recent reply brief, noting that it is not surprising that not many 17-year-olds commit capital murder because "17-year-olds are less likely to have unhampered access to the instrumentalities and localities so commonly associated with capital murder (e.g. guns, cars and private residences) than independent adults". This statement also acknowledges that 17-year-olds are not "independent adults".

[47] For example, in October 2000 James Edward Davolt was sentenced to death in Arizona for a double murder committed in November 1998 when he was 16 years old. A few days before the sentencing hearing James Davolt dismissed his lawyers and, despite his young age and the seriousness of his situation, was allowed to represent himself. He presented no mitigating evidence. The lawyers had been investigating and preparing such evidence when the teenager fired them. They have told Amnesty International that there was evidence of mitigating evidence in the form of a very dysfunctional family life, and of possible physical and other abuse against James Davolt. In its decision (*Atkins v Virginia*, 2002) finding the execution of people with mental retardation unconstitutional, the US Supreme Court pointed out that such defendants "may be less able to give meaningful assistance to their counsel and are typically poor witnesses", making them additionally vulnerable to "wrongful execution". So too for many young defendants. Amnesty International has argued that if the Supreme Court was to apply its *Atkins* reasoning to the question of the constitutionality of executing child offenders, if consistent it

"until a couple of days before trial and I felt that by then it was too late to raise a mental health issue. I felt that to do so would look bogus, and I decided not to do it".[48] A possible further sign of his unwillingness to consider his past traumas was that when his mother testified at the sentencing phase, Nanon Williams refused to attend.

Today Nanon Williams has learned to express himself through writing. For example, in his recent book he tells of the grief of learning on death row that his grandfather ("Papa") has died and of the pain of knowing that he would not be able to attend the funeral. It causes him to recall the death of his own father: "I thought of my own father and remembered how he was shot over and over again on a street in Los Angeles, over drug territory. I remembered being a boy of eleven and going to the funeral, watching hundreds of people, it seemed, lay flowers on his casket and kiss him. My father just laid there, very pale, his eyes closed, stitches closing his wounds. There was no life in him and I stood above him, staring at first, and then I laid my head on his chest crying and begging him to wake up". He continues: "Even prison could never erase the memories of my father. Sometimes, even now, more than fourteen years later, I wake up with tears streaming down my face, missing my father. Now Papa was gone… Now there would be no other chances to make Papa proud. I wouldn't be allowed to attend my grandfather's funeral, and this caused me more pain than anyone could imagine".[49]

The mitigating evidence presented in Nanon Williams' sentencing phase glossed over the reality of his childhood. Most importantly, perhaps, the jurors were not presented with any expert evidence to help them put his criminal activities into a psychological context.

For the purpose of the post-conviction proceedings, Dr Gary Aitcheson, a forensic and clinical psychologist, reviewed Nanon Williams's records and conducted a mental health examination. He concluded that Williams suffered from post-traumatic stress disorder (PTSD) as a result of the violence to which he was exposed or subjected during his childhood.

In an affidavit, Dr Aitcheson revealed, among other things, that:

> *- Nanon and his father were shot at on several occasions as they drove a car.*
>
> *- When he was only seven years old, Nanon's uncle was shot to death right in his presence in the doorway to their house, as another man physically fought with his mother. Nanon tried to get to his uncle, and was covered in blood from his uncle's wounds as he tried to revive his dead uncle.*
>
> *- Nanon went into a shocked state when told of the shooting murder of his father.*
>
> *- When he was about 11 years old, the FBI conducted a nighttime raid on the home of his parents. The raid involved about 30 armed SWAT team officers. The armed men*

would outlaw the latter practice too. See *USA: Indecent and internationally illegal: The death penalty against child offenders*, September 2002, http://web.amnesty.org/library/Index/ENGAMR511432002.

[48] Affidavit of Loretta Muldrow, 16 April 1998.

[49] *Still Surviving*, pages 187-188.

held guns to his head. He believed that he was going to be shot and killed; he then witnessed his parents being handcuffed and taken away at gunpoint.

- Nanon was left alone for long periods of time in the home with adult strangers he did not know who were highly intoxicated on illicit drugs. He experienced prolonged periods of the absence of an adult in the home, sometimes for weeks at a time. He was constantly shuffled through a variety of inconsistent, incompetent parent figures and homes while his own parents were incarcerated.

- Nanon suffered severe verbal and physical abuse as one of only two African American children first entering a previously all-white school.

- Nanon's cousin's mother was killed and mutilated.

- At age five, Nanon was stabbed in the leg by children who attempted to take his tricycle away from him. This is Nanon's earliest memory.

- Nanon was never able to partake of the usual activities of childhood, friendship and school because his parental figures were engaging in illegal activities, or were incarcerated.

Dr Aitcheson suggested that "without a psychiatrist to explain the evidence the jury received from his family, telling the jury about the violence he was exposed to as a youngster could only have done more harm than good, and may have led the jury to decide he was likely to be dangerous in the future, which is simply not the case with PTSD". In Dr Aitcheson's opinion, expert testimony at the sentencing phase could have helped the jury to understand that the defendant was not an "immutable psychopath, but rather a young man struggling without guidance to deal with a horrific childhood".[50] From the time he spent with him, Dr Aitcheson was "certain that he is not a cold, heartless killer, but instead an intelligent, talented, teachable, emotional human being".

3.4 An internationally illegal penalty

"*He's not a boy, he's a man. He will be 21 in a couple of weeks*". Prosecutor, closing arguments for execution.

The jurors were encouraged by the prosecutor to think in terms of the defendant's age at the time of the trial rather than at the time of the crime three years earlier. They were not informed that what they were being asked to do by the state was to involve themselves in an internationally illegal practice – the imposition of the death penalty on someone who was under 18 years old *at the time of the crime*.[51]

[50] Affidavit, Gary Aitcheson, 17 April 1998.

[51] The international community of states has adopted four human rights treaties of worldwide or regional scope which explicitly exclude child offenders from the death penalty. Several international humanitarian law treaties also prohibit the use of the death penalty against child offenders. See Amnesty International documents, *The exclusion of child offenders from the death penalty under general international law*, July 2003, http://web.amnesty.org/library/Index/ENGACT500042003 and

Nanon Williams was tried in 1995. Between 1990 and 1995, there were 13 recorded executions of child offenders worldwide. Six (46 per cent) were carried out in the USA. Since 1995, there have been 21 such executions documented globally. The USA accounts for 13 (62 per cent) of these executions. Of the five such executions recorded worldwide in the past two years, four (80 per cent) took place in the United States. The USA is not only out of step on a fundamental principle of human rights law, it is becoming more so.

There are 192 states parties to the UN Convention on the Rights of the Child which prohibits the use of the death penalty against child offenders.[52] The USA has not ratified the treaty, although it has signed it thereby binding itself not to undermine its provisions pending a decision on whether to ratify it.[53] The USA has ratified the International Covenant on Civil and Political Rights (ICCPR), but lodged a reservation purporting to exempt itself from the treaty's ban on the execution of child offenders. The US reservation has been widely condemned, including by the Human Rights Committee, the expert body established by the ICCPR to oversee its implementation.

In October 2002, the Inter-American Commission on Human Rights held that "a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18 years at the time of their crime" and that this rule has been recognized as being of a sufficiently indelible nature to now constitute a norm of *jus cogens* (a peremptory norm of general international law). The Commission found that "the acceptance of this norm crosses political and ideological boundaries and efforts to detract from this standard have been vigorously condemned by members of the international community as impermissible under contemporary human rights standards… As a *jus cogens* norm, this proscription binds the community of States, including the United States. The norm cannot be validly derogated from, whether by treaty or by the objection of a state, persistent or otherwise."[54]

4. That "all-important good impression"

"*[O]ffences committed by juveniles under the age of 18 do not merit the death penalty. The practice of executing such offenders is a relic of the past and is inconsistent with evolving standards of decency in a civilized society. We should put an end to this shameful practice.*"
Four US Supreme Court Justices, October 2002

The four US Supreme Court Justices who dissented in 2002 against the Court's refusal to revisit its 1989 decision, *Stanford v Kentucky*, allowing the execution of child offenders, did not include Justice Sandra Day O'Connor among them.

A year later, Justice O'Connor said that "no institution of government can afford any longer to ignore the rest of the world." She recalled that in the Court's decision in June 2002 to outlaw the execution of people with mental retardation, the majority noted that "within the

USA: Indecent and internationally illegal: The death penalty against child offenders, September 2002, http://web.amnesty.org/library/Index/ENGAMR511432002.

[52] At the time of Nanon Williams' trial in 1995, there were 175 states parties to the Convention.

[53] Article 18 of the Vienna Convention on the Law of Treaties.

[54] Op. cit.

world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved". Justice O'Connor continued: "I suspect that with time, we will rely increasingly on international and foreign law in resolving what now appear to be domestic issues, as we both appreciate more fully the ways in which domestic issues have international dimension, and recognize the rich resources available to us in foreign courts. Doing so may not only enrich our own country's decisions; it will create that all-important good impression. When US courts are seen to be cognizant of other judicial systems, our ability to act as a rule-of-law model for other nations will be enhanced". [55]

On the question of the death penalty against people with mental retardation, nine senior former US diplomats had filed an *amicus curiae* (friend of the court) brief with the US Supreme Court which argued that such use of the death penalty had "become manifestly inconsistent with evolving international standards of decency". Continuing to execute such defendants, the brief asserted, "will strain diplomatic relations with close American allies, provide ammunition to countries with demonstrably worse human rights records, increase US diplomatic isolation, and impair the United States' foreign policy interests".[56] If this was true of the execution of people with mental retardation, it can be no less true in relation to the execution of child offenders, an illegal practice now virtually unknown outside of the United States and condemned in all corners of the globe.

Kevin Stanford was the Kentucky death row prisoner at the centre of the *Stanford v Kentucky* decision in 1989.[57] In December 2003, the outgoing governor of Kentucky commuted Kevin Stanford's death sentence on the grounds that it was an "injustice". Despite the seriousness of the crime for which Kevin Stanford was sent to death row, Governor Paul Patton had come to the conclusion that the punishment was wrong because Kevin Stanford was under 18 at the time of his offence.

It is just as wrong in the case of Nanon Williams and the dozens of other child offenders on death row in the USA. The executive clemency authorities should ensure no more executions of child offenders take place. Legislators in the offending states, including and especially Texas, should change their laws to exempt from the death penalty those who were under 18 at the time of the crime. The US Supreme Court should also do the right thing and prohibit the execution of child offenders, as it did in June 2002 for offenders with mental retardation.

In view of the false evidence that was presented to Nanon Williams' jury, and the inadequacy of his defence representation, Amnesty International believes that Nanon Williams should be granted a new trial. This time, in line with international law and standards of decency, the death penalty should not be an option.

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[55] Remarks at Southern Center for International Studies, Atlanta, Georgia, 28 October 2003.
[56] *Ernest Paul McCarver v State of North Carolina*. Brief of *Amici Curiae*. Diplomats Morton Abramowitz, Stephen W. Bosworth, Stuart E. Eizenstat, John C. Kornblum, Phyllis E. Oakley, Thomas R. Pickering, Felix G. Rohatyn, J. Stapleton Roy, and Frank G Wisner in support of Petitioner.
[57] The decision amalgamated two cases. The other was *Wilkins v Missouri*. While Kevin Stanford was 17 at the time of the crime, Heath Wilkins was 16. Wilkins is now serving a life sentence after his death sentence was overturned by a federal judge. In 2003 the Missouri Supreme Court outlawed the use of the death penalty against under-18-year-olds, although the state has appealed this decision.

Appendix: Some AI reports

Amnesty International campaigns for worldwide abolition of the death penalty. Listed below are some AI documents on the USA's use of the death penalty against child offenders.

USA: Evolving standards of decency, AI Index: AMR 51/003/2004, 6 January 2004. http://web.amnesty.org/library/Index/ENGAMR510032004

USA: A killing that no respectable government can condone, AI Index: AMR 51/033/2003, 4 March 2003. http://web.amnesty.org/library/Index/ENGAMR510332003

USA: Indecent and internationally illegal: The death penalty against child offenders, AI Index: AMR 51/143/2002, September 2002. http://web.amnesty.org/library/Index/ENGAMR511432003

USA: The human dignity that Texas refuses to recognize. AI Index: AMR 51/087/2002, 31 May 2002. http://web.amnesty.org/library/Index/ENGAMR510872002

USA: Hypocrisy or human rights? Time to choose. AI Index: AMR 51/075/2002, 15 May 2002. http://web.amnesty.org/library/Index/ENGAMR510752002

USA: In whose best interests? AI Index: AMR 51/063/2002, 24 April 2002. http://web.amnesty.org/library/Index/ENGAMR510632002

USA: "The day of my scheduled execution is fast approaching…". A plea for life and respect for international law. AI Index: AMR 51/149/2001, 12 October 2001. http://web.amnesty.org/library/Index/ENGAMR511492001

USA: Too young to vote, old enough to be executed. Texas set to kill another child offender. AI Index: AMR 51/105/2001, July 2001. http://web.amnesty.org/library/Index/ENGAMR511052001

USA: Crying out for clemency: The case of Alexander Williams, mentally ill child offender facing execution. AI Index: AMR 51/139/00, September 2000. http://web.amnesty.org/library/Index/ENGAMR511392000

USA: An appeal to President Clinton, Vice-President Gore and Governor Bush of Texas to condemn one illegal execution and to stop another. AI Index: AMR 51/96/00, 15 June 2000. http://web.amnesty.org/library/Index/ENGAMR510962000

USA: Shame in the 21st Century: Three child offenders scheduled for execution in January 2000. AI Index: AMR 51/189/99, December 1999. http://web.amnesty.org/library/Index/ENGAMR511891999

USA: Killing hope: the imminent execution of Sean Sellers. AI Index: AMR 51/108/98, December 1998. http://web.amnesty.org/library/Index/ENGAMR51081999

USA: On the wrong side of history: children and the death penalty. AI Index: AMR 51/58/98, October 1998. http://web.amnesty.org/library/Index/ENGAMR510581998

USA: The death penalty and juvenile offenders. AI Index: AMR 51/23/91, October 1991.