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UNITED STATES OF AMERICA

The Death Penalty and Juvenile Offenders

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This report describes the application of the death penalty in the cases of juvenile offenders: children or adolescents who were aged under 18 at the time of the offence. The report reviews the history, laws and practice regarding the execution of juvenile offenders in the USA. It gives information on the cases of 23 juvenile offenders sentenced to death in recent years, which Amnesty International has reviewed in some detail. The report covers the period to 1 July 1991.

24 of the 36 US states with the death penalty have laws allowing the imposition of death sentences on juveniles. In June 1989, the US Supreme Court ruled that the execution of offenders as young as 16 was permissible under the Constitution.

More than 90 juveniles have been sentenced to death in the USA since the death penalty was reinstated in the 1970s; all were aged between 15 and 17 at the time of the offence. Although many have had their sentences vacated on appeal, four were executed between 1985 and 1990 and 31 remained on death row as of 1 July 1991. Although they represent only a small proportion of the more than 2,400 prisoners under sentence of death in the USA, there are more juvenile offenders on death row in the USA than in any other country known to Amnesty International.

The imposition of death sentences on juvenile offenders is in clear contravention of international human rights standards contained in numerous international instruments including the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR) and the United Nations (UN) Convention on the Rights of the Child. The USA has signed but not ratified the first two treaties. In 1984 the UN Economic and Social Council (ECOSOC) adopted a series of

Safeguards guaranteeing the rights of those facing the death penalty which also provides a minimum age limit of 18.

The execution of juvenile offenders is extremely rare. More than 70 countries which retain the death penalty by law have abolished it for people under 18 at the time of the crime. The USA is one of only seven countries known to have carried out such executions in the last decade (the other countries are Barbados, which has since raised the minimum age to 18, Iran, Iraq, Nigeria and Pakistan; one such execution was also reported in Bangladesh).

All those sentenced to death in the USA have been convicted of murder. Amnesty International does not argue that juveniles should not be held criminally liable or subjected to severe penalties where appropriate. However, international standards were developed in recognition of the fact that the death penalty - which denies any possibility of rehabilitation or reform - is a wholly inappropriate penalty for individuals who have not attained fully physical or emotional maturity at the time of their actions. A number of professional organizations in the USA, including the American Bar Association (ABA) are opposed to the execution of juveniles. US domestic standards and arguments against the execution of juveniles are referred to in the report.

The report summarizes Amnesty International's findings regarding the cases of 23 juveniles sentenced to death under present US statutes, including 14 still on death row as of 1 July 1991. The large majority of these offenders came from acutely deprived backgrounds; at least 12 had been seriously physically or sexually abused; ten were known to have been regularly taking drugs or alcohol from an early age. In many cases the parents had histories of alcoholism, mental illness or drug abuse. At least 14 of the prisoners suffered from mental illness or brain damage. Most were of below-average intelligence; four were borderline mentally retarded an one was significantly retarded. However, in a disturbing number of cases, trial juries had no opportunity to consider the defendant's mental capacity or background as factors mitigating against a possible death sentence. This was often through failure of court-appointed attorneys to conduct an adequate investigation into the defendant's background and to present the relevant information at time of trial. In some cases the defendant's youth itself was not mentioned, or fully considered, as a mitigating circumstance at the sentencing hearing. These and other findings are described in Part I of the report. Individual case profiles are also given in 14 cases.

As described in Part II of the report, US capital punishment laws contain safeguards intended to ensure that the death penalty is applied fairly and imposed only for the worst crimes and most culpable offenders. The evidence in the cases examined suggests that these safeguards have not been met in practice.

Amnesty International opposes the death penalty in all cases, believing it to be the ultimate cruel, inhuman and degrading treatment and a violation of the right to life as proclaimed in the Universal Declaration of Human Rights and other international human rights instruments.

This report summarizes a 83-page document (28,927 words), *United States of America: The Death Penalty and Juvenile Offenders* (AI Index: AMR 51/23/91), issued by Amnesty International in October 1991. Anyone wanting further details or to take action on this issue should consult the full document.

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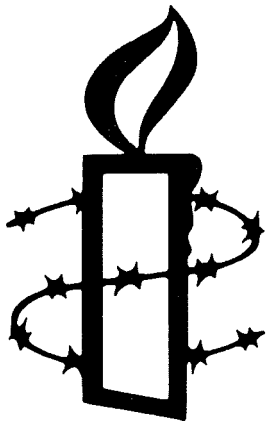

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UNITED STATES OF AMERICA

The Death Penalty and Juvenile Offenders

INTRODUCTION

This report examines the application of the death penalty in the cases of juvenile offenders: children or adolescents who were aged under 18 at the time of the offence. The report reviews the history, laws and current practice regarding the execution of juvenile offenders in the USA and describes relevant international and US domestic standards. The report includes information on the cases of 23 juvenile offenders sentenced to death in recent years, which Amnesty International has reviewed in some detail. The report covers the period to 1 July 1991.

More than 90 juveniles have been sentenced to death in the USA since the death penalty was reinstated in the 1970s; all were aged between 15 and 17 years at the time of the offence. Although a relatively large number have had their death sentences reversed on appeal, four were executed between 1985 and 1990 and 31 remained under sentence of death as of 1 July 1991. Although they represent only a small proportion of the more than 2,400 prisoners under sentence of death in the USA, there are more juvenile offenders on death row in the USA than in any other country known to Amnesty International.

Amnesty International opposes the death penalty unconditionally in all cases, believing it to be the ultimate cruel, inhuman and degrading punishment and a violation of the right to life, as proclaimed in the Universal Declaration of Human Rights and other international human rights instruments. International standards, while not prohibiting the death penalty in all circumstances, impose safeguards regarding its application and encourage governments progressively to restrict their use of the death penalty, with a view to its eventual abolition.

International standards on the death penalty are, furthermore, unanimous in prohibiting the imposition of death sentences on persons aged under 18 at the time of the offence. Treaties and instruments containing such a prohibition include the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR) and the United Nations (UN) Convention on the Rights of the Child. The USA has signed but not ratified the first two treaties. In 1984 the UN Economic and Social Council adopted a series of Safeguards guaranteeing the rights of those facing the death penalty which also provides a minimum age limit of 18.

There is widespread adherence to such standards in practice. The USA is one of only seven countries worldwide known to have executed juvenile offenders in the last decade. (The other countries are Barbados, which has since raised the minimum age to 18, Iran, Iraq, Nigeria and Pakistan; one such execution was also reported in Bangladesh.)

Juveniles under sentence of death in the USA were convicted of murders, many of which were committed in particularly brutal circumstances. Amnesty International does not argue that juveniles accused of serious crimes should not be held criminally liable or subjected to severe

penalties where appropriate. However, international standards prohibiting the execution of juveniles were developed in recognition of the fact that the death penalty - with its uniquely cruel and irreversible character - is a wholly inappropriate penalty for individuals who have not attained full physical or emotional maturity at the time of their actions. Children and adolescents are widely recognized as being less responsible for their actions than adults, and more susceptible to rehabilitation, thus rendering the death penalty a particularly inhumane punishment in their cases.

Despite the above standards, 24 of the 36 US states with the death penalty have laws allowing the imposition of death sentences on juveniles. In June 1989, the US Supreme Court ruled that the execution of offenders as young as 16 was permissible under the Constitution.

A number of professional organizations in the USA, however, including the American Bar Association, are opposed to the death penalty in such cases. Arguments against the execution of juvenile offenders have been presented in various *amicus curiae* briefs to the US Supreme Court which are referred to in this report. It has been pointed out that US law recognizes the reduced responsibility of juveniles in many other areas, 18 being the minimum age in all states, for example, at which a person may vote or sit on a jury. Most states place numerous other restrictions on persons under 18. It has been argued that this general recognition of the lesser responsibility of minors is further ground for excluding the death penalty in such cases.

Cases reviewed by Amnesty International

Amnesty International has reviewed the cases of 23 juvenile offenders sentenced to death in the USA under present statutes. The cases include three prisoners who were executed between 1985 and 1991; four whose death sentences were vacated on appeal, who were re-sentenced to life imprisonment; 14 who were still on death row as of 1 July 1991 and two who at the time of writing were awaiting a new sentencing hearing (at which they could be again sentenced to death). The 23 prisoners were sentenced to death in the following states: Alabama, Florida, Georgia, Indiana, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Oklahoma, South Carolina, Texas and Washington.

In most of the above cases Amnesty International obtained information about the crime and background of the defendant by reviewing documents such as sentencing reports, grounds of appeal filed, court judgements, clemency petitions and psychiatric testimony. In four cases Amnesty International was unable to obtain detailed information about the background of the defendant but has nevertheless included some relevant case data in its findings.

Part I of the report summarizes Amnesty International's findings regarding these cases. Individual case profiles in 14 cases are also given. Amnesty International's research indicates that juvenile offenders sentenced to death in the USA, while convicted of very serious crimes, come overwhelmingly from acutely deprived backgrounds; have often been the victims of physical or sexual abuse; are typically of below-average intelligence and in many cases suffer from mental illness or brain damage. Yet, in a disturbing number of cases, these factors were not adequately taken into account at any stage of the judicial proceedings. These include cases in which juries had no opportunity to consider the defendant's mental capacity or background as factors mitigating against a possible death sentence because the relevant information was not presented at time of trial. This was often through failure of court-appointed attorneys to conduct an adequate investigation into the defendant's background. In some cases the defendant's youth

itself was not mentioned, or fully considered, as a mitigating circumstance at the sentencing hearing.

As described in Part II, US capital punishment laws contain safeguards intended to ensure that the death penalty is fairly applied and imposed only for the worst crimes and most culpable offenders. The US Supreme Court has recognized the need for particular scrutiny in cases involving juvenile offenders. The evidence in the cases examined suggests that these safeguards have not been met in practice.

Many of Amnesty International's findings in juvenile cases (for example inadequate legal representation at trial and the presence of mental illness, mental retardation and deprivation or abuse in the background of the defendant) apply also to other prisoners sentenced to death in the USA. The fact that such circumstances should prevail in juvenile cases, where particular care might be expected, confirms Amnesty International's more general concerns about the way in which the death penalty has been applied in the USA (see Amnesty International Report *United States of America: The Death Penalty, 1987* and other external documents).

PART I

SUMMARY OF AMNESTY INTERNATIONAL'S FINDINGS IN 23 CASES

- In the large majority of cases examined, the prisoners appear to have come from particularly deprived or unstable family backgrounds. Many of them had been brought up in the absence of one or both parents; in many cases the parents themselves had histories of alcoholism, mental illness or other problems. At least 12 of the 23 prisoners had been seriously physically or sexually abused in childhood (Amnesty International had no information on this point in a number of cases). Ten were known to have been regularly taking alcohol and drugs from an early age (as young as six years in one case); others were under the influence of alcohol or drugs at the time of the crime.

- There was evidence of mental illness or brain damage in at least 14 cases.[1] In six of these cases, the prisoners had long histories of psychiatric illness or mental disorders dating from early childhood. In other cases evidence of brain damage or mental illness was revealed in tests conducted during post-conviction proceedings. Although the defendants had been found competent to stand trial, there was evidence suggesting that pre-trial psychiatric evaluations were inadequate in a number of these cases.

One defendant in the sample was examined by state-appointed mental health professionals for less than 20 minutes, despite a court order that a full psychiatric evaluation be carried out, including a "battery of psychological tests".[2] In another case, a pre-trial mental competency evaluation failed to discover that the defendant had a low IQ and was brain damaged.

- Of 15 cases where Amnesty International had the relevant information, 11 prisoners had an Intelligent Quotient (IQ) below 90 (a person of average intelligence has an IQ score of around 100). At least four fell within the borderline mentally retarded range and one other was significantly mentally retarded. Only two of the 15 had IQ scores above 100. Two of the defendants were illiterate at the time of their trials and only learned to read and write while on death row.

- Most defendants were represented at trial by court-appointed attorneys or public defenders who sometimes spent little time preparing the case for trial. In at least nine cases, lawyers handling later appeals uncovered important mitigating evidence which had not been presented at the trial or sentencing hearing. These included cases where no information had been presented about the defendant's mental illness, mental retardation or severely abused childhood - often because the trial attorneys had failed to conduct an adequate investigation into the defendant's background or psychiatric history.

[1]There were a number of other cases in which Amnesty International's information was incomplete but where there may have been mental illness.

[2]See case profile of (George) David Tokman

These cases included one in which it was later discovered that the defence attorney had spent less than four hours investigating the case, and had failed to approach any family members or community acquaintances of the defendant, except the defendant's mother whom he contacted after the trial had started. No witnesses for the defence were presented at either the trial or the sentencing hearing. In another case in which no information was presented about the prisoner's deprived and unstable childhood, the prisoner's mother subsequently testified at an appeal hearing that her contact with the defence lawyer before trial had been minimal and she had not been informed about the sentencing hearing or the relevance of this.

There are several cases where lawyers failed to obtain adequate pre-trial psychiatric evaluations, despite the defendant having a history of mental problems. In several cases, lawyers stated that they had been unable to obtain an independent psychiatric examination for the defendant due to lack of funds. In the case of a 17-year-old offender with a mental age of 12, defence requests for funds to hire a psychiatrist were repeatedly denied by the trial court, despite the fact that a psychologist retained by the prosecution gave damning testimony that the defendant was a "sexual sadist" - without having examined her in person.[3]

- In a number of cases the defendant's youth was not presented as a significant mitigating factor at the sentencing hearing or, if it was, this was rejected by the trial court. This appears to contravene the US Supreme Court ruling in *Eddings v Oklahoma* in which the Court held that "the chronological age of a minor is itself a relevant mitigating factor of great weight". (See P.66). The trial judge in a Florida case, for example, sentenced a 16-year-old offender to death on the basis that two aggravating circumstances outweighed the one mitigating circumstance found. The judge specifically rejected the defendant's age as a mitigating circumstance to be weighed, stating that age is a factor 'when it is relevant to the defendant's mental and emotional maturity and his ability to take responsibility for his own acts and to appreciate the consequences following from them.' He found that age was not relevant in this case as the defendant knew what he was doing, knew that it was wrong and had tried to cover up his crime.[4]

In a Missouri case, a 16-year-old offender with a long history of mental disturbance refused to be represented by a lawyer, pled guilty to the crime and asked the judge to impose the death penalty. The judge gave no indication in his sentencing order that the defendant's youth or other circumstances had been considered as potentially mitigating factors.[5]

In several other cases, jurors were not instructed that the defendant's age must be considered as a mitigating factor when deliberating between a life or death sentence. In the case of a 15-year-old offender in Oklahoma, for example, the court gave no specific instructions to the jury about the defendant's youth but advised them that "the determination of what are mitigating factors is for you as jurors to resolve".[6]

[3]See case profile of Janice Buttrum

[4]Judgment in the case of James A Morgan, Circuit Court, Nineteenth Judicial Circuit, Florida, 20 February 1990.

[5]See case profile of Heath Wilkins

[6]From Supreme Court ruling in *Thompson v Oklahoma* No. 86-6169. Although Thompson's death sentence was vacated, it was not on this specific ground and similar instructions have been given in later cases reviewed by Amnesty International

Cases in which the defendant's age was not even mentioned as a mitigating factor by trial counsel at the sentencing hearing included that of Dalton Prejean, who was executed in May 1990.

- In some cases, the trial courts also rejected evidence of the defendant's deprived or abused background as a relevant mitigating circumstance at the sentencing hearing. In the case of a 17 year-old offender in Florida, for example, the trial judge overruled the jury's recommendation of a life sentence and imposed the death penalty; the sentencing order explicitly rejected evidence of the defendant's "impoverished, deprived and disturbed childhood" as a mitigating circumstance, adding that "The mother and others who may have contributed to his childhood were not, however, on trial here".[7]

- The above case was one of two in the sample in which trial judges overruled a jury's recommendation of a life sentence. The other case was that of a 15-year-old offender sentenced to death in Alabama. (Alabama, Florida and Indiana are the only US states in which the jury's sentencing recommendation in a capital case is advisory and the trial judge makes the final decision on sentence.)

- Death sentences in many cases had been upheld by both state and federal appeals courts, despite the above factors (although most of the defendants were continuing to pursue further appeals). At the time of writing, only four of the defendants had had their death sentences vacated and sentences of life imprisonment substituted. (In three of these four cases this was not because of the presence of mitigating factors or errors at trial or sentencing but on other grounds, in two cases because the states in question had raised their minimum age). Three prisoners in the sample had been executed, despite the presence of strong mitigating circumstances in at least two cases.

- At least three of the eight black defendants in the sample (convicted of killing white victims) were convicted and sentenced to death by all-white juries, after prosecutors had used their peremptory challenges (the right to reject jurors without explanation) to exclude black prospective jurors from the jury pool.[8] In 1987 the US Supreme Court ruled in *Batson v Kentucky* that prosecutors may not exclude jurors solely on the basis of their race, but this decision did not apply retroactively to prisoners whose convictions had already been upheld on direct appeal. Two of the above defendants lodged appeals in the state courts based on the *Batson* ruling, but these were rejected and were pending appeal in the federal courts at the time of writing. The third prisoner, Dalton Prejean, was too late to lodge an appeal based on the *Batson* decision; he was executed in May 1990.

- The juvenile offenders in the sample were convicted and sentenced to death for brutal crimes, some of which involved sudden, apparently motiveless attacks on the victim. Although most of

[7]Sentencing order in the case of Bernell Hegwood, Circuit Court for the Seventeenth Judicial Circuit, Florida, 29 March 1988.

[8]One of the eight prisoners did not have a jury trial so this issue did not arise. In four cases Amnesty International had no information about jury selection at trial.

the prisoners in the sample had a prior record of juvenile delinquency, there was no significant history of prior criminal activity in a number of cases and others had a record of relatively minor offenses not involving violence. Only one of the defendants in the sample had a prior conviction for homicide (one also confessed to another murder which was unadjudicated at the time of his trial). In eight cases, older accomplices were involved in the crime for which the defendant received a death sentence (in most but not all of these cases these accomplices were also sentenced to death).

- In some states minors charged with capital crimes are tried automatically in the adult criminal courts (which alone have the power to impose a death sentence). In these cases there is no individual assessment of suitability of the defendant to stand trial as an adult. In other states there must be a juvenile court hearing in which a decision is taken whether or not to transfer the case to the jurisdiction of the criminal court. Several cases provided information on the criteria used in the latter proceeding. While the crime, record and age of the defendant were taken into account in such cases, the defendant's individual maturity appeared to play no part in the decisions taken.[9]

The most common ground for waiving juvenile court jurisdiction in the cases examined was the lack of facilities within the juvenile justice system to provide long-term custody, rather than a finding that the defendant could not be rehabilitated. In one case, the juvenile court specifically found that the defendant (a 17 year old offender under sentence of death in Kentucky) was "emotionally immature and could be amenable to treatment if properly done on a long term basis ..."; it ordered the case to be transferred to the adult court, however, as there were no in-state facilities providing long term youth programs. Citing this decision in a later appeal, the prisoner's lawyer said "It is indeed a cruel twist of fate for Kentucky to fail to provide the petitioner with 'meaningful therapy' or 'after-care intervention' ... which eventually results in his transfer to adult court, and then seek to exact society's ultimate sanction from him because it failed to provide him with appropriate treatment".[10]

A 1983 report on capital punishment for minors confirmed these findings, observing that "... maturity rarely, if ever, plays a part in transfer decisions" and that "... the most common bases for waiver [of juvenile court jurisdiction] are inadequate resources or insufficient time to effect rehabilitation".[11]

[9]Age was taken into account primarily for the purpose of assessing the length of time the defendant would remain in custody within the juvenile system.

[10]From writ of certiorari to the US Supreme Court in the case of *Stanford v Kentucky* No. 87-5765.

[11]*Capital Punishment for Minors: An Eighth Amendment Analysis*, Helene B. Greenwald, Journal of Criminal Law and Criminology, Vol 74. No. 74 1983.

CASE PROFILES

NAME:	**CHRISTOPHER BURGER**		**GEORGIA**
RACE:	White	**DATE OF BIRTH:**	30 December 1959
DATE OF CRIME:	4 September 1977	**AGE AT CRIME:**	17 years 9 months
DATE OF SENTENCE:	25 January 1978 and 17 July 1979		

CURRENT STATUS: Christopher Burger received a last-minute stay of execution in December 1990, pending an appeal regarding his mental competency. A decision by the US Court of Appeals for the Eleventh Circuit was pending as of 1 July 1991.

CRIME: Burger was convicted of the kidnap, rape and murder of Roger Honeycutt, a soldier who worked part-time as a taxicab driver. Burger and an accomplice, 20 year old Thomas Stevens, were also soldiers in the US army at the time of the crime. Honeycutt was killed after Burger and Stevens had hired his taxi to take them to the airport to pick up another soldier, James Botsford. On the way to the airport, they forced the cab to stop and robbed Honeycutt of 16 US$. He was then forced into the back of the cab where Stevens sodomized him. Burger and Stevens picked Botsford up at the airport, with Honeycutt tied up in the boot of the car. They dropped Botsford off at the army base, after telling him what had happened and assuring him that Honeycutt would not be harmed. Burger and Stevens drove to a lake, Burger lifted the boot to see if Honeycutt was alright, closed it again, started the car and let it enter the water. Honeycutt died by drowning.

Stevens was sentenced to death at a separate trial.

TRIAL: Burger and Stevens were each convicted on the basis of their confessions and the testimony of James Botsford. Each suggested that the other was more culpable. Burger said that he had thought they would abandon both the taxi and the driver after the robbery; he also said that Stevens had told him to drive the car into the pond. Burger's testimony was corroborated by Botsford who testified at both trials that it was Stevens' idea to kill Honeycutt and that Burger had protested, saying they should let him go.

SENTENCING

HEARING:

Burger's first death sentence was vacated and the case was remanded for a new sentencing hearing. At the new sentencing hearing in July 1979 Burger was again sentenced to death. The same court-appointed lawyer represented him at his trial and at the two sentencing hearings.

No mitigating evidence at all was presented at either sentencing hearing. The jury heard nothing about the defendant's background. The trial lawyer later told an appeals court that he had felt that such testimony might be prejudicial to the defendant as information given by relatives had suggested he had a prior juvenile record.

A psychologist hired by the defence had conducted a brief examination of Burger before the trial and found that he had an IQ of 82 with a mental age of 12. However, he was also of the opinion that Burger was a sociopath with a psychopathic personality. The lawyer therefore chose not to put the psychologist on the witness stand and the jury was not told that Burger had a low IQ, well below his chronological age. (The lawyer also said later that he had been unwilling to ask for a full psychiatric evaluation of Burger as he did not trust the hospital which would have been assigned to carry out such an evaluation.)

APPEALS:

Burger's conviction and death sentence were upheld on direct appeal to the state courts. Lawyers then lodged a habeas corpus appeal on constitutional grounds. Two main issues were raised: (1) that there was a conflict of interest through the fact that Burger and Stevens had been represented by attorneys working for the same law firm, who had cooperated on both cases at the time of trial and direct appeal to the state courts. It was argued that this had adversely affected the handling of Burger's case, including the ability to arrange a plea bargain. (2) It was claimed that Burger had received ineffective assistance of counsel, due to his lawyer's failure to investigate his background and present mitigating evidence at the sentencing hearing. New evidence was presented regarding Burger's troubled childhood, including affidavits from relatives and testimony given by his mother (see Personal Profile, below). The US Court of Appeals denied the appeal, with one judge dissenting. An appeal was then lodged to the US Supreme Court.

SUPREME COURT RULING ON THE CASE 1987

The US Supreme Court denied the appeal in a 5-4 majority decision in June 1987. The majority opinion found that there had been no conflict of interest arising from the attorney's partnership with the lawyer representing Stevens, noting inter alia that the defendants had been convicted at separate trials and that Burger's lesser culpability had been strenuously argued.

On the failure to present mitigating evidence, the majority opinion acknowledged that the new evidence "would have disclosed that the petitioner had an exceptionally unhappy and unstable childhood" and that "the record at the habeas corpus hearing does suggest that [the trial lawyer] could well have made a more thorough investigation than he did".
However, they found that there had been a reasonable strategic basis for the lawyer's actions and that some of the new evidence might have affected the jury adversely by revealing information about Burger's past record and a tendency toward violent outbursts.

In two strong dissenting opinions, four of the Supreme Court justices found that the trial lawyer had erred in failing to present any evidence at the sentencing hearing. The record indicated that the lawyer's meetings with the defendant had been brief and that Burger would have been unlikely to volunteer many of the facts about his childhood. Burger's mother also testified that she had spoken to the lawyer only after she had approached him and that he did not explain to her the significance of the sentencing hearing or the need for mitigating evidence. The judges found that the actual circumstances of the defendant's childhood (including beatings and being rejected by both estranged parents and two step-fathers) would have been highly relevant at the sentencing hearing.

The dissenting judges also found it unreasonable of the trial attorney not to have sought information about Burger's background through fear that his past record might have been revealed. They noted that the lawyer had not investigated whether the defendant had a prior criminal record, the record in fact revealing nothing more than one incident of shoplifting a candy bar and another incident involving an automobile. Justice Blackmun, writing the main dissenting opinion stated: "The account provided by the petitioner's mother of petitioner's hitchhiking to Florida to be with her after having been thrown out of his father's house and having to sell his shoes during the trip to get food ... may well have outweighed the relevance of any earlier petty theft."[12]

The dissenting judges were also critical of the trial lawyer's refusal to admit the testimony of a lawyer who had befriended Burger in childhood (who was willing to travel to Georgia at his own expense to testify at the trial) on the ground that he was black and that this may have adversely affected the jury. They were critical, too, of the trial lawyer's failure to ask the court for a full psychiatric evaluation of Burger. Justice Powell, writing the second dissenting opinion, noted

[12] *Burger v Kemp* No 86-5375 Dissent at page 3136, 107 Supreme Court Reporter.

that there was some indication that Burger may have suffered brain damage from beatings when he was younger.

Three of the Supreme Court judges also found that there had been a clear conflict of interest in the representation of the accused by lawyers who were partners in the same firm. They found that this may well have prevented Burger's lawyer from offering to have Burger testify for the state against Stevens in return for a reduced sentence.

PSYCHIATRIC EVALUATION:

In 1989 Burger was evaluated by Dr Dorothy Lewis, Professor of Psychiatry at New York School of Medicine and a clinical psychiatrist at the Yale Child Study Centre. She found that he suffered from organic brain impairment, probably from a series of brain injuries and physical abuse he had received as a child. She found that he had sustained "numerous severe traumata to the central nervous system" which had contributed to his early hyperactivity, his impulsivity and difficulty controlling his temper, and that he was mentally ill. She found that the pre-trial evaluation by the psychologist was highly inadequate and that his diagnosis of Burger as a psychopath or sociopath was contrary to accepted psychiatric practice, given his young age and history.

WARRANT FOR EXECUTION:

Christopher Burger was scheduled to be executed on 18 December 1990. He received a last-minute stay of execution pending an appeal on the question of his mental competency at the time of the crime in light of the later psychiatric evidence. Oral arguments were presented to the US Court of Appeal for the Eleventh Circuit in June 1991. A decision was still pending at the time of writing.

PERSONAL PROFILE:

Burger's parents married when his mother was 14 and his father 16. He was the second of four children his mother had borne by the age of 22. His mother had herself been severely abused as a child, and suffered from severe bouts of depression and mental illness, for which she was hospitalized during Burger's childhood. According to her own testimony at an appeal hearing, she often beat Burger as a child, and sometimes had to lock him in a room to keep herself from harming him.

Burger's parents divorced when he was nine and he was placed in the custody of his father, who used to hit and punch him. He was unwanted by his father's new family and sometimes shut out of the home. He was shuttled back and forth between both sets of parents, and used to beg

to be allowed to stay with his mother. However, at one stage he was left in the care of his mother's boyfriend for several months, during which period he was severely ill-treated. During his childhood, his mother twice re-married. Burger was beaten by one of his step-fathers and also witnessed him beating his mother. Burger claimed that he was given drugs by another stepfather at an early age.

Burger received a series of head injuries during childhood, which rendered him unconscious on at least two occasions. He had learning difficulties at school and was hyperactive, a condition observed when he was at kindergarten, although no action was taken. At the age of 11 or 12 he started to inhale organic solvents and to smoke marijuana. In 1975, when he was aged 15, he joined his mother in Florida but this proved traumatic as she was at that time undergoing a divorce from her third husband. According to a report on the case, Burger attempted suicide with the help of his mother who gave him six valium tablets which he consumed with whisky. He was treated in an emergency medical room and released.

After being involved in a minor car accident in Florida, Burger was taken into custody by the juvenile authorities as his mother was unable to care for him. The authorities returned him to his father in Indiana. His father petitioned the juvenile court to take him but he was released into the supervision of his father some months later. As soon as he became 17, Burger's father signed permission for him to join the army. Burger was in the army for eight months before taking part in the crime for which he was sentenced to death.

According to appeal documents, Burger's only previous record was one offence of shoplifting a candy bar, being absent from school without permission and involvement in "a minor car wreck" (details of latter not given).

Christopher Burger

NAME:	**JANICE BUTTRUM**		**GEORGIA**
RACE:	White	**DATE OF BIRTH:**	17 January 1963
DATE OF CRIME:	3 September 1980	**AGE AT CRIME:**	17 years 8 months
DATE OF SENTENCE:	31 August 1981	**AGE AT SENTENCE:**	18 years 7 months

CURRENT STATUS: Janice Buttrum's death sentence was vacated by an appeal court in 1989 (after 8 years on death row). She was re-sentenced to life imprisonment in June 1991.

CRIME: Janice Buttrum was convicted of the murder of 19-year-old Demetra Faye Parker, who was stabbed to death and sexually assaulted in a motel room in Whitfield County, Georgia. Janice Buttrum, her 28-year-old husband Danny, and their 19-month-old daughter had been staying at the motel at the time of the murder. Danny Buttrum was also found guilty of the murder at a separate trial and sentenced to death. He later committed suicide in prison.

PRE-TRIAL MOTION ON COMPETENCY Several months before the trial, the defence asked the court for funds to permit them to hire a psychiatrist to examine Janice Buttrum, whom social workers estimated to have a mental age of 12. The court denied this request, but agreed to have her examined by two state psychologists. They later testified at a competency hearing that she was competent to stand trial. The defence called several lay witnesses who gave the opinion that she was not competent. After a brief deliberation, the jury found that Janice Buttrum was competent to stand trial.

TRIAL AND SENTENCING HEARING The trial took place in Whitfield County, after an unsuccessful request by the defence for a change of trial venue due to the extensive pre-trial publicity the case had generated. In the year leading to the trial, Janice Buttrum had been described in numerous local newspapers as a bi-sexual sadist, with graphic accounts of the crime and her alleged role. The trial of Danny Buttrum, several months before her own trial, had generated further publicity. The defence alleged that this made it impossible to obtain an impartial jury.

At the sentencing hearing, a private psychologist, Dr Adams, appeared as the sole witness for the state. Although he had not interviewed Janice Buttrum in person, he testified that she was a sexual sadist, an Anti-

Social Personality type and a "paraphiliac"[13] who, he predicted, would commit other violent sexual acts in the future. (Janice Buttrum had only one previous conviction for a minor offence, not involving sexual violence: see below). Dr Adams said that he had formulated his professional opinion after reviewing materials given to him by the prosecutor, including the file from the Central State Hospital's competency evaluation. The defence was unable to call a rebuttal psychologist or psychiatrist because their renewed request for funds for a psychiatric evaluation had once again been denied by the trial court.

In seeking the death penalty, the prosecution alleged that Janice Buttrum had been the dominant party in the crime and had directed her husband to kill the victim. The defence tried to rebut this theory at the sentencing hearing, pointing out that Danny Buttrum was not only 11 years older, but had a prior criminal record and was known to become violent when drunk. Janice Buttrum herself alleged that it had been Danny's idea to enter the victim's room on the night of the crime and that she had stabbed the victim in anger after seeing her husband having sex with her; she admitted that her conduct had been wrong, and that she deserved to be punished. She also testified that she had been frequently beaten by Danny. The defence also tried to introduce evidence from a social worker who said that Danny Buttrum had told her three years before the crime that he suffered from irresistible urges to rape women and had hostile feelings toward his mother, whom he had once tried to attack with a knife. However, the court did not allow this evidence to be presented.

The defence presented evidence of the defendant's acutely deprived background in mitigation against the death penalty (see below). However, the jury imposed the death penalty after finding that the murder had been committed in the course of a rape and had involved torture, depravity of mind and an aggravated assault to the victim.

APPEALS:

Janice Buttrum's conviction and death sentence were upheld on direct appeal to the state courts. An appeal was then filed in the federal courts alleging that she had been denied a fair trial on a number of counts.

In September 1989, the District Court upheld her conviction but vacated the death sentence on the ground that she had been denied the right to a fair sentencing hearing. The District Court held, among other things, that the trial court had been wrong to deny the defendant funds

[13]According to court records in the case, a paraphiliac is one who causes "non-consenting adults pain and humiliation as a method of achieving sexual excitement and arousal".

for a psychiatric evaluation; that the testimony of Dr Adams had been unreliable; that the trial court had been wrong to exclude evidence regarding Danny Buttrum's past urges to rape women and that the prosecutor had made improper closing remarks to the jury when seeking the death penalty.

The State of Georgia appealed against the decision but it was upheld by the US Court of Appeals. The case was remanded for a new sentencing hearing.

In June 1991, the prosecutor agreed not to re-seek the death penalty and Janice Buttrum was re-sentenced to life imprisonment.

Amnesty International had written to the prosecutor in April 1991, urging him not to seek re-imposition of the death penalty in Janice Buttrum's case, citing the relevant international standards.

PERSONAL PROFILE: Social workers, former teachers and others gave evidence during Janice Buttrum's trial about her extremely deprived childhood.

Janice Buttrum was born to an unmarried mother who sold her at birth for the price of the hospital bill. Her early childhood was spent with childless foster parents who lived in a one-bedroom trailer. Social workers testified that the home was filthy and that the foster couple (who had drink problems), failed to provide for Janice or to teach her basic hygiene. She regularly obtained her clothing from the town dump (rubbish tip). For several years, her bedroom was a broken-down truck in the front yard of the trailer. She smelled, and was ridiculed at school. An appeal document in Janice Buttrum's case (referring to trial testimony) states: "Several social workers and former teachers who had worked with hundreds of impoverished and neglected children testified that Janice Buttrum was the most neglected child they had ever encountered."[14]

During her early teens, Janice started to play truant and to run away from her foster home. She was befriended by an older man who, together with another man, sexually assaulted her. At age 14, she was declared a deprived child and placed in the custody of the county. She moved between one foster family and another. At one time she was placed in a Youth Detention Centre for six months, not for having committed a crime but because she had nowhere else to live. She met Danny Buttrum (who was 26 and divorced with two children) when she was 15, they were married less than a month later.

[14]From petition for writ of habeas corpus in the case of Buttrum v Black in the US District Court for the Northern District of Georgia. 22 October 1987

At her trial, Janice Buttrum testified that Danny often beat her when he was drunk and on several occasions she tried to pursue charges against him (charges she later dropped). Evidence was also introduced that, despite the violence, she was obsessively devoted to her husband.

At the time of the murder, Janice Buttrum was pregnant and already had one child. Her second daughter was born in prison, two months before her trial.

Janice Buttrum had one prior conviction, for "simple battery". (The victim was a police officer who had not been injured. Janice Buttrum had pled guilty to the charge and had not been represented by counsel.

NAME:	**JOSEPH JOHN CANNON**		**TEXAS**
RACE:	White	**DATE OF CRIME:**	30 September 1977
DATE OF BIRTH:	13 January 1960	**AGE AT CRIME:**	17 years 8 months
DATE OF SENTENCE:	22 February 1982	**AGE AT SENTENCE:**	22

CURRENT STATUS: Cannon's conviction and death sentence have been affirmed on direct and post-conviction appeal. In July 1989 his lawyers requested a stay of execution on the grounds that Cannon was insane and incompetent to be executed. The trial judge ordered a psychiatric evaluation by two doctors (see below). A petition for a writ of habeas corpus was filed in May 1990 and is pending in the federal courts.

Psychiatric tests before and after his trial show Cannon to be disturbed and immature for his age. He learned to read on death row. He has posed no behavioral problems in prison but suffers visual hallucinations and depression requiring constant drug treatment. He has been taking Mellaril, an anti-depressant drug, for most of his life.

CRIME: Convicted and sentenced to death for the murder of Anne Walsh, white, in Bexar County, Texas. Cannon had been thrown out of his home by his step father. He broke into an apartment and stayed there until he was arrested for burglary. The lawyer appointed to represent him on the burglary charge arranged for his release on parole, befriended him and invited him to stay with his sister, Anne Walsh (also a lawyer). Cannon stayed about a week. Prior to her murder he had smoked marijuana, swallowed some 25 "pills" and drunk a large quantity of whisky. Anne Walsh was shot several time in her house. After her murder Cannon took about $100, fled in the family's car, crashed it and was arrested. He confessed, but could not explain his actions. "I go crazy sometimes...I had no grudge [sic] or any reason to kill Anne in fact she went out of her way to be nice to me."

TRIAL: At his first trial in 1980, Cannon plead not guilty by reason of insanity, but the jury rejected this and he was sentenced to death. The conviction was overturned in 1981. At his second trial in 1982 he plead not guilty. No psychiatric testimony or information about Cannon's highly disturbed background was presented. This was for tactical reasons because of the risk that such factors might be construed by the jury as aggravating rather than mitigating evidence. The jury was told only that Cannon was illiterate and aged 17 at the time of the crime. He was again sentenced to death.

PSYCHIATRIC FINDINGS:

Three psychiatrists who examined Cannon in 1978 found him competent to stand trial. Tests revealed he had an IQ of 79 (borderline mentally retarded). However, in July 1989 Cannon was examined again by two doctors who both queried his mental state at the time of the trial. One psychologist, Dr. Windel Dickerson, diagnosed organic brain syndrome and confirmed that Cannon had a subaverage IQ. He noted that Cannon's condition was certainly not of his own choosing, citing Cannon's learning disabilities, hyperactivity, head injuries and the sexual abuse he had endured as a child. Dickerson found Cannon to have responded well to prison life. He had learned to read and write and was taking Bible classes by correspondence. "He has, in fact, done better than almost anyone...foresaw."

Dickerson concluded that the prognosis of "future dangerousness" presented to the jury at Cannon's trial, and medical testimony that Cannon could not be managed anywhere, was "wholly inconsistent with scientifically established knowledge and procedure." On the contrary, his IQ, aptitude and self image had all improved in prison.

Another psychologist, José Rodríguez, considered Cannon's case history "exceptional" in the extent of the brutality and abuse he had received as a child. "Even in the worst of case histories one seldom encounters traumatization as heinous and extreme as those to which [Cannon] was subjected while growing up." Such was the "depravity and oppressiveness" of his upbringing that Cannon has thrived better on death row than he ever did in his home environment.

PERSONAL PROFILE:

Joseph Cannon suffered from an extremely disturbed childhood. At the age of four he was hit by a pickup-truck and suffered a fractured skull, broken leg and perforated lungs. He was in hospital for 11 months and unconscious for part of that time. On his release, he was placed in an orphanage by his mother who was unable to care for him. Whereas before the accident Cannon had been slow in his development, his head injury left him hyperactive. He suffered from a speech impediment and did not learn to speak clearly until he was six. He had learning disabilities, could not function in a classroom and was expelled from school in first grade, receiving no other formal education. He sniffed glue and solvent; he drank and sniffed gasoline and, at the age of 10, was diagnosed as suffering from organic brain damage caused by the solvent abuse. He was diagnosed as schizophrenic and treated in mental and psychiatric hospitals from an early age.

Cannon was severely sexually abused by his step father (his mother's fourth husband) when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. In one of his many psychiatric interviews Cannon told a doctor that he

could not remember anything good that ever happened to him. He suffered from severe depression, and has been treated with anti-depressant drugs for most of his life. He attempted suicide at the age of 15 by drinking insect spray.

Cannon has a long and well-documented medical history of psychiatric disorders, yet attempts to have him committed to a state mental institution failed because of lengthy waiting lists.

NAME:	**ROBERT ANTHONY CARTER**		**TEXAS**
RACE:	Black	**DATE OF BIRTH:**	10 February 1964
DATE OF CRIME:	24 June 1981	**AGE AT CRIME:**	17 years 3 months
DATE OF SENTENCE:	10 March 1982	**AGE AT SENTENCE:**	18 years 1 month

CURRENT STATUS: Robert Carter's conviction and death sentence were affirmed by the Texas Court of Criminal Appeals in 1986. The US Supreme Court denied leave to appeal in November 1987. Post-conviction appeals were in progress as of 1 July 1991.

CRIME: Robert Carter was convicted of the murder of Sylvia Reyes, an 18-year-old girl. She was shot during a robbery at a Conoco petrol station in Southeast Houston where she worked as a cashier.

On his arrest, Carter was kept in isolation during interrogation. He initially declined to make a statement but later confessed, both to shooting Miss Reyes and to another murder. He waived his right to have a lawyer present.

JURY SELECTION: Jury selection took three weeks. During the proceedings the prosecutor used peremptory challenges to remove 12 potential jurors who had slight reservations about the death penalty, even though they expressed confidence in their ability to judge the case on the facts and impose the death penalty if they felt it was appropriate. Lawyers representing Carter on appeal argue that he was deprived of the right to an impartial jury.

TRIAL: The prosecution presented its entire case in one day. Carter's confession provided the only evidence that he was at the crime scene, and the only evidence of how the shooting occurred. The prosecution's case was that Carter had been approached by three others, solicited to commit a robbery on the spur of the moment, given a gun by one of the accomplices just prior to the robbery, and that Carter accidentally shot the victim as he attempted to uncock the gun. Carter's defence counsel did not present any evidence in rebuttal and Carter was duly convicted of capital murder.

The sentencing proceedings lasted only a few hours. Four witnesses for the prosecution testified about Carter's involvement in the other murder (which was still pending adjudication at the time). The prosecutor speculated to the jury that if Carter were sentenced to life imprisonment he would be released early on parole, and described life imprisonment as a "slap on the wrist."

Robert Carter's mother and a family friend were the only character witnesses called on Carter's behalf, although numerous others were available. They described his upbringing in poverty and neglect. The jury was not invited to consider as mitigating evidence Carter's age at the crime; the fact that he was mentally retarded, brain damaged and had suffered brutal physical abuse as a child; or that this was his first offence.

The jury took only ten minutes to reach its unanimous "yes" verdicts on the three questions that determine whether or not a defendant in Texas will be sentenced to death: 1) whether the crime was committed "deliberately"; 2) whether Carter would commit future acts of violence; and 3) whether his conduct was unreasonable in response to any provocation from the victim. (Under the Texas death penalty statute a sentence of death is mandatory once the jury has found the above three factors to be present).

TRIAL REPRESENTATION:

The two court-appointed lawyers who represented Carter made only minimal efforts to investigate the case, talk to Carter before the trial, locate potential witnesses or present mitigating evidence.

They failed to properly request all possible exculpatory or mitigating information from the prosecutor and were consequently unaware (thus the jury remained unaware) that several of the prosecution witnesses had failed to identify Carter in identity parades.

Defence counsel failed to request assessments of Carter's mental capacity or competence to stand trial. They did not challenge the validity of his confession even though they apparently suspected he might be retarded. They failed to object to numerous trial errors (for example the prosecution's repeated references to the unadjudicated second murder). They failed to explore the precise nature of Carter's involvement in the crime as compared with other possible accomplices. Some of their remarks to the jury were prejudicial to their client.

Their failure to call character witnesses during the sentencing hearing enabled the prosecutor to assert at one point: "doesn't it say a lot about Mr. Carter's probability to do violence when nobody can come say a good word about him except his mother?"

MEDICAL FINDINGS:

Robert Carter is mentally retarded and seriously brain damaged. In June 1986 he was examined by Dr. Dorothy Lewis as part of a larger investigation she was conducting into the medical histories of juveniles under sentence of death. (See reference to this study in Part II vii). She found that Carter had suffered several severe head injuries as a child resulting from accidents and abuse. In one incident shortly before

Sylvia Reyes' murder, Carter was shot in the head by his brother, the bullet lodging near his temple. He afterwards suffered seizures and fainting spells.

Lewis found Carter to be "significantly retarded" with a full-scale IQ of 74. His mental disabilities limit his capacity to understand or reflect on what he or others are doing and, when confused, he displays poor judgment. Lewis described his thinking as "childlike". The brutal abuse he received as a child (see below) left him unusually subservient to and compliant with persons in authority. Yet no inquiry was ever conducted to determine whether Carter knowingly and voluntarily waived his right to a lawyer and his right not to incriminate himself following his arrest.

PERSONAL PROFILE: Robert Carter grew up in an impoverished district of Houston, one of six children. He was brutally abused throughout his childhood by his mother and stepfather who whipped and beat the children with wooden switches, belts and electric cords. Carter's mother would sometimes surprise them at night while they slept by pulling down the bed-covers and whipping them.

Carter received several serious head-injuries as a child. At the age of five he was hit on the head with a brick; on another occasion a dinner plate his mother threw at him smashed on impact with his head. At the age of ten he was hit so hard on the head with a baseball bat that the bat broke. He received no medical attention for any of these injuries.

The family was one of the poorest in the neighbourhood and Carter was taunted and beaten by other children because he was so dirty and his clothes so ragged. Even so, he tried to overcome his environment. He held a series of jobs and his employers all described him as obedient, hard-working, cooperative and trustworthy. He used to help a frail, elderly neighbour who ran a local cafe by escorting her home each night with the day's takings (usually between $500 and $1000). He did this up until he was arrested for Reyes' murder.
Robert Carter had no prior criminal record.

NAME:	**PAULA COOPER**		**INDIANA**
RACE:	Black	**DATE OF CRIME:**	14 May 1985
DATE OF BIRTH:	25 August 1969	**AGE AT CRIME:**	15 years 9 months
DATE OF SENTENCE:	11 July 1986	**AGE AT SENTENCE:**	16

CURRENT STATUS: On 13 July 1989 Paula Cooper's death sentence was set aside by The Indiana Supreme Court. The court held that, because of her age at the time of the crime, the death sentence was a disproportionate punishment. She was resentenced to the maximum prison term permissible under Indiana law: 60 years. She must serve half her sentence before becoming eligible for parole.

CRIME: Paula Cooper was convicted of the murder of Ruth Pelke, a 78-year-old white woman, who was stabbed to death in her home in Gary, Indiana. Paula Cooper and three other girls drank a bottle of wine before visiting Mrs. Pelke, a Bible teacher. She was stabbed more than 30 times with a butcher's knife. The girls stole $10 and Mrs. Pelke's car, and drove it until it ran out of petrol.

CONVICTION: Paula Cooper, the admitted ring-leader of the group, pled guilty and was convicted without a jury trial in June 1986. On being sentenced she was reported to be the youngest woman to receive the death penalty in the USA this century. The other three girls (all teenagers of around the same age as Cooper) received sentences of between 25 and 60 years' imprisonment for their part in the crime.

PERSONAL PROFILE: Paula Cooper was depicted by her defense as an abused child and chronic runaway. Her father beat her with belts and extension cords. She and her older sister were forced to watch him beating and raping their mother. On one occasion Paula Cooper's mother attempted to kill herself and her two daughters by putting them into the car in the garage and turning on the motor. Paula Cooper spent periods of time in foster homes and juvenile centres.

APPEALS: In its ruling in July 1989, the Indiana Supreme Court held Paula Cooper's death sentence to be "unique and disproportionate" in light of Indiana's 1987 law establishing 16 as the minimum age for the imposition of the death penalty.

Paula Cooper's death sentence provoked debate in the national and international media as to the appropriateness of capital punishment for juvenile offenders.

An international campaign on behalf of Paula Cooper, based in Italy, brought her case to world attention. In September 1987 the Pope urged Governor Robert Orr to grant clemency, and in March 1989 an Italian delegation presented a petition with one million signatures to the United Nations, protesting the death penalty and requesting clemency for Paula Cooper. Statements about the case were also made in the European Parliament's Political Affairs Committee (Sub-committee on human rights).

Ruth Pelke's grandson, William Pelke, became convinced that his grandmother would not have wished her killer to be executed. "It was the Paula Coopers of this world my grandmother was trying to help." He befriended Paula Cooper, corresponds with her and speaks publicly against the death penalty from the viewpoint of a family member of a murder victim. He, too, had urged that her death sentence be commuted.

Paula Cooper (c)AFP

NAME:	**TROY DUGAR**		**LOUISIANA**
RACE:	Black	**DATE OF CRIME:**	26 October 1986
DATE OF BIRTH:	1 May 1971	**AGE AT CRIME:**	15 years 5 months
DATE OF SENTENCE:	14 May 1987	**AGE AT SENTENCE:**	16

CURRENT STATUS: Remanded by Louisiana Supreme Court for an evidentiary hearing by the trial court judge, who ruled in 1988 that Troy Dugar was"incompetent" to appeal his case. He was returned to death row, where he remains pending further proceedings.

CRIME: Convicted and sentenced to death for the murder of Donald Williams, white, aged 31. Williams was abducted from the office of the Acadiana Catholic Newspaper in Lafayette, where he worked, and put into the trunk of his own car. His body was found the following morning in Sulphur, Louisiana. He had been shot some six times.

TRIAL: The prosecution's chief witness was James Moore, aged 14, an acquaintance of Dugar's. They were together during the commission of the crime. According to Moore's account, Dugar picked him up in the victim's car, they drove around the area then headed for Houston. Moore claimed that Dugar shot the victim and also alleged that Dugar had taken $3 from the victim's wallet (Dugar denies the theft). This was an important question that Dugar's defence counsel failed to pursue. The jury duly convicted him of murder committed "in the course of a robbery" - a capital offence.

SENTENCING: At the sentencing phase of the trial the prosecution cited Troy Dugar's "prior conviction:" the theft of a gun some weeks before the commission of the murder. Shortly before his trial for murder Dugar had pled guilty to this offense, apparently unaware that it could be used against him. According to his present attorney, Dugar was mentally disturbed at the time and did not understand the consequences of pleading guilty to the gun theft.

This "prior criminal record" apparently proved damning at the sentencing phase of the trial. On Troy Dugar's 16th birthday the jury unanimously recommended that he be executed. The judge formally imposed the death penalty two weeks later and Troy Dugar became the youngest prisoner sentenced to death in the country.

TRIAL

REPRESENTATION: Troy Dugar was represented at his trial by two inexperienced public defenders who offered no evidence whatsoever to rebut the state's theory of the case at the guilt phase of the trial. At the sentencing phase little was said regarding what ought to have been a major mitigating factor: Troy Dugar's age. His lawyers also failed to present mitigation evidence describing Dugar's long history of psychiatric problems, his low IQ, a family history of alcoholism (and Dugar's own alcohol consumption from an early age). The "mitigation" evidence they did present was prejudicial rather than helpful: the testimony of a doctor who said that Dugar was a "sociopath" with no other mental disorder.

PSYCHIATRIC FINDINGS: In 1988 Dr Howard Albrecht, a psychologist, examined Troy Dugar and found him to be schizophrenic and to have an IQ of around 75. In his opinion Dugar had been mentally incompetent at the time of the crime and prior to his trial and was incompetent now. At a 1988 hearing, the trial judge ruled that Dugar was not competent to proceed with his appeals.

Troy Dugar's present attorney reports that his client's behaviour suggests that he is mentally ill. He hallucinates, does not appear to understand that he is on death row, gives incoherent accounts of his trial, and tells his lawyer that his father is coming to take him home.

PERSONAL PROFILE: Troy Dugar grew up in Crowley, Louisiana. His father, Lancaster Dugar, was an officer in the Sheriff's Department at the time of his son's arrest. According to reports, Troy Dugar grew up in a disturbed family environment. His parents' marriage was unhappy and there were frequent fights, drinking bouts and extra-marital affairs. They eventually divorced.

This had a profound effect on Dugar. According to one report, "He had started drinking aged six, had a breakdown at 10, and was an alcoholic at 12... After the divorce Dugar was utterly torn in his allegiances, and yet his parents constantly asked him to choose between them."[15]

Since he has been on death row in Louisiana's Angola Prison, Troy Dugar has reportedly suffered violent fits, hallucinations and has spent periods of several months under heavy sedation.

[15]Sunday Times Magazine, 11 September 1988, article by Peter Gillman

NAME:	**CURTIS HARRIS**		**TEXAS**
RACE:	Black	**DATE OF BIRTH:**	31 August 1961
DATE OF CRIME:	12 December 1978	**AGE AT CRIME:**	17 years 4 months
DATE OF SENTENCE:	7 June 1979 and 6 August 1983		

CURRENT STATUS: An appeal against his conviction and death sentence was still pending in the federal district court as of I July 1991.

CRIME: Curtis Harris was convicted of the murder of Timothy Merka (white), a truck driver. Merka was beaten to death after his truck was stopped by Curtis and three others: his older brother Danny Harris, James Manuel and Valarie Rencher. The four then stole the truck. Danny Harris was also convicted of murder and sentenced to death at a separate trial. James Manuel received a 25 year prison sentence.

INADEQUATE PRE-TRIAL PSYCHIATRIC EVALUATION: Harris' lawyer had arranged for him to be evaluated by a psychotherapist before the trial. However, the psychotherapist failed to obtain any details about his history or background or to conduct any medical examinations. His two-page report gave no indication that Harris was mentally retarded or suffered from brain damage: findings that emerged only later.

TRIAL: Curtis Harris' first conviction was reversed on appeal. He was re-convicted and again sentenced to death at a second trial in August 1983.

The evidence against him was based entirely on the testimony of Valarie Rencher. She gave her testimony in return for a maximum 10 year sentence but was in fact placed on probation, for "truancy", after Harris' conviction, and was never prosecuted in connection with the murder. According to Rencher's testimony, Curtis' older brother Danny stopped Merka's truck and asked for assistance after their car had broken down. When the car still would not start, Danny Harris decided that they would steal the truck and he pinned the driver to the ground while Curtis hit him with a car tool. They drove off, robbed a store, and Danny Harris later disposed of the truck.

SENTENCING HEARING No evidence was presented at either the guilt or sentencing phase of the trial regarding Curtis Harris' upbringing or mental health. The only mitigating factors presented at the sentencing hearing were the fact that he had committed no disciplinary offenses since his admission to prison; had consumed marijuana and "hard" liquor on the night of the

crime and was aged only 17 at the time of the offence. His mother also made a plea for mercy. The jury were not informed that Harris had an IQ of only 77, was brain damaged and had been physically abused as a child (see below).

JURY:

Curtis Harris was tried and sentenced to death by an all-white jury after the prosecutor had used his peremptory challenges to exclude three prospective black jurors from the jury panel. The prosecutor had also changed the trial venue from an area with a 17% minority population to one with only 6%, which meant that there were fewer black people on the jury panel than would originally have been the case. His trial lawyer failed to object to the change of trial venue.

POST-CONVICTION PSYCHIATRIC EXAMINATION:

In 1986 Curtis Harris received an extensive neuropsychiatric evaluation by Dr Dorothy Otnow Lewis, Professor of Psychiatry at the New York University School of Medicine and a clinical psychiatrist at the Yale Child Study Centre. She found, among other things, that Harris had a full-scale IQ of only 77, had significant brain damage and possibly suffered from a seizure disorder. She also discovered that he had been severely beaten as a child and had sustained several severe head injuries, from which he still had scars and an indentation of the cranium. She also found that he suffered from psychotic symptoms and paranoia, which would be exacerbated through the use of alcohol or marijuana. She found that these circumstances, taken together, would have severely impaired his ability to act deliberately and to control his conduct on the night of the crime.

APPEALS:

Curtis Harris' conviction and death sentence were upheld on direct appeal to the state courts. An appeal raising constitutional issues was still pending before the federal courts as of 1 July 1991.

The appeal alleges, among other things,:

- that Harris' trial lawyer was ineffective in failing to discover and present evidence about his client's brain damage, mental retardation or physical abuse. The appeal also mentions other evidence that might have mitigated against a possible death sentence had it been presented, including the fact that Curtis had performed charitable acts toward elderly people in his community.

- that the testimony of Valarie Rencher was unreliable and inconsistent. The appeal refers to conflicting statements she had made regarding Curtis' involvement in the murder before and after she had entered an agreement with the state for a reduced sentence. Also, some of her testimony against Harris did not match the physical evidence at the

crime scene. It is also alleged that the state had failed to disclose the true nature of the agreement reached in return for her testimony (i.e. the court was not made aware of the fact she would not even be sentenced to a prison term).

- that the pre-trial psychological examination of Harris was wholly inadequate. This was shown clearly in the evidence given by Dr Lewis. It is claimed, alternatively, that Dr Lewis' findings constitute newly discovered evidence, requiring vacation of the conviction and death sentence.

- that the striking of black prospective jurors by the prosecutor was made solely on the basis of race and therefore violated Harris' constitutional rights. (It is also claimed that blacks and Hispanics were under-represented in the jury pool due to their unconstitutional under-representation on the voter registration lists). That trial counsel had erred in failing to object to the exclusion of black jurors and to the change of trial venue to a county where blacks constituted an even smaller minority.

- the appeal also alleges that the prosecutor had improperly excluded two prospective jurors who had expressed some reservations about the death penalty but who said that they would be able to perform properly at both the guilt and the sentencing stage of the trial.

The appeal further claims that the Texas death penalty statute itself prevented the jury from properly considering mitigating circumstances. The statute required the jury to impose a death sentence on Harris if it found that his conduct was deliberate, and that there was a probability of his committing future acts of violence that would constitute a continuing threat to society. Harris' appeal argues that there is no opportunity for jurors under Texas law to give independent weight to other mitigating circumstances, such as brain damage or an abused childhood. Such factors could even be used against the defendant, and allow the state to strengthen its call for the death penalty on the ground that such circumstances may increase the defendant's "future dangerousness".[16]

PERSONAL PROFILE: Curtis Harris was one of nine children and was brought up in extreme poverty. According to the testimony of relatives and siblings at the post conviction proceedings, his father was an alcoholic who became extremely abusive towards his children when drunk. Harris was regularly severely beaten as a child with electric cords, belts, a

[16]See note 38 at P.76 for the relevant wording of the Texas Statute. This issue has been raised in numerous appeals challenging the constitutionality of the Texas death penalty statute. The statute remains in force, however.

bullwhip and his father's fists. On one occasion he was hit over the head with a wooden board, which his father swung at him like a baseball bat; his cranium still bears the indentation mark.

NAME:	**FREDERICK LYNN**[17]		**ALABAMA**
RACE:	Black	**DATE OF BIRTH:**	6 September 1964
DATE OF CRIME:	5 February 1981	**AGE AT CRIME:**	16 years 5 months
DATE OF SENTENCE:	May '83/April '86	**AGE AT SENTENCE:**	18 and 21

CURRENT STATUS: Frederick Lynn's first conviction and death sentence were reversed on appeal, but he was again sentenced to death at his second trial in April 1986. He is now pursuing post-conviction appeals.

CRIME: Lynn was convicted of the murder of a 61-year-old white woman, Marie Driggers Smith, committed during a robbery at the victim's home in Eufaula, Alabama. Lynn and an accomplice (of about the same age) broke into Mrs. Smith's home and held her at gunpoint during a search for jewellery and money. They found only a ring, a watch and a few coins.

TRIAL: Lynn was convicted largely on the testimony of his accomplice, Garrett Marcus Strong. Strong, also a juvenile, learned in September 1982 that his fingerprint had been found in the victim's home. He turned himself in to the police, confessed to the burglary and received a 30-year prison sentence in exchange for his testimony at Lynn's trial. Strong testified that it was Lynn who had masterminded the crime and shot the victim.

Lynn's first conviction and death sentence were overturned by the Alabama Supreme Court in July 1985 on the grounds that he had been prevented from effectively cross-examining Strong about his prior criminal record.

At his second trial, Lynn was convicted and sentenced to death by an all-white jury. At the sentencing hearing the judge identified one aggravating factor (murder during the course of a burglary) and one mitigating factor (the fact that Lynn was 16 at the time of the crime).

TRIAL REPRESENTATION: Lynn was represented at both trials by two court-appointed lawyers.

APPEALS: In March 1987 the Alabama Court of Criminal Appeals remanded the case back to the trial court for an evidentiary hearing to discover whether the jury at the second trial had been selected in a racially

[17] Amnesty International was unable to obtain information about Frederick Lynn's upbringing or background.

discriminatory manner. The prima facie case was based on the fact that all 11 black potential jurors had been removed from the 38-member jury pool by the district attorney.

At the evidentiary hearing the reasons given for having excluded the 11 black jurors were somewhat suspect. Several were rejected because they lived in the vicinity of Lynn, Strong, their relations or friends (most black citizens of Eufaula live in the same area of town); one prospective juror was the brother of a man prosecuted several times by the DA another's name was 'Jackson' and the DA suspected he might be related to other people of the same name whom he had prosecuted in the past; another was 28, unemployed and "lived close to a city magistrate"; and one lived in "a very high crime district" and "might not be as shocked or opposed to crime" as a result.

The Alabama Supreme Court denied Frederick Lynn's request for a new trial on 30 December 1988, accepting that the reasons given by the district attorney were "race-neutral". However, one Justice found that compliance with the jury selection standard had been "at most, minimal" and that "some of the race-neutral reasons stated by the prosecutor are not as clear and specific as they might have been." (Maddox, J,., concurring specially).

NAME:	**DALTON PREJEAN**		**LOUISIANA**
RACE:	Black	**DATE OF BIRTH:**	10 December 1959
DATE OF CRIME:	2 July 1977	**AGE AT CRIME:**	17 years 6 months
DATE OF SENTENCE:	11 May 1978	**AGE AT SENTENCE:**	18 years 5 months
DATE OF EXECUTION:	18 May 1990	**AGE AT EXECUTION:**	30
METHOD OF EXECUTION:	Electrocution		

CRIME:

Dalton Prejean was convicted of the murder of a white police officer, Donald Cleveland, in Lafayette, Louisiana. Cleveland was shot when he stopped the car in which Prejean and three others were driving. All four occupants of the car had been drinking heavily and were under the influence of drugs. Dalton Prejean's brother, Joseph, was ordered out of the car and roughly searched. According to witnesses, Dalton believed his brother (whom he idolized) was in danger; he panicked, took a gun from under the car seat and shot Trooper Cleveland dead.

TRIAL:

Dalton Prejean was represented by a court-appointed attorney and tried by an all-white jury after the judge changed the trial venue to a predominantly white area and the prosecutor then excluded all four prospective black jurors from the panel. Prejean was convicted of first-degree murder on 3 May 1978 and the jury recommended a death sentence the same day.

TRIAL REPRESENTATION:

Dalton Prejean's youth was not mentioned as a possible mitigating factor at the sentencing phase of the trial. Nor was the jury given adequate information about his state of extreme intoxication at the time of the crime. The jury was not informed of Prejean's childhood neglect and abuse, or about his documented history of mental illness and brain damage.

It was argued on appeal that, if the jury had known all the relevant mitigating evidence, it is unlikely that they would have sentenced Prejean to death. This is born out by the appeal for clemency made by one member of Dalton Prejean's jury shortly before the execution (see below).

PSYCHIATRIC FINDINGS:

At his trial, Dalton Prejean was found to be borderline mentally retarded with a full-scale IQ of 71. Tests performed in 1984 indicated that Prejean also suffered from organic brain damage which impaired his ability to control his impulses when under stress, and almost certainly contributed to his criminal behaviour. Prejean was confined to various institutions between 1972 and 1976. Diagnosed as suffering from a number of mental problems, including schizophrenia and depression, he still responded well in the structured environment of the institution.

In 1974, aged 14, Dalton Prejean was committed to an institution after killing a taxi driver (a crime in which an older man was also involved). Medical specialists recommended that he would require "longterm medical in-patient hospitalization" under strict supervision and that he would benefit from a secure and controlled environment. Despite their finding that Prejean was "a definite danger to himself and others," he was released from the institution without supervision in 1977 because no more funding was available for his care. Six months later he killed Officer Cleveland.

RACE DISCRIMINATION:

Over the past century nine juvenile offenders have been executed in Louisiana, including Dalton Prejean. All nine were black males, convicted of the murder of white victims, and all were convicted and sentenced to death by all-white juries.

PERSONAL PROFILE:

Dalton Prejean was abandoned by his mother when he was two-weeks old and brought up by an alcoholic aunt in Houston, Texas. She was unpredictably violent and frequently beat him. Prejean was 11 when he learned that she was not his natural mother; this discovery caused him extreme emotional anguish and depression.

From his early childhood, he exhibited symptoms of paranoia and was sometimes violent. His family and acquaintances remember him as "strange" and "crazy." He had few friends but was deeply attached to his older brother, Joseph. After his release from institutional care in 1977 he left Houston and moved to Lafayette to be near Joseph.

Dalton Prejean was the longest-surviving inmate on Louisiana's death row. During his 12 years under sentence of death he received ten stays of execution. In interviews before his execution he expressed remorse for the crime and explained, "I've changed. There's a whole difference between being 17 and 30." Referring to his nine-year-old son he said, "I think about Cleveland's children, the fact that they don't have a father either." And in his final statement Prejean again remembered the victim's family: "To the Cleveland family, they say it wasn't for the

revenge, but it's hard for me to see, to understand...I hope they're happy."

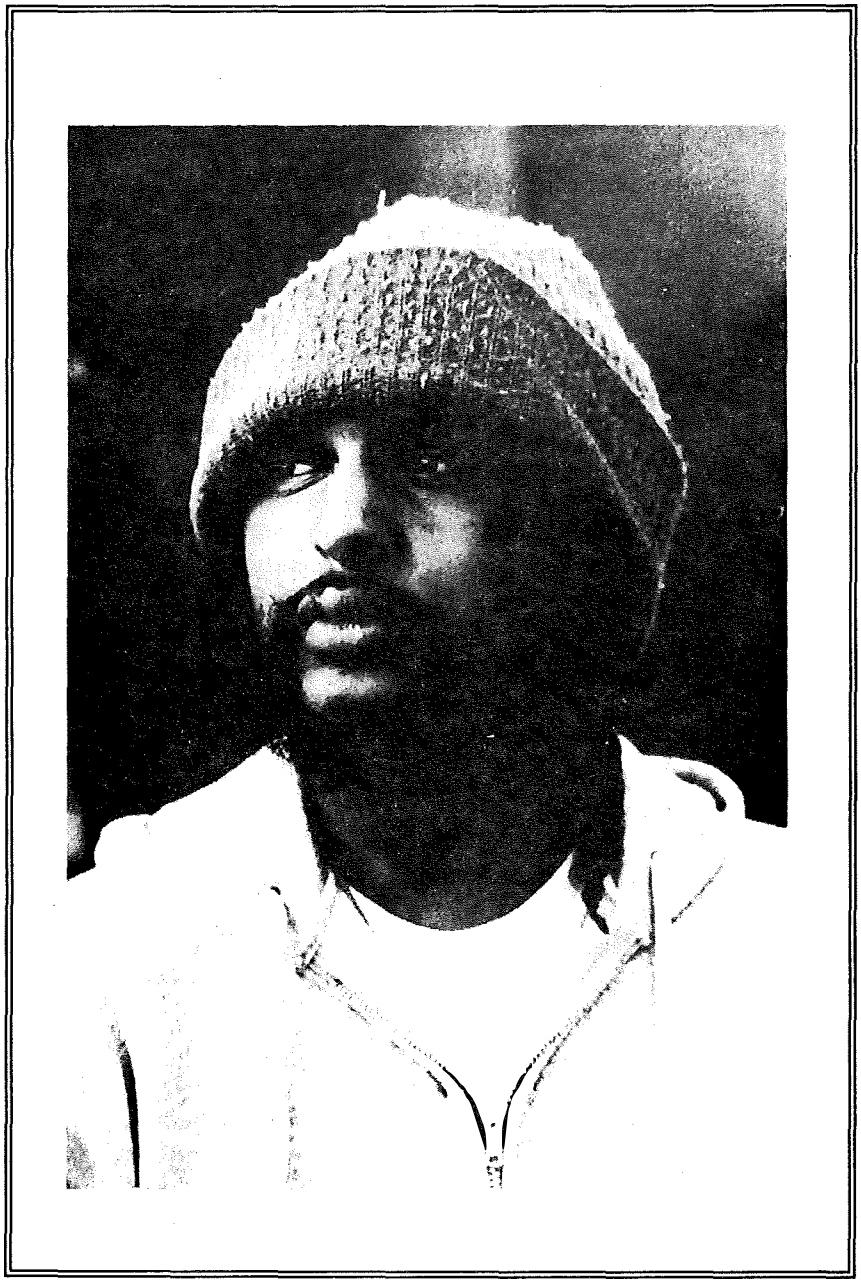
APPEALS FOR CLEMENCY:

On 28 November 1989 the Louisiana Board of Pardons recommended by three votes to two that the governor commute Dalton Prejean's sentence to life imprisonment without parole. The majority said they had been influenced by Prejean's childhood abuse, his mental deficiencies, his remorse and his model behaviour during his 12 years under sentence of death. On 23 April 1990 the three board-members who had recommended clemency wrote again to Governor Roemer to reiterate their "special plea" that he review the case and reconsider his refusal to commute the death sentence. They said: "While we do not in any way wish to deprecate the seriousness of the crime - it was senseless and perpetrated upon one of the state's law enforcement officers - we feel that evidence deduced after the conviction suggests that Mr Prejean's sentence should be commuted to life without parole.

Shortly before Prejean was executed in May 1990, one of the original trial jurors came forward to appeal to Governor Roemer to grant clemency. The juror had recently received information that had not been given to the jury at the time of the trial. This led him to conclude that, "I would, if I had another opportunity, vote against the death penalty in favour of institutionalization. I am entering my plea for a stay of execution and a reassessment of penalty." Under Louisiana law, the jury's vote for a death sentence must be unanimous. If even one juror disagrees the sentence imposed is life imprisonment without parole.

The European Parliament passed a resolution on 17 May 1990 calling on Governor Roemer to commute Prejean's death sentence. The case aroused deep concern internationally and many hundreds of appeals for clemency were sent from around the world.

Governor Roemer denied clemency on the grounds that the murder victim was a state trooper. "So on behalf of 780 state troopers, and thousands of police officers who put their lives on the line every day, the execution will proceed." Roemer and Prejean spoke by telephone on the night before the execution. It is understood that Roemer told Prejean his death was necessary to serve society. And that Prejean asked to have a chance at life and a chance to give something back to society.



Dalton Prejean (c)Howard Zehr, USA

NAME:	**JAMES TERRY ROACH**		**SOUTH CAROLINA**
RACE:	White	**DATE OF BIRTH:**	18 February 1960
DATE OF CRIME:	29 October 1977	**AGE AT CRIME:**	17 years 8 months
DATE OF SENTENCE:	16 December 1977	**AGE AT SENTENCE:**	17
DATE OF EXECUTION:	10 January 1986	**AGE AT EXECUTION:**	25
METHOD OF EXECUTION:	Electrocution		

CRIME:

Sentenced to death for the kidnapping, rape and murder of Carlotta Hartness, aged 14, and the armed robbery and murder of her 17-year-old boyfriend, Tommy Taylor. Both victims were white and were from prominent families in the area. On the day of the crime Terry Roach was in the company of a 22-year-old soldier named Joseph Carl Shaw, and Ronald Mahaffey aged 16. All three had been consuming beer, marijuana, and other drugs. Shaw drove them to a baseball park northeast of Columbia, South Carolina. They stopped beside Taylor's car, demanded his wallet and shot Taylor three times. They abducted Hartness who was raped and also shot dead.

LEGAL PROCEEDINGS:

The crime provoked enormous community outrage. After five days of intense investigation, Shaw, Roach and Mahaffey were arrested. Mahaffey agreed to testify against the other two in exchange for a lighter sentence. The prosecutor sought the death penalty for Shaw and Roach.

Shaw and Roach waived their right to a jury trial and pled guilty. During a three-day sentencing hearing in December 1977, the judge considered mitigating factors for Roach including his youthful age, lack of previous violent crimes, his emotional and mental condition and his having acted under the domination of Shaw. The judge ruled that these mitigating factors were outweighed by the heinous nature of the crime. Roach and Shaw were both sentenced to death. Shaw was executed on 11 January 1985.

LEGAL REPRESENTATION:

Roach was represented by a court-appointed attorney, Walter Brooks. A year before his representation of Roach, Brooks was charged in bar disciplinary proceedings with various irregularities in his law practice and with involvement in illegal drug trafficking. These charges were still pending when he represented Roach. Two years after Roach's trial, Brooks was disbarred from practising law in South Carolina. However, his representation of Roach was found to have been constitutionally adequate.

APPEALS: The South Carolina Supreme Court unanimously affirmed Roach's conviction and death sentence on 28 May 1979. Defence efforts on appeal resulted in some four postponements of Roach's execution date, but relief was denied in the state and federal courts.

As Roach's case received more and more statewide attention, South Carolina legislators introduced a bill to set the minimum age for the imposition of the death penalty at eighteen at the time of the crime. This bill was still pending when Roach was executed and its chances for passage died with him.

MEDICAL FINDINGS: Lawyers representing Roach presented evidence indicating that he was "borderline" mentally retarded with an IQ of between 75 and 80. A neurological examination performed in 1979 suggested that he may have been suffering from the first stages of Huntington's Chorea, an hereditary degenerative brain disease (from which Roach's mother and several other family members suffered).

Shortly before Roach was executed he was examined by a neurologist who testified that he appeared to exhibit early clinical signs of Huntington's Chorea, and that his social and criminal history may have been the early manifestations of the disease. A last-minute appeal to the US Supreme Court to stay the execution was rejected. Dissenting from the majority, Justice Thurgood Marshall expressed concern that Roach's mental condition "raises substantial doubts as to whether Roach has any understanding that he is scheduled to die tomorrow." Five months later the Supreme Court ruled that the presently insane may not be executed.

Roach's lawyers also brought a complaint on his behalf to the Inter-American Commission on Human Rights (IACHR) on the grounds that his execution would violate US obligations under international customary law and the human rights charter of the Organization of American States. The IACHR appealed to the US authorities to grant a stay of execution; their request went unheeded.

PERSONAL PROFILE: Terry Roach was born into a poor white family in Seneca, South Carolina. His mother suffered from prolonged illness (see above) and his father, a truck driver, was frequently absent from home. Limited by a low IQ, Terry Roach did not do well in school, and left as soon as he could. He became involved with drugs and was placed for a while in a state reform school from which he escaped in 1977.

He found shelter in a rented house near Fort Jackson, South Carolina. The transient residents of the house were unemployable "dropouts" involved in a variety of antisocial activities including extensive abuse of drugs. Some were considerably older and cleverer than Roach who

easily fell under their domination. One of these was 22-year-old Joseph Shaw.

During his six years on death row, Roach's mental illness as a result of Huntington's Chorea began to show itself and his mental condition deteriorated.

THE EXECUTION:

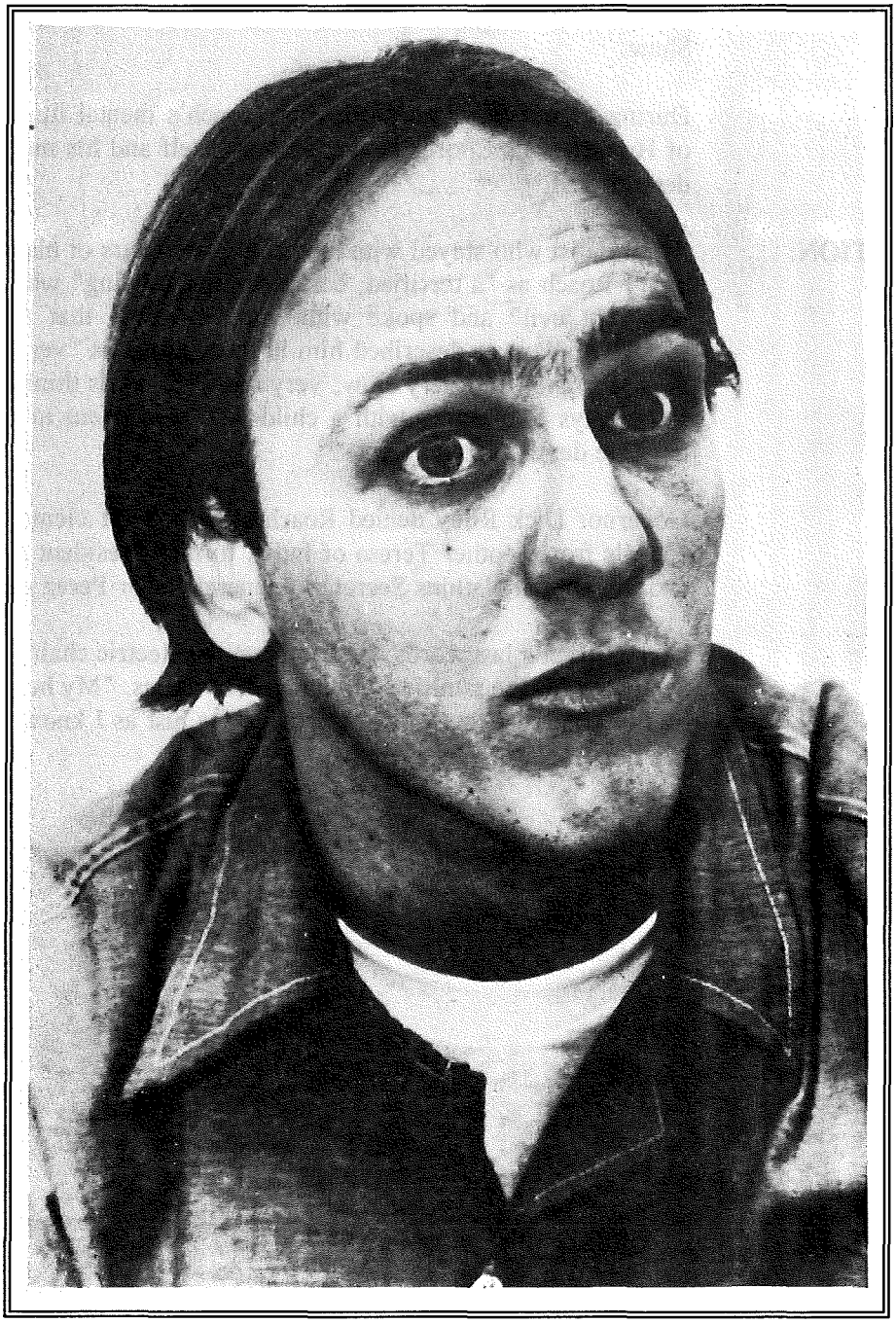
A journalist who stayed with him in the last hours of his life described Terry Roach as "a terrified, cornered human being" who "personified fear, not evil" and spoke with "simple words that a child would use."[18] His lawyer described him in those hours as "very, very brave, he was limited and very slow, very concrete in his thinking...it felt in some ways like sitting with a child who was about to have a really horrible dentist appointment."[19]

Governor Dick Riley denied Roach's petition for clemency, ignoring appeals from Mother Teresa of India, former President Jimmy Carter, and the United Nations Secretary-General Javier Perez de Cuellar.

Terry Roach's last words, spoken from the electric chair, expressed his sympathy for the families of the murder victims. "My heart is still with you in your sorrow. May you forgive me just as I know that my Lord has done."

[18]Colman McCarthy, "A Last Talk with a Condemned Man," Washington Post, 13 January 1986.

[19]David Bruck, "Banality of Evil", in A Punishment in Search of a Crime, by Ian Gray and Moira Stanley, Avon Books, New York, 1989.



James Terry Roach

NAME:	**SEAN RICHARD SELLERS**		**OKLAHOMA**
RACE:	White	**DATE OF BIRTH:**	18 May 1969
DATE OF CRIMES:	8 Sept 1985 + 5 March 1986	**AGE AT FIRST CRIME:**	16 years 3 months
DATE OF SENTENCE:	2 October 1986	**AGE AT SENTENCE:**	17 years 4 months

CURRENT STATUS: Sellers' conviction and death sentence are on direct appeal before the Oklahoma Court of Criminal Appeals.

CRIME: Sean Sellers was convicted of the shooting murder of Robert Bower, a store owner in Oklahoma City, on 8 September 1985. He was also convicted of the murder of his mother and step-father, who were shot while asleep at their home in Oklahoma City on 5 March 1986. Sellers had been taking amphetamines for three days before the murder of his parents.

TRIAL: The three murder cases were tried together. The prosecution's chief witness against Sellers was his best friend, Richard Howard, who was with him at the time of Bower's murder and was also charged with first-degree murder. However, the state dismissed the charge against Howard and recommended that he be given a five-year suspended sentence in exchange for his testimony against Sellers. There was no forensic evidence linking Sellers to either crime. Howard testified that Sellers told him he had killed his parents, but this was uncorroborated by any other evidence.

Despite a dearth of evidence, the jury found that the murders were especially heinous, atrocious or cruel and that Sellers posed a continuing threat to society. Although the circumstances of his parents' killing were not known, the jury also found that Sellers had caused a great risk of death to more than one person.

At the sentencing phase of the trial the jury was not instructed that Sellers' age of 16 at the time of the crime was a mitigating circumstance. Instead the jury was asked to decide whether his age was a mitigating factor.

The jury's two alternative sentences were life imprisonment or death. Defence counsel sought to present evidence regarding the length of a life sentence in Oklahoma - to counteract newspaper stories suggesting that life imprisonment does not mean "life." The judge did not allow this evidence to be introduced and the jury sentenced Sellers to death on all three counts.

PSYCHIATRIC FINDINGS:

A psychiatrist for the defence testified at the trial that, if Sellers killed his parents, he could not have known what he was doing, and was incapable of forming an intent to kill due to insanity or "unconsciousness" (an automaton-like state where a person, though capable of action, is not conscious of what they are doing). His testimony was rebutted by that of a psychologist for the state who had examined Sellers for a juvenile certification hearing, but had not tested him to determine whether he was sane at the time of the crimes.

In March 1987 Sellers was examined by Dr. Dorothy Lewis. She found him to be chronically psychotic, exhibiting symptoms of paranoid schizophrenia and other major mood disorders. His psychoses included visual and auditory hallucinations, paranoid ideation, delusional beliefs, peculiar acts of self-mutilation and obsessions with God, Satan, good and evil.

In his interview with Dr. Lewis, Sellers described the satanic rituals he practised daily in the months prior to the murder of his parents. He kept vials of blood in the refrigerator, some of which he drank at school. He began taking drugs, hallucinating and dreaming that he had killed his parents. He would experience grandiose, euphoric moods and suicidal depressions.

APPEALS:

Among many issues raised on appeal it was argued that the trial judge erred in not instructing the jury that it could find Sellers guilty of first-degree manslaughter if it had doubts about his ability to form the requisite intent for murder. Instead the jury was given only two options: to find Sellers guilty of first-degree murder or to set him free.

PERSONAL PROFILE:

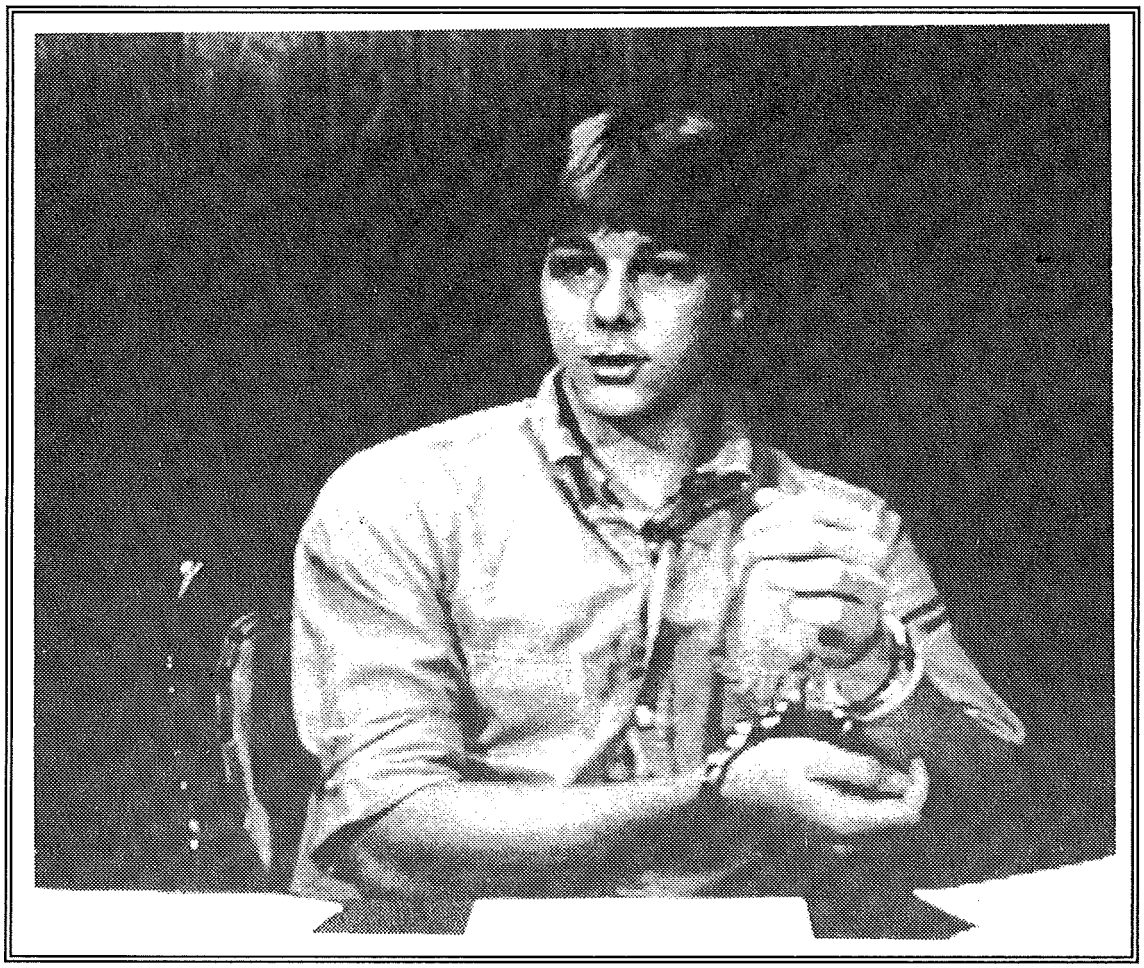
Sellers' mother was 16 when he was born. His parents divorced when Sellers was three or four. His childhood was troubled and turbulent and as a small boy he was often left in the care of relatives while his mother was away with his step-father, a truck-driver. The family frequently moved from place to place.

As a child he was humiliated by an uncle who made him wear diapers [nappies] because he still wet the bed at the age of 12 and 13. If he wet the bed two nights in a row his uncle would make him wear a soiled diaper on his head all day as punishment.

Sellers was also exposed to grotesque demonstrations of violence. An uncle who took him hunting tried to teach him to step on an animal's head and pull on its legs to kill it. Sellers was called a "wimp" by his uncle and chastised by his step-father for his reluctance to perform these violent acts. His step-father and mother both carried guns and knives with them wherever they went.

He had a close relationship with his mother and step-father, and performed well in school. But in his early adolescent years he became involved in satanism and fantasy role-playing games. He became increasingly emotionally disturbed and lived largely in a world of unreality. He several times considered suicide.

Sean Sellers had no criminal record whatsoever prior to his indictment for the murders. His only earlier brush with law enforcement agencies was when he tried to steal a piece of black cloth from a store.



Sean Richard Sellers

NAME: **DAVID TOKMAN** **MISSISSIPPI**

RACE: White **DATE OF BIRTH:** 19 February 1963

DATE OF CRIME: August 1980 **AGE AT CRIME:** 17 years 6 months

DATE OF SENTENCE: September 1981 **AGE AT SENTENCE:** 18 years 7 months

CURRENT STATUS: David Tokman's death sentence was vacated in May 1988 on grounds of ineffective assistance of counsel. In March 1991 he was transferred from death row to Hinds County jail to await a new sentencing hearing, at which he could again be sentenced to death. The hearing was due to take place in September 1991.

CRIME

David Tokman was convicted of the murder of Albert Taylor, an elderly black taxi driver. The crime was committed with two accomplices: Michael Leatherwood, aged 18, and Jerry Fuson, aged 20. All three were in the army at the time. According to the evidence presented at trial, the three were travelling from their army unit in Louisiana to Jackson, Mississippi, to retrieve Fuson's car; they ran out of money and decided to rob and kill a taxi driver. Albert Taylor was killed by repeated blows to the head.

One of the co-accused, Michael Leatherwood, was also sentenced to death at a separate trial. However, his conviction was overturned on a point of law and he was retried and sentenced to life imprisonment. He was eligible for parole at the time of writing. Jerry Fuson (who had reportedly left the scene to retrieve his car while the murder was being carried out) received a 20 year sentence in return for testifying for the state.

TRIAL AND LEGAL REPRESENTATION:

The trial took place in Mississippi where Tokman, who was from Michigan, had no relatives or acquaintances. He was represented by a court-appointed attorney who met him for the first time several months before the trial but had very little contact with him thereafter. Not a single witness for the defence was presented at either the guilt or the penalty phase of the trial. Although the trial lawyer learned that an accomplice, Fuson, was to testify as a key witness against Tokman, he did not interview him or any other state witnesses before the trial.

The state's evidence depended mainly on Fuson's testimony. Although he testified that he had not witnessed the actual killing, he said that it had gone ahead as planned and that Leatherwood had tied a rope round the victim's neck and held him down while Tokman struck him with a knife. As no stab wounds or lacerations were found on the victim, the prosecution's theory was that Tokman had hit him with the blunt end of a folding knife. No murder weapon was produced in evidence. The

state's case went largely unchallenged by the defence, who produced no evidence to rebut the prosecution's theory that Tokman (despite being the youngest, with no prior record of violence) was the most hardened and most culpable of the three accused.

The trial attorney later admitted to an appeal hearing that he had spent less than seven hours preparing Tokman's case for trial (including three hours spent drafting a court petition) and had conducted no investigation into Tokman's background. (A second lawyer he hired to assist him a few days before the start of the trial had also spent little time on the case.) Although Tokman had asked his lawyer at their initial meeting to contact his mother, this was done by telephone only after the trial had started; his mother then refused to travel to Mississippi to testify at the sentencing hearing, reportedly because she was unwell and was undergoing a "difficult divorce". No attempt was made to contact any other relatives or acquaintances who might have presented mitigating testimony at the sentencing hearing. The defence counsel had planned to rely entirely on Tokman's own plea for mercy but chose not to put him on the stand when, the day before the hearing, he said he would ask for the death penalty.

INADEQUATE PSYCHIATRIC EVALUATION:

Several months before the trial, the court had ordered a complete psychiatric evaluation of Tokman, including a "battery of psychological tests", in order to assess his mental competency. These tests were never carried out, although they are normally administered during a competency examination. Instead, Tokman was interviewed by a state psychiatrist and a psychologist for less than 20 minutes, during the course of which they questioned him in detail (without a lawyer present) about his involvement in the crime. His trial attorneys - who later stated that they were unaware of the court order - did not obtain a transcript of the state's psychiatric examination of Tokman. Nor did they arrange for him to have any further psychiatric examination, even though they later admitted there was evidence to suggest that he had a "death wish", had been abusing illegal substances and had a poor relationship with his father. They later testified to an appeal hearing that their failure to obtain an independent psychiatric examination was not based on strategic considerations but the lack of funds".

APPEALS:

Tokman's conviction and death sentence were affirmed by the Mississippi Supreme Court (MSC) in 1983; two judges dissented and voted to reduce the sentence to life imprisonment, criticising "the absence of any evidence going to Tokman's rearing, training or background". The US Supreme Court declined to hear the case.

In October 1984, Tokman's appeal lawyers filed a motion for post-conviction relief based on "ineffective assistance of counsel". An evidentiary hearing was held before the circuit court in October 1986. Numerous relatives, acquaintances and neighbours from Michigan testified for the first time about Tokman's background, including the fact that he had been neglected and physically abused by his father. His sister and others testified that, despite his unhappy home life, Tokman had been a hard-working and considerate boy who had taken jobs from a very early age and did most of the housework as his mother was often out.

The appeal lawyers had also arranged for Tokman to be examined by two psychiatric experts, who conducted extensive tests and reviewed his family history and background. Both testified at the hearing. Both concluded that the pre-trial psychiatric assessment of Tokman by the state had been inadequate. Dr Fox, a psychologist, also concluded that Tokman was intelligent but immature with low self-esteem and was easily led. He found that Tokman did not have an anti-social personality disorder and that he had a high potential for rehabilitation. Dr Ritter, a psychiatrist, confirmed many of Dr Fox's findings and testified that the defendant "suffered the consequences of a deprived, detached and lonesome existence in which he was rejected by his father; his mother was inconsistent; and he himself felt rather helpless, hopeless, not a loved person". He stated that this created "a tendency to be immature, basically dependent, unstable and perhaps given to depressive episodes". The state presented three psychiatric experts who themselves confirmed some of the above findings. One state psychologist said that "the defendant like most adolescents has some anti-social traits" but "did not meet the full criteria for an anti-social personality disorder".

Following the above hearing, in May 1988, the circuit court vacated Tokman's death sentence on the ground that his trial attorney's conduct had fallen below reasonable standards and had prejudiced the outcome of the sentencing hearing. The court said that **"...with timely investigation, mitigating evidence could have been obtained and offered during the penalty stage which would have presented Tokman to the jury as a person other than the cold blooded and callous murderer proffered by the state"**. The State of Mississippi unsuccessfully appealed against this decision to the MSC. The MSC upheld the decision of the lower court in April 1990, and remanded the case for a new sentencing hearing.

FURTHER APPEALS: In May 1990, Tokman's lawyers renewed an earlier appeal for a rehearing of their motion to vacate the conviction as well as the death sentence in the case. They argued that deficiencies by Tokman's defence attorney had prejudiced the fairness of the guilt stage of the trial. They cited, among other things, the lawyer's failure to interview

any state witnesses, including Fuson, or to challenge inconsistencies in the evidence which had not established beyond doubt that it was Tokman who had killed the victim. They also claimed that the trial lawyer had been negligent in failing to object to the introduction of testimony from the victim's identical twin brother which, although irrelevant to the question of guilt or innocence, had served to sway the jury emotionally; this same testimony had been specifically excluded from the co-accused Leatherwood's trial.

Alternatively, the appeal asked the court to reduce the sentence to one of life imprisonment, instead of remanding the case for a new sentencing hearing at which the defendant might again be sentenced to death. They argued that this would be appropriate, in view of his youth, the acknowledged deficiencies of his trial counsel and the length of time he had already spent under sentence of death before his original sentence was vacated. This appeal was denied.

PERSONAL PROFILE: As noted at the evidentiary hearing in October 1986, the defendant came from an emotionally deprived and neglectful background. He suffered rejection by his father, who had been made to marry his mother when she became pregnant with him. According to testimony from relatives, his father abused him both verbally and physically, and frequently hit him with his fists and a belt, drawing blood on occasions. According to Tokman's appeal lawyers, his mother at the time of his original trial was "impoverished, mentally unstable and had emphysema". Despite his background, Tokman was described as a considerate and hard-working boy and to have a high potential for rehabilitation. Tokman had no prior record of a violent offence.

NAME:	**JAMES RUSSELL TRIMBLE**		**MARYLAND**
RACE:	White	**DATE OF BIRTH:**	November 1963
DATE OF CRIME:	3 July 1981	**AGE AT CRIME:**	17 years 8 months
DATE OF SENTENCE:	19 March 1982	**AGE AT SENTENCE:**	18

CURRENT STATUS: In December 1990, James Trimble's death sentence was reversed by the Maryland Court of Appeals. He was resentenced to life imprisonment.

In April 1987 the Maryland General Assembly passed legislation barring the death penalty in cases involving crimes committed by persons aged under 18 at the time of the crime. Such defendants are now given a maximum sentence of life imprisonment without parole.

CRIME: James Trimble, together with four male companions, was convicted of the kidnapping, assault and murder of Nila Rogers, a white woman aged 22. The five, who were all very drunk at the time, were returning in a van with more alcohol to a party at Trimble's house. Nila Rogers and another woman joined them in the van. Both women were raped, a fight ensued and Nila Rogers was killed from blows to the head with a baseball bat.

Trimble's four companions (all in their 20s) pled guilty to first-degree murder. James Trimble pled not guilty by reason of insanity and was thus the only one of the five to be brought to trial. The other four negotiated plea-bargains with the state and received life sentences. However, two of the four had their sentences reduced to five years and were released after serving three-and-a-half years; one was treated for a period of time in a rehabilitation centre. The fourth man, Anthony Kordell, had his entire sentence suspended.

Kordell was the prosecution's chief trial witness against James Trimble and testified that Trimble was the one who had killed Nila Rogers. The prosecutor assured the jury that Kordell had nothing to gain from his testimony against Trimble, in that "he understands under the law that the only sentence which can be given him is a mandatory sentence of life imprisonment." However, at Kordell's own sentencing hearing two months later, the same prosecutor urged the court not to incarcerate him. Kordell was accordingly given a suspended life sentence and placed on five years' probation.

TRIAL: James Trimble was convicted of first-degree murder, rape, assault and kidnap, the jury having rejected his plea of not guilt by reason of insanity. Trimble was permitted, despite his obvious mental problems,

to waive his right to be sentenced by the jury, and was sentenced to death by the trial judge.

At the sentencing hearing the judge described Trimble's troubled upbringing, drug and alcohol abuse and expulsion from school. He called Trimble a "confirmed recidivist" (Trimble had previous convictions for burglary, but no crimes of violence). He said there was no way to rehabilitate Trimble "in our present state of knowledge,", citing one of the psychiatrists for the prosecution who had alleged that there was no way to cure Trimble's personality disorder "even with the most expensive individual psychotherapy."

TRIAL REPRESENTATION:

James Trimble was represented at his trial by lawyer who had never before handled a case involving the death penalty.

PSYCHIATRIC FINDINGS:

Evidence concerning Trimble's mental handicap was presented at the trial. He was found to have an IQ of 64 to 66 (equivalent to mental retardation in the "mild to moderate" range: a person of average intelligence scores an IQ of 100). A psychiatrist for the defense also found Trimble to be suffering from organic psychosis as a result of his drug abuse, together with symptoms of paranoid schizophrenia.

During his trial, Trimble's behaviour in court was described as "bizarre" and called into question his mental competence to follow the proceedings. He appeared in court with his head shaved and a red cross painted on his forehead; he repeatedly stuck out his tongue, rolled his head, spun around in his chair and made obscene gestures to the jury. His behaviour became so extraordinary that the judge was compelled to ask Trimble's lawyer to restrain his client, and at one point considered gagging him.

The prosecution produced two psychiatrists to rebut Trimble's insanity plea: both testified that Trimble had been sane and "criminally responsible" on the night of the crime.

APPEALS:

James Trimble's death sentence was upheld on direct appeal by the Maryland Court of Appeals in April 1984. The court ruled that the mitigating factors of Trimble's age and mental retardation were outweighed by the particularly heinous nature of the crime. Trimble's first post-conviction appeal was denied by the trial court in June 1988. His second appeal to the Maryland Court of Appeal was, however, successful (see above).

In December 1987 Governor William Schaefer was urged by the Roman Catholic Bishops of Maryland, Delaware and Washington DC

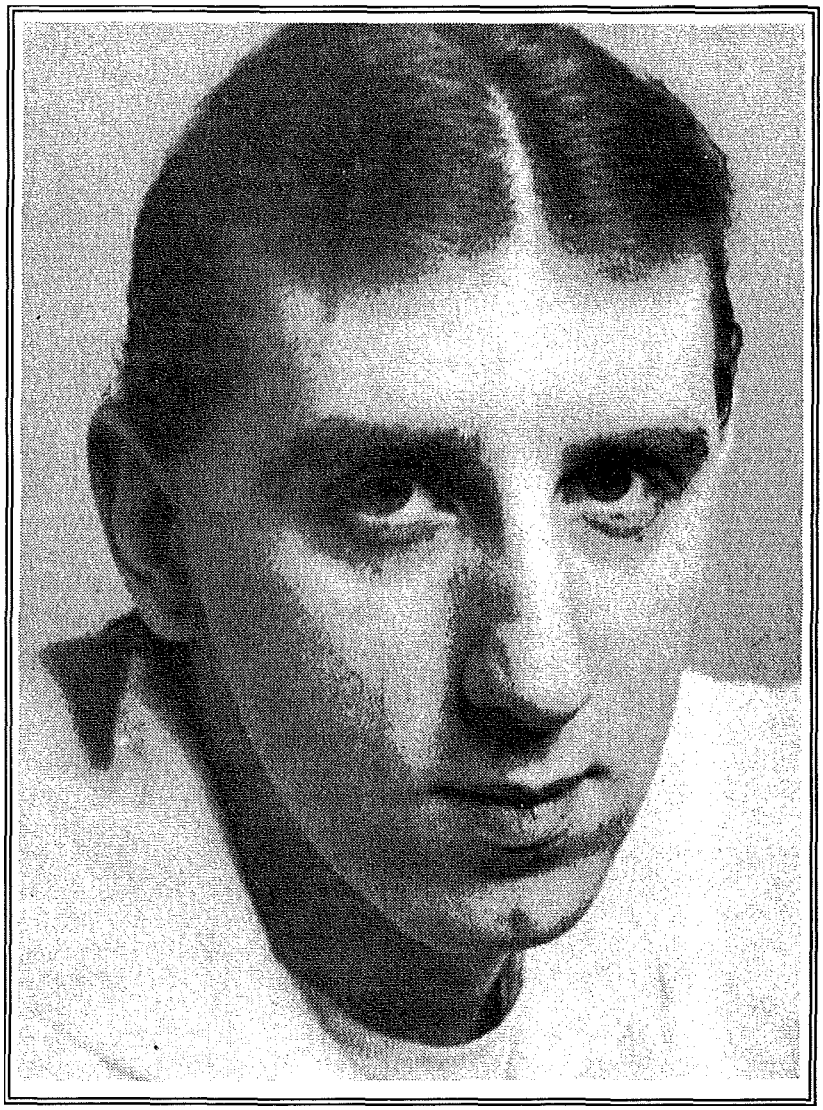
to grant clemency to James Trimble. Several members of the Maryland legislature made similar appeals. In January 1989 Amnesty International highlighted James Trimble's case and as a result, petitions from as far away as Nepal urged Governor Schaefer to commute Trimble's death sentence. The Governor consistently refused to intervene in the case.

PERSONAL PROFILE: James Russell Trimble was born in Baltimore, Maryland. He was an unplanned, unwanted child (his mother became pregnant accidentally at the age of 43). His father was a violent alcoholic who frequently beat both Trimble and his mother. At the age of ten, Trimble witnessed his father's death. He was sexually molested for three years by his mother's boyfriend.

James Trimble began using drugs and alcohol at the age of 10 and as an adolescent became addicted to heroin. He committed burglaries to pay for his drugs, was caught and spent some time in a juvenile detention centre. He had serious problems at school and was expelled several times.

At the time of Nila Rogers' murder, Trimble was employed doing general maintenance work at an airport and was living with his 17-year-old pregnant girlfriend. Their son was born two weeks after his arrest.

While awaiting trial for the murder, Trimble attempted suicide several times and was committed to a hospital for the criminally insane and placed under heavy sedation. He was still under the effects of Thorazine (an anti-psychotic tranquillizer) at the time of the trial. He was nevertheless found competent to stand trial.



James Russell Trimble

NAME:	**HEATH WILKINS**		**MISSOURI**
RACE:	White	**DATE OF BIRTH:**	7 January 1969
DATE OF CRIME:	27 July 1985	**AGE AT CRIME:**	16 years 6 months
DATE OF SENTENCE:	27 June 1986	**AGE AT SENTENCE:**	17 years 5 months

CURRENT STATUS: The case was still pending appeals as of 1 July 1991.

CRIME: Convicted of the robbery and murder of Nancy Allen, a 26 year old mother of two, who was working behind the counter of a convenience store. Wilkins and three other teenagers had planned the robbery of the store which was owned by the victim and her husband. Wilkins and an accomplice, Patrick Stevens, entered the store while the two others waited nearby with a change of clothes. Wilkins first stabbed Nancy Allen while Stevens held her; he then stabbed her again seven times while Stevens robbed the cash register. All four later divided the proceeds between them.

At the time of the murder Wilkins was living "rough" in a local park with a girlfriend. The murder was carried out at around 10 pm; earlier that day Wilkins had drunk a quantity of alcohol and had taken three "tabs" (doses) of the drug LSD. Wilkins made no attempt to flee and was arrested two weeks after the crime.

Stevens pled guilty to second-degree murder and was sentenced to life imprisonment (he will be eligible for parole in 15 years). The third accomplice received a 15 year sentence and the fourth was placed on probation.

JUVENILE TRANSFER PROCEEDINGS: Wilkins was transferred to the jurisdiction of the adult criminal court at a juvenile court hearing held only four days after his arrest, allowing little time for a court-appointed lawyer to investigate his background. After reviewing his juvenile record (for offenses which included wrecking a tractor at the age of 8, various acts of theft and starting fires), the court found that he was unamendable to treatment within the juvenile system. After the close of evidence, his lawyer requested and was denied a mental evaluation of Wilkins.

PRE-TRIAL COMPETENCY EVALUATION: After the case was transferred to the adult court, the public defender appointed to represent him entered a plea of not guilty by reason of insanity. However, Wilkins was subsequently found competent to stand

trial. A state-appointed psychologist, Dr Mandracchia, had examined him for one and a half hours and, despite being aware of his long record of treatment in mental institutions from the age of 10 (see below), found that he met the legal standard of competency. A second psychologist, Dr Logan, appointed at the request of the defence, had found that the defendant was "psychiatrically ill" but he could not provide a definite conclusion regarding the legal standard of competency.

THE TRIAL AND SENTENCING HEARING:

Immediately after the competency hearing, Wilkins said he wished to change his plea to guilty and to waive his right to a lawyer and to a jury trial. After allowing him a week to reconsider, the court accepted his waiver of counsel. His former attorney told the court that there was much additional evidence regarding Wilkins' background and mental health than was contained in the competency reports. However, the court accepted Wilkins' plea of guilty to first degree murder on the basis of the competency decision.

At the sentencing hearing, both Wilkins and the state prosecutor asked for the death penalty. The state presented evidence of Wilkins' past record of juvenile offenses from age 8. Wilkins refused to present any mitigating evidence or to allow any references to his past mental treatment. The judge sentenced him to death on the basis of two statutory aggravating circumstances: that the murder was committed during the course of a robbery and that it was "outrageously or wantonly vile, horrible or inhuman". The sentencing order made no reference to any mitigating factors found or considered by the court.

APPEALS: FURTHER PSYCHIATRIC EVIDENCE:

Wilkins took no steps to appeal, so the Missouri Supreme Court ordered a further competency hearing. Wilkins was examined by state psychiatrist Dr Parwatiker, who concluded that he was "not capable of waiving his constitutional right to counsel". A lawyer was then appointed to represent him. In September 1987, the Missouri Supreme Court affirmed his conviction and death sentence in a four-three decision (three judges dissented and voted to reduce his sentence to life imprisonment).

In June 1988 lawyers filed a motion to vacate Wilkins' conviction and death sentence on the ground that he had been incompetent to plead at his original trial and had received ineffective assistance of counsel. They also argued that to impose a death sentence on a 16 year old offender was excessive and disproportionate (Missouri has never executed an offender 16 or younger). They presented new evidence

showing that Wilkins had been severely abused as a child, in addition to his record showing severe mental disturbance and a history of mental illness within his family (see below). A hearing was held in 1989 at which testimony was given by Dr Dorothy Lewis, Professor of Psychiatry at the New York University School of Medicine and clinical professor at the Yale Child Study Centre; Dr Jonathan Pincus, Chairman of Neurology at Georgetown University and Dr William O'Connor, a clinical psychologist and specialist in violent behaviour. All three had conducted extensive examinations of Wilkins and had found him to be suffering from mental illness and incompetent to proceed at the time of his guilty plea. The state called Dr Mandracchia, who had made the original competency examination. Dr Mandracchia conducted a further examination and changed his testimony, concluding that Wilkins had almost certainly not been competent to plead or to waive his right to counsel.

The motion further alleged that the juvenile transfer hearing had been inadequate: Dr Logan testified that, had he known the full facts about Wilkins' abused childhood (of which the juvenile services had also been unaware), he would have recommended a treatment programme which may have changed the outcome of the transfer proceeding.

The court disregarded the above evidence and denied the motion on 26 July 1989. This decision was upheld by the Missouri Supreme Court in January 1991. Further appeals are pending.

Wilkins' case was also one of two cases which went to the US Supreme Court on the question of whether the Constitution permitted the execution of juvenile offenders. In its decision, given in June 1989, the Court held that it was permissible to execute offenders aged 16 and 17 (see *Stanford v Kentucky* Part II, P.67.

PERSONAL BACKGROUND:

Records indicate that Wilkins had a chaotic upbringing and was badly beaten as a small child. His father left home when he was two and his mother suffered from bouts of extreme rage and depression, was regularly taking drugs and - according to her own testimony - administered severe beatings to Wilkins and his brother. Wilkins testified that his mother's brother (with whom he was left during the day) had given him drugs, including amphetamines and marijuana, when he was aged six. Wilkins and his brother were also severely physically abused by their mother's boyfriend who, in addition to frequent beatings, often used to lock the boys in their room for hours on end so that they were forced to urinate and defecate there.

At the age of 10, Wilkins tried to kill his mother and her boyfriend by putting poison into Tylenol capsules; they found out about it, emptied the capsules and forced Wilkins to swallow them.

Wilkins spent six months in the Tri-County Mental Health Centre when he was aged 10 and was described by a psychologist there as "a severely depressed boy with homicidal and suicidal ideation". Around

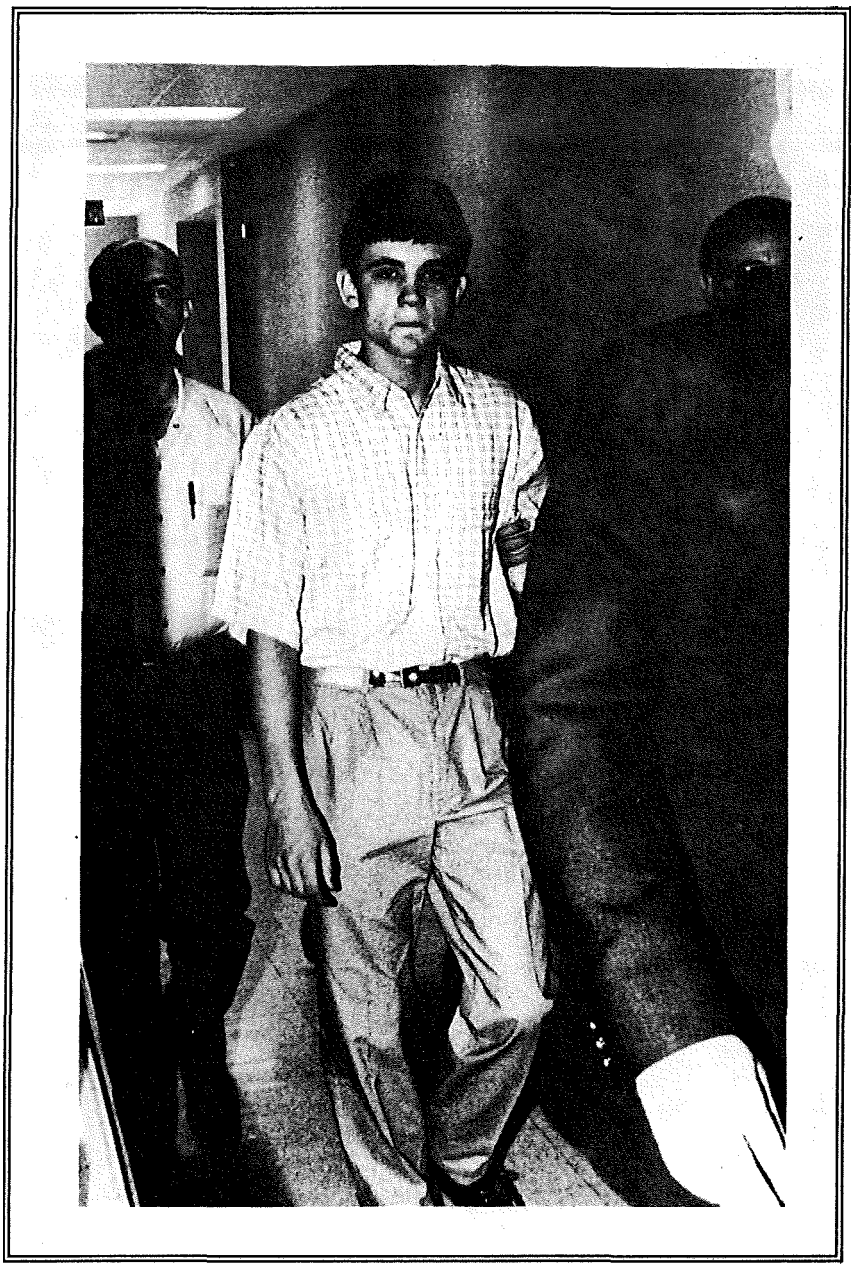
that time he had made the first of three suicide attempts by throwing himself off a bridge into the path of a truck (which managed to swerve, avoiding him).

Intensive psychotherapy was recommended, but this was never followed. (The juvenile mental health services were unaware of the violence at home.)

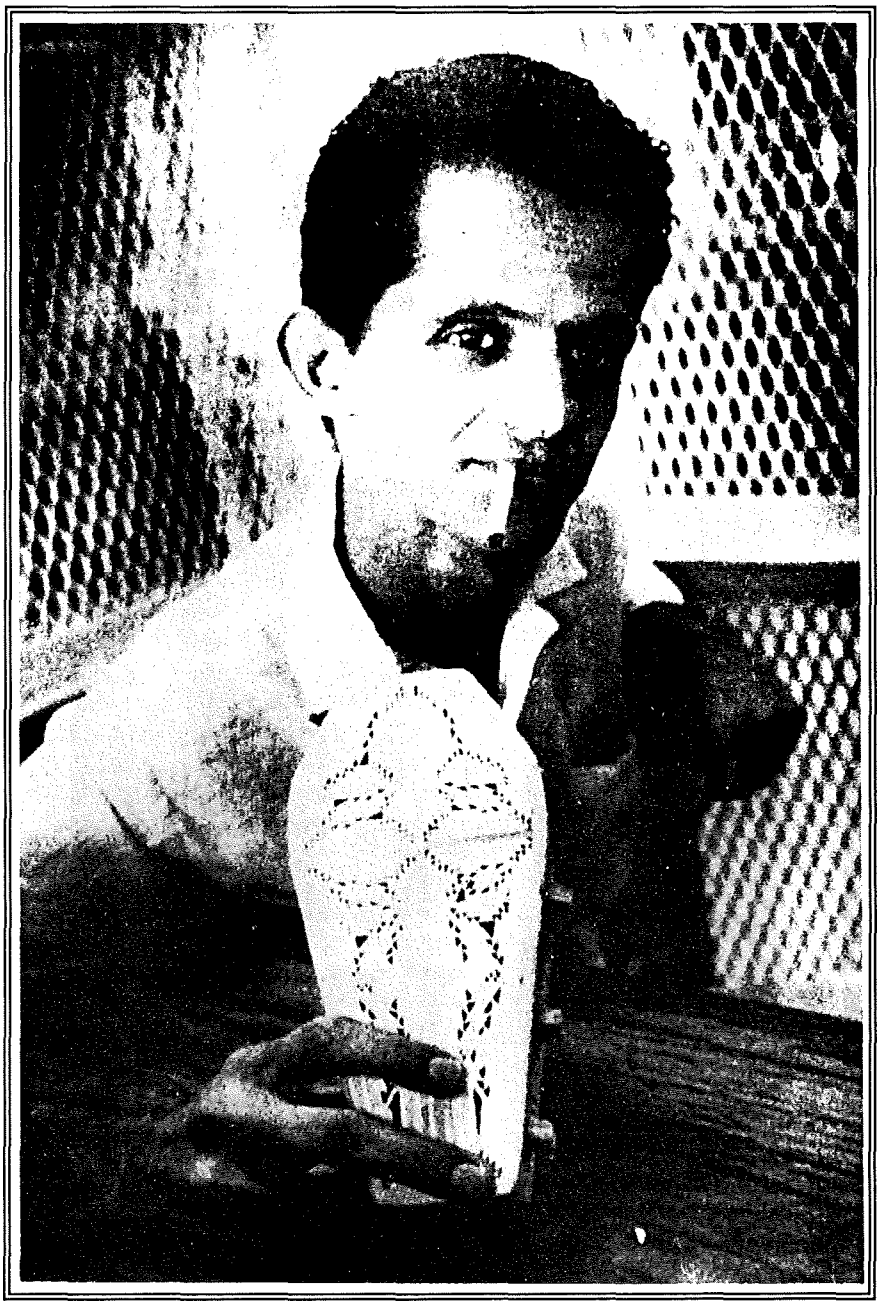
He spent the next three years in another youth centre where he was placed on Mellaril and diagnosed as having a "schizotypal personality". He twice attempted suicide by overdosing on drugs and alcohol. He was later placed in foster care; spent time in another centre where he was placed on the tranquillizer Thorazine; was again placed in foster care. He then returned to his mother, who would not have him in the house. From May 1985 until the murder in July 1985, he was living on the streets.

Wilkins' natural father was committed to a mental institution in Arkansas and came from a family with a history of physical abuse. Wilkins' only brother was diagnosed as suffering from schizophrenia and was admitted to a mental institution in 1982.

Wilkins had a record of juvenile offenses dating from the age of 8 when he wrecked a tractor; other offenses included theft, acts of burglary and starting fires.



Clayton Flowers was convicted of the murder of a young woman; he was 15-years-old at the time of the crime. The trial judge overruled the jury's recommendation of a life sentence and imposed the death penalty. (c) Guy Busby/Mobile Press Register



On 11 September 1985, in Texas, Charles Rumbaugh became the first juvenile offender to be executed in the USA since 1964. (c) AP.

PART II - GENERAL BACKGROUND

HISTORICAL BACKGROUND: EXECUTIONS 1600-1991

Recent research indicates that, since the mid-seventeenth century, at least 286 children have been executed in the United States for crimes committed before the age of 18.[20] This figure includes four juveniles executed since 1985 who were over 18 by the time their executions were actually carried out.

US law is based largely on the English common law system under which, in the past, an offender aged 14 and over was automatically held to be criminally responsible for his or her actions and was tried and punished as an adult. Such children could be sentenced to death if convicted of a capital crime. A child from the age of seven to thirteen could also be tried and punished as an adult in certain circumstances and was also liable to the death penalty if convicted of a capital crime. Children under seven were held to be incapable of forming criminal intent. These basic principles continue in some form today, although most states have raised the minimum age and limited the number of offenses for which juveniles may be tried in the criminal courts. Some states no longer impose the death penalty on juvenile offenders (see below).

In practice, death sentences have rarely been imposed or carried out on very young children. Of 15,000 recorded executions in the USA only twelve have been carried out on offenders aged under 14 at the time of the crime. The youngest persons known to have been executed in US history were three twelve-year-olds (two black slave boys and an American Indian girl) who were hanged in the late eighteenth century in the states of Connecticut, Virginia and Alabama. The youngest at the time of the crime was James Arcene, a 10 year old Cherokee Indian convicted of killing a white man, who evaded arrest and was hanged years later by the federal government in 1885.[21]

During the early twentieth century a juvenile justice system developed under US law. This established separate courts for young offenders in which the emphasis was on rehabilitation and reform rather than punishment. All states and the federal jurisdiction today have a juvenile court system and most retain jurisdiction over minors up to the age of 18. However, the laws of nearly all states allow minors charged with designated serious offenses (including capital crimes) to be transferred from the juvenile to the adult criminal courts. In such cases, minors have continued to be tried and punished as adults and to be liable to maximum penalties, including the death sentence where this is available. Some states have expressly excluded certain offenses from juvenile court jurisdiction; in others, the decision to try a juvenile in the criminal court for certain offenses is discretionary and usually takes place only after the juvenile court has waived jurisdiction in the case.

Most known executions of juvenile offenders have, in fact, been carried out this century under the above provisions. More than 190 of the 286 recorded juvenile executions in the USA have taken

[20]Professor Victor Streib, of Cleveland State University (CSU), has documented 286 executions dating from 1642 to May 1990 (see *Death Penalty for Juveniles*, Victor L. Streib, Indiana University Press, 1987 and *The Juvenile Death Penalty Today*, CSU, 16 May 1991). The actual number of executions may be higher, as data from the earlier period may be incomplete.

[21]Professor Streib also mentions one other poorly documented execution of a ten year old child in Louisiana in 1885 (*The Death Penalty for Juveniles*, ibid).

place since 1900. Juvenile executions, however, have always represented a small minority (of between 1 and 4%) of total US executions. They reached a peak of 53 during the 1940s, but this was still only 4.1% of the total number of executions during this period. Executions of juveniles declined thereafter. Sixteen were carried out in the 1950s and only three in the 1960s.[22] James Echols, a black teenager executed in Texas in May 1964 for the rape of a white woman when he was 17, was the last juvenile offender put to death before the introduction of the present death penalty statutes. Twenty-one years were to elapse before another juvenile offender was executed.

On 11 September 1985 in Texas, Charles Rumbaugh became the first juvenile offender to be executed in the USA since 1964. Three further executions of juvenile offenders had taken place as of 1 July 1991: James Terry Roach, executed in South Carolina in January 1986; Jay Pinkerton, executed in Texas in May 1986 and Dalton Prejean, executed in Louisiana in May 1990.

Characteristics of Executed Offenders 1642-1991

Some 80% of juvenile executions carried out since 1642 have been for the crime of murder. However, in the period up to 1964, a number of juveniles were also executed for rape, attempted rape or for other non-homicidal offenses, including robbery. (Two children, including the first juvenile known to have been executed in 1642, were hanged for the crime of bestiality (sexual acts committed with animals).)

According to data published by Professor Victor Streib in 1987,[23] 69% of all executed juvenile offenders since 1600 whose race was known were black and only 25% were white. (A further 3% were American Indians, 2% were Mexican-American and 1% were Chinese.) Streib found that racial disparities became even more marked after 1900 when the proportion of black children executed rose to 75%. He also noted that all 43 rape cases resulting in the execution of juveniles up to 1964 involved black offenders. In contrast, according to Streib's data, only 9% of the victims in the cases of executed juvenile offenders were black and this fell to only 4% between 1900 and 1986. (Streib's data did not include the last recorded execution, of Dalton Prejean in May 1990.) Racial disparities based on the race of offender alone have fallen considerably under present statutes, although some 49% of the 31 juvenile offenders on death row as of July 1991 were black. Seventy-five percent had been convicted of murdering white victims. All four juvenile offenders executed since 1985 (of whom three were white and one was black) had been convicted of crimes against white victims.

Only nine of the juveniles known to have been executed since 1642 were female. Eight of the girls were black and one was American Indian.

Ninety per cent of juvenile executions carried out this century have been for crimes committed by persons aged 16 or 17. The youngest person executed this century was 14-year-old George Stinney, a black boy electrocuted in South Carolina in 1944 for the murder of two girls. Fortune Ferguson, a black youth hanged in Florida in 1927 for the rape of a white girl when he was only 13, is believed to be the youngest offender to have been executed this century (he was 16 when he was executed).

[22]Ibid

[23]ibid

SUMMARY OF PRESENT US DEATH PENALTY LAWS AND PROCEDURES

Executions generally in the USA declined after the 1940s and had become rare by the mid-1960s. After 1967, there was an unofficial moratorium on executions while several key cases affecting the death penalty statutes of various states were awaiting decisions by the US Supreme Court. In 1972 the US Supreme Court ruled in *Furman v Georgia* that the death penalty was being applied in an "arbitrary and capricious" manner and constituted "cruel and unusual punishment" in violation of the US Constitution.[24] This ruling effectively invalidated all then existing laws. However, in a landmark decision in *Gregg v Georgia* (1976), the Court upheld the revised statutes of a number of states which contained new procedures for capital punishment. This ruling permitted states to re-establish the death penalty according to guidelines which were intended to eliminate unfairness in death sentencing. In *Gregg v Georgia* and subsequent rulings, the US Supreme Court held that particularly stringent safeguards were required in death penalty cases, given the unique severity of this form of punishment.

Thirty-six states have since introduced revised death penalty statutes to conform to the guidelines laid down by the Supreme Court in *Gregg v Georgia* and later decisions. Although these statutes differ in detail, they share the following characteristics:

-The death penalty may be imposed only for murder where there are additional aggravating circumstances (for example, murder carried out in particularly cruel circumstances or during the course of another serious felony).
-In capital trials, the question of guilt or innocence must be decided separately from the sentence.
-If a defendant is found guilty of a capital crime, the court must then hold a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment. In deciding the appropriate sentence, the court must consider aggravating and mitigating factors in relation to both the crime and the offender. In *Lockett v Ohio* (1978), the US Supreme Court ruled that states may not limit the mitigating circumstances to be considered at this stage of the proceeding but must consider all relevant factors presented by the defendant, including the defendant's age and role in the offence.

The trial and sentencing hearing usually takes place before a jury, although defendants may waive their right to be heard by a jury and elect to be tried by a judge alone. In most states the jury alone decides on the sentence in a capital case (unless a jury hearing is waived). In three states (Alabama, Florida and Indiana), the judge may overrule a jury's sentencing recommendation. In four states (Arizona, Idaho, Montana and Nebraska) the judge alone decides on the sentence.

Capital convictions and death sentences are appealed automatically to the state supreme court. Further appeals raising constitutional issues may then be made in the state and federal courts. Power to commute death sentences and stay executions normally rests with the state

[24]The prohibition of cruel and unusual punishments is contained under the Eighth Amendment to the Constitution.

governor or the state Board of Pardons and Paroles (BPP), whose members are usually appointed by the governor. In some cases the BPP makes clemency recommendations to the governor.

As of 1 July 1991, there were more than 2,400 prisoners under sentence of death in 34 states, including 31 who were juveniles at the time of their crime. One hundred and forty eight prisoners were executed between 1977 (when the first post-Furman execution was carried out) and 1 July 1991. An Amnesty International report *United States of America:The Death Penalty*, 1987, gives a more detailed analysis of the application of the death penalty in the USA since 1972.

MINIMUM AGES UNDER PRESENT DEATH PENALTY STATUTES

Twenty-four of the 36 US states with current death penalty statutes allow the death penalty to be imposed on people aged under 18 at the time of the crime. Eight of the 24 states have set a minimum age of 16 or 17 in their capital punishment statutes. These are as follows:

17 years Georgia, North Carolina, Texas

16 years Indiana, Kentucky, Nevada, Wyoming, Missouri

The minimum age in a further eight states is the age at which minors may be tried in the adult criminal courts and sentenced to death for a capital offence. These ages range, in theory, from 12 to 15 as follows:

12 years Montana
13 years Mississippi
14 years Alabama, Arkansas, Idaho, Utah
15 years Louisiana, Virginia

The remaining eight states set no minimum age limit at which the death penalty may be imposed, either in the state capital punishment statute or in statutes allowing the transfer of juvenile cases to the adult criminal courts in capital cases. These states are:

Arizona, Delaware, Florida[25], Oklahoma, Pennsylvania, South Carolina, South Dakota, Washington.

Eighteen of the 24 states which allow the execution of juvenile offenders list the defendant's "youth" or "age" as a statutory mitigating circumstance to be considered at the sentencing stage of a capital trial. Three states - Delaware, Oklahoma and South Dakota - have no minimum age and age is not listed as a mitigating factor in the death penalty statutes.

[25]In Florida the minimum age is 16 if the defendant has no prior felony convictions, otherwise there is no minimum age.

Twelve states with the death penalty prohibit the imposition of death sentences on persons below 18 at the time of the crime. These are:

California, Colorado, Connecticut, Illinois, Maryland, Nebraska, New Hampshire, New Jersey, New Mexico, Ohio, Oregon, Tennessee.

Most of these 12 states retain provision for trying minors before the adult criminal courts for designated serious offenses. Thus, a juvenile offender accused of a capital offence may still be tried and sentenced as an adult and receive a maximum penalty of life imprisonment; however, the death penalty may never be imposed in such cases.

Most of the above states introduced the 18-year minimum age limit during the 1980s. Ohio introduced a statutory minimum age of 18 in 1981, Nebraska in 1982, Tennessee in 1984, Colorado and Oregon in 1985 and New Jersey in 1986. The last state to do so at the time of writing was Maryland in 1987. The relevant acts brought the above states in line with both international standards against the execution of juveniles and standards recommended by criminal justice organizations in the USA (see below).

However, there has since been a retreat from what was an emerging legislative trend toward eliminating the death penalty for minors. Since 1986, several states have rejected attempts to introduce an age limit of 18 or have introduced minimum ages below 18.

Kentucky had exempted juveniles under 18 from the death penalty in a revised juvenile code enacted in 1980; however, this code was never implemented and was repealed in 1984. In 1986 Kentucky introduced a statutory minimum age of only 16 in its death penalty statute. In the same year, Indiana raised its minimum age from 10 to 16 years and a bill to raise the minimum age to 18 was dropped from the legislative agenda. In 1987 North Carolina raised its minimum age from 14 to 17 and the legislature in Georgia rejected a measure to raise the age from 17 to 18; in 1989 Wyoming introduced a minimum age of 16 from previously having no age limit and bills to introduce or raise the minimum age failed in Mississippi, Virginia and again in Georgia. In 1990 Missouri raised the minimum age from 14 to 16 years.

This regressive trend, compared to the earlier period, has been reinforced by a US Supreme Court ruling in June 1989 that the execution of offenders as young as 16 is permissible under the Constitution (see below).

US SUPREME COURT RULINGS IN JUVENILE CASES

During the 1980s the US Supreme Court was asked to rule on whether the execution of juveniles was permissible under the Constitution. Three key cases on this question have been decided since 1982 and are summarized below. In each case lawyers for the petitioners argued that "evolving standards of decency" made the execution of juvenile offenders cruel and unusual punishment, in violation of the Eighth and Fourteenth Amendments to the Constitution.[26]

[26]The Eighth Amendment prohibits the infliction of "cruel and unusual punishments"; the Fourteenth Amendment provides, in relevant part, that no state may "deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law". The US Supreme Court has held that it must interpret what constitutes cruel and unusual punishment according to "the evolving standards of decency that mark the

Eddings v Oklahoma (1982)

The Court was asked to rule on "whether the infliction of the death penalty on a child who was 16 at the time of the offense constituted cruel and unusual punishment". The petitioner was Monty Lee Eddings, who had been sentenced to death for the murder of a highway patrol officer when he was 16. This was the first time that the US Supreme Court had agreed to hear an appeal based solely on the defendant's age.

In a 5-4 decision given in January 1982, however, the Court failed to rule on the question of whether the death penalty was per se cruel and unusual when imposed on a 16-year-old. Instead, it vacated Eddings' death sentence on the ground that the trial judge had refused to consider evidence of the prisoner's "turbulent family history, of beatings by a harsh father and of severe emotional disturbance" as potentially mitigating factors at the sentencing hearing. These circumstances, the Court said, were particularly relevant when considered together with the defendant's youth. The decision affirmed the US Supreme Court's ruling in *Lockett v. Ohio* (1978) that any aspect of a defendant's character or record presented in mitigation must be considered at the sentencing stage of a capital trial.

Although the Supreme Court did not address the constitutionality of the death penalty for juveniles in *Eddings*, the decision is nevertheless important because it held that "the chronological age of a minor is itself a relevant mitigating factor of great weight" that must be considered at the sentencing hearing in a capital case. Writing for the majority, Justice Powell made the following observation:

> "youth 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. Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults. Particularly 'during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment' expected of adults. *Bellotti v. Baird* 443 U.S. 622 (1979).
>
> Even the normal 16-year-old customarily lacks the maturity of an adult. In this case Eddings was not a normal 16 year-old; he had been deprived of the care, concern and paternal attention that children deserve ... All of this does not suggest an absence of responsibility for the crime of murder ... 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".[27]

Despite its limitations, *Eddings v Oklahoma* remains one of the clearest rulings to date against the imposition of the death penalty upon an emotionally disturbed and socially deprived juvenile offender. However, as is noted later in this report, the principles set out in *Eddings*

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progress of a maturing society" (*Trop v. Dulles*, 356 U.S.).

[27] *Eddings v Oklahoma*, 455 U.S. 104, 102 S. Crt 869 71 L.Ed 2nd (1982) at p. 11-12.

appear not to have been followed in a number of cases where juveniles have since been sentenced to death (see Part I).

Thompson v Oklahoma (1988)

In this case the Court addressed the question of whether the death penalty was cruel and unusual when imposed on a 15-year-old offender. The petitioner, William Wayne Thompson, had been sentenced to death in Oklahoma for participating in the murder of his former brother-in-law when he was 15. (Three older men, including Thompson's 27 year old brother, were also convicted and sentenced to death for the murder.)

In a 5-4 decision given in June 1988, the Court vacated Thompson's death sentence. However, only four of the judges found that execution of a 15-year-old offender would be cruel and unusual in all circumstances. A fifth judge concurred in the decision to vacate Thompson's death sentence, but did so on the narrower ground that Oklahoma's death penalty statute set no minimum age at which the death penalty could be imposed; she found that the sentencing of a 15-year-old to death under this type of statute failed to meet the standard for special care and deliberation required in capital cases.

Because the Court did not reach a majority decision on whether the Constitution forbids capital punishment for all offenders under 16, this question remains undecided. At the time of writing, no state which had established a specific minimum age in their death penalty statutes had set this below 16. Although this is considered unlikely, the *Thompson* ruling does not prevent states from legislating in future to introduce minimum ages of 15 or less in their capital punishment statutes.

Since the Thompson ruling, a trial court in Alabama has sentenced a 15-year-old offender to death (Clayton Flowers in February 1990) under a capital punishment statute which, like Oklahoma's, sets no minimum age. Another 15-year-old offender remains on death row in Louisiana. Both were sentenced under statutes which appear to violate *Thompson*. Should the state appeals courts uphold such sentences, this question may again come before the Supreme Court.

Stanford v Kentucky and Wilkins v Missouri (1989)

Both cases were decided together in June 1989, when the Court held by five votes to four that the execution of offenders aged 16 and 17 was permissible under the Constitution. The ruling upheld death sentences imposed on Kevin Stanford and Heath Wilkins, who were sentenced to death for murders committed when they were 17 and 16 respectively.

Justice Antonin Scalia, writing for the majority, said that society had not formed a consensus that such executions constitute "cruel and unusual punishment". He also rejected evidence which suggested that the death penalty was no deterrent for young people because of their "less developed fear of death". Justice Scalia also emphasized that the Court had looked to US conceptions of decency - not the sentencing practices of other countries - in determining what constituted "evolving standards of decency".

Writing for the dissent, Justice William Brennan objected that the majority had not taken into account the fact that, in addition to the 12 US states which had imposed an age limit of 18 in their death penalty statutes, a further 15 states (including the District of Columbia) did not

authorize executions under any circumstances. "Thus it appears that the governments in fully 27 of the States have concluded that no one under 18 should face the death penalty." Among other factors Justice Brennan considered to be relevant were "objective indicators of contemporary standards of decency" such as the fact that, "within the world community, the imposition of the death penalty for juvenile crimes appears to be overwhelmingly disapproved". The execution of juveniles, he said, was disproportionate to the offender's blameworthiness and made no measurable contribution to acceptable goals of punishment.

Amnesty International had submitted an amicus curiae brief to the US Supreme Court in support of Stanford and Wilkins' appeal which presented evidence on international law and practice. Amnesty International said that this evidence demonstrated a well-established internationally recognized legal standard against the execution of offenders who were under 18 at the time of their crime and that the international consensus on this issue was "overwhelming". Amnesty International later described the above ruling as a "retrograde step for international human rights".

A number of professional organizations in the USA, including the American Bar Association had also submitted amicus briefs to the Court opposing the execution of offenders under 18.

DEATH SENTENCES IMPOSED ON JUVENILES SINCE 1973

As in the past, only a small minority of death sentences imposed under present statutes have been for crimes committed by children under 18. Only 2.4% of persons sentenced to death in the USA between 1973 and May 1991 were juvenile offenders, with the number falling slightly to 2% since 1983.[28] In 1990 (the last full year at the time of writing) seven juvenile offenders were sentenced to death out of an annual total of 250-300 death sentences.

A relatively large proportion of death sentences in juvenile cases have been reversed on appeal, thus reducing still further their number on death row at any given period. Although the adult death row population has increased by some 69% since the mid-1970s, the number of juveniles on death row has remained fairly constant at between around 28 and 35. As of 1 May 1991, there were 31 juvenile offenders under sentence of death out of a total death row population of more than 2,400.

According to recently published data, a total of 92 juvenile offenders were sentenced to death in the USA between January 1974 and 1 May 1991.[29] Of these, 49 (53%) were black, 36 (39%) were white, three (3%) were Hispanic and the race of four unknown. Only four of these offenders were female. As of 1 May 1991, 57 of the 92 inmates had had their death sentences reversed on appeal; most were re-sentenced to life imprisonment, although several were awaiting new sentencing hearings at which they could again be sentenced to death. Four of the 92 were

[28]Streib: The Juvenile Death Penalty Today (CSU 16 May 1991) cited above

[29]*This figure is taken from Streib The Death Penalty Today, 16 May 1991, and statistics published by the NAACP Legal Defense Fund (LDF) and Educational Fund Inc on 24 April 1991. Amnesty International has excluded one case included on both lists as it has received information suggesting that the prisoner in question may have been over 18 at the time of the crime.*

executed. The ages of those sentenced ranged from 15 to 17 at the time of the crime. No-one aged 14 or younger has been sentenced to death in the USA under present statutes.

Juvenile Offenders Under Sentence of Death in May 1991

As of 1 May 1991, 31 juvenile offenders were under sentence of death for murder in 12 US states (see table below).[30] All were males. Fifteen (48%) were black, a further 15 were white and one was Hispanic. 74% of the victims in these cases were white. Two of the 31 were aged 15 at the time of their crimes, six were aged 16, 22 were aged 17 and the age of one was unknown. Time spent on death row ranged from a few months to more than 12 years. A number had had their initial death sentences and/or convictions reversed on appeal and were re-sentenced to death after new trial or sentencing proceedings.

Texas had the largest number of juvenile offenders on death row: seven on 1 May 1991 (all of whom were aged 17 at the time of their crime). This was followed by Alabama, with six (aged from 15 to 17), Florida and Pennsylvania, with three each (ages 16 and 17), and between one and two in eight other states.

STATE PRISONER'S NAME	DATE OF BIRTH	DATE OF CRIME	AGE AT CRIME	RACE	RACE OF VICTIM
ALABAMA					
Davis, Timothy	18 March 61	20 July 78	17	M/W	F/W
Flowers, Clayton	24 Jan 73	05 June 88	15	M/W	F/W
Hart, Gary		12 Aug 89	16	M/B	M/W
Lynn, Frederick	06 Sept 64	05 Feb 81	16	M/B	F/W
Neal, John		16 Feb 87	16	M/B	
Slaton, Nathan	05 Oct 69	May 87	17	M/W	F/W
FLORIDA					
Ellis, Ralph		20 Mar 78	17	M/W	2 X M/B
LeCroy, Cleo		04 Jan 81	17	M/W	M/W
Morgan, James	28 Nov 60	06 June 77	16	M/W	M/W+F/W F/W

[30]This was the last date on which a full list of juvenile offenders on death row at the time of writing was available.

STATE PRISONER'S NAME	DATE OF BIRTH	DATE OF CRIME	AGE AT CRIME	RACE	RACE OF VICTIM
GEORGIA					
Burger, Christopher	30 Dec 59	05 Sept 77	17	M/W	M/W
Williams, Alexander		04 Mar 86	17	M/B	F/W
KENTUCKY					
Stanford, Kevin	23 Aug 63	07 Jan 81	17	M/B	F/W
LOUISIANA					
Dugar, Troy	01 May 71	26 Oct 86	15	M/B	M/W
MISSISSIPPI					
Foster, Ron		10 June 89	17	M/B	M/W
MISSOURI					
Lashley, Frederick	10 March 64	09 Apr 81	17	M/B	F/B
Wilkins, Heath	07 Jan 69	27 Jul 85	16	M/W	F/W
NORTH CAROLINA					
Adams, Thomas		13 Dec 87	17	M/W	F/W
Joyner, Richard		01 Dec 88	17	M/W	M/W
OKLAHOMA					
Hain, Scott	02 June 70	06 Oct 87	17	M/W	M/W+F/W
Sellers, Sean	18 May 69	08 Sept 85 05 Mar 86	16	M/W	1 x M/W M/W+F/W
PENNSYLVANIA					
Blount, John	25 Oct 72	28 Sept 89	17	M/B	2 x M/B
Hughes, Kevin	05 March 62	01 Mar 79	16	M/B	F/B
Lee, Percy		26 Feb 86	17	M/B	2 x F/B
TEXAS					
Cannon, Joseph	13 Jan 60	30 Sept 77	17	M/W	F/W
Cantu, Ruben	05 Dec 66	08 Nov 84	17	M/H	M/W
Carter, Robert	10 Feb 64	24 June 81	17	M/B	F/H
Garrett, Johnny	24 Dec 63	31 Oct 81	17	M/W	F/W
Graham, Gary	05 Sept 63	13 May 81	17	M/B	M/B
Harris, Curtis	31 Aug 61	12 Dec 78	17	M/B	M/W
Willis, Robert	28 Jan 67	17 Jan 85	17	M/B	F/W
WASHINGTON					
Furman, Michael	22 June 71	27 Apr 89	17	M/W	F/W

Abbreviations:
M = male; F = female; B = black; H = Hispanic; W = White

Death Row Conditions

Although these vary from state to state, death row conditions in the USA are generally extremely harsh. Unlike inmates in the general prison population, prisoners under sentence of death in most states have no access to prison work, vocational or training programmes or group educational classes.[31] They are typically confined for many hours a day alone in small, often poorly equipped cells. Although inmates may study individually for educational diplomas while on death row (usually through correspondence courses), the absence of training or educational programs together with long periods of cellular confinement and limited association with others, appear to be especially unsuitable for juvenile offenders. Although rehabilitation is considered inapplicable to those under sentence of death, juvenile offenders have sometimes spent years in such conditions before having their death sentences reduced on appeal.

JUVENILE OFFENDERS EXECUTED UNDER PRESENT LAWS

At the time of writing, four juvenile offenders had been executed since the death penalty was reinstated in the 1970s.

Charles Rumbaugh, executed by lethal injection in Texas on 11 September 1985, was the first person in 21 years to be executed in the USA for a crime committed before the age of 18. He was convicted and sentenced to death for the murder of jewellery store owner Michael Fiorillo during a robbery in April 1975 when he was aged 17. Rumbaugh had held up the shop with a gun and Fiorillo, aged 58, had reached for his own gun and was fatally shot during the struggle which followed.

Rumbaugh had a disturbed upbringing and a long history of juvenile crime, although he had no prior homicide convictions. He spent most of his childhood in a series of reform schools and mental institutions. Shortly before the murder, he had escaped from a mental hospital where he was being treated for manic depression. (By the time he reached adulthood, his body was reportedly covered in scars from suicide attempts and acts of self-mutilation.) Rumbaugh decided to drop his legal appeals as early as 1982. However, his lawyers persuaded his parents (who never visited him in prison) to file a petition challenging his mental competency. This led to three more years of appeals. He was aged 28 by the time of his execution. In a letter to a pen-friend (a Wisconsin housewife) written 18 months earlier, Rumbaugh had said "... I started making mistakes at a very young age and never changed before it was too late. I was 17 years old when I committed the offence for which I was sentenced to die, and I didn't even start thinking and caring about my life until I was at least 20."

The second juvenile offender to be executed under present laws was **James Terry Roach**, who was executed by electrocution in South Carolina on 10 January 1986. Roach was convicted with two others, and sentenced to death for the rape and murder of a 14 year old girl, Carlotta Hartness, and the murder of her 17-year-old boyfriend, Tommy Taylor. Roach was aged 17 at

[31]Texas is one of the few states to provide a work programme for death row inmates.

the time of the crime. One of the co-defendants, J C Shaw, an older man, was also sentenced to death and was executed in 1985. The third defendant, a boy of 16, received a life sentence in return for testifying for the state.

Roach pled guilty to the crime and consequently no jury trial was held. The trial judge found six mitigating circumstances to be present in his case, including the fact that he had no previous record of violence, was emotionally immature and borderline mentally retarded (he had a mental age of 12), that he was a minor and had been acting under the domination of an adult (Shaw) at the time of the crime. However, he sentenced him to death on the ground that these factors were outweighed by the heinousness of the crime. The Governor of South Carolina later denied clemency in the case, despite the above factors and later evidence that Roach was suffering from a degenerative, hereditary mental disease. (see case studies in Part I).

The third case was that of **Jay Kelly Pinkerton**, who was executed by lethal injection in Texas on 15 May 1986. He was sentenced to death in June 1981 for the murder and attempted rape of Sarah Donn Laurence, a mother of three young children, in October 1979. He was 17 years old at the time of the crime. On 14 May 1982 he was also sentenced to death at a separate trial for the murder in April 1980 of Sherry Lynn Welch.

In August 1985 the US Supreme Court had granted a stay of execution 20 minutes before it was due to be carried out. Pinkerton was in the holding cell next to the execution chamber when he was informed of the stay. A second reprieve was granted in November 1975. The Supreme Court rejected two further appeals in the case on 14 May 1982, the day before his execution. In the first of these, three of the nine justices supported a stay of execution on the ground that the Supreme Court had not yet considered whether the Constitution permitted the execution of minors. The final appeal was written by Pinkerton from the death holding cell and was delivered to a federal court in Houston by his mother.

The last juvenile offender to be executed at the time of writing was **Dalton Prejean**, who was executed by electrocution in Louisiana on 18 May 1990. Dalton Prejean, who was black, was convicted and sentenced to death for the murder of a white police officer in 1977 when he was aged 17. He had been tried and sentenced by an all-white jury after the prosecutor had used his peremptory challenges (the right to reject potential jurors without explanation) to exclude all black prospective jurors from the jury panel.

Prejean was borderline mentally retarded. He also had a history of mental illness and childhood abuse - factors which were not presented to the jury during the sentencing stage of his trial. The state governor denied clemency, despite a recommendation by the Louisiana Board of Pardons and Paroles that his death sentence should be commuted to life imprisonment without parole. (See case studies in Part I).

A fifth juvenile offender, **Christopher Burger**, was scheduled to be executed in Georgia on 18 December 1990. However, he received a last minute stay pending a further hearings in his case (see case studies, in Part I).

As stated above, the USA is one of only seven countries known to have executed juvenile offenders in the past decade. The four executions carried between 1985 and 1990 are more than were reported in any other single country during this period, with the exception of Iran and Iraq.

STUDY BY PSYCHIATRISTS OF FOURTEEN JUVENILES ON DEATH ROW

During 1986 and 1987, a team of psychiatrists and neurologists conducted a study of 14 juveniles on death row in four US states (some 40% of the total juvenile death row population at that time). [32]The 14 prisoners - who were chosen solely on the basis of their youth and not because of any prior knowledge of their background by the research team - were interviewed at length and subjected to detailed psychiatric and neurological examinations. The researchers were surprised to find evidence of psychiatric illness or brain damage in nearly every case. Twelve of the 14 had also been subjected to serious physical or sexual abuse in childhood.

The study's findings, which were published in the American Journal of Psychiatry in May 1988, included the following. All 14 inmates had sustained head injuries as children, eight of which were serious enough to require hospitalization; nine of the 14 were found to have serious neurological abnormalities, including evidence of brain injury; seven suffered from serious psychiatric disturbances first manifest during early childhood and four others had histories consistent with severe mood disorders; seven were psychotic at the time of evaluation or had been so diagnosed in earlier childhood. Only two of the 14 had full-scale IQ scores above 90 (100 being the normal score) and only three had average reading abilities; three had learned to read only since arriving on death row. Twelve had suffered serious physical abuse in childhood and five had been sodomized by older male relatives. Alcoholism, drug abuse and psychiatric treatment were also prevalent in the histories of the inmates' parents.

Perhaps the team's most disturbing finding was that few of the above circumstances had been brought to light during the prisoners' trials, despite being potentially mitigating factors against the imposition of a death sentence. The team found that the prisoners and their families were reluctant to reveal details of abuse or mental illness, for example, and that the trial lawyers often lacked the expertise or resources to obtain the necessary clinical evaluations. Only five of the 14 inmates had been given pre-trial psychiatric evaluations - and these the research team found to have been perfunctory, providing "inadequate and inaccurate information" about the juveniles' disorders.

The researchers found that the juvenile offenders in the study were "multiply handicapped" not only through their natural immaturity but by additional factors such as brain damage or abusive family backgrounds. The report concluded that "... juveniles accused of a capital offence are uniquely vulnerable; they lack the maturity or insight to recognize the importance of psychiatric or neurological symptoms to their defense; and they are dependent on family for assistance in a way that adult offenders are not. Our data shed light on some of the special difficulties encountered when adolescents are treated as though they were as responsible as adults and are condemned to death."

The 14 prisoners in the above study included all juvenile offenders on death row in the four states chosen: Florida, Georgia, Oklahoma and Texas. Although the 14 were not identified by name, some have since been identified through citing the study's findings in subsequent

[32]The study was conducted by Dorothy Otnow Lewis, M.D., a psychiatrist at the New York University School of Medicine, and Dr Jonathan H Pincus, Chairman of Neurology at the Georgetown University Medical Centre, together with researchers from New York University and Central Connecticut State University.

appeals and several were among the cases reviewed by Amnesty International. The study's findings are borne out by Amnesty International's information in other juvenile cases (see Part I).

ARGUMENTS AGAINST EXECUTING JUVENILES: US DOMESTIC STANDARDS

Although the Supreme Court has upheld the death penalty for minors aged 16 and over, a significant body of professional opinion in the USA has rejected the use of capital punishment in such cases.

In 1983 the American Bar Association (ABA) House of Delegates adopted a resolution opposing, in principle "... the imposition of capital punishment upon any person for an offense committed while under the age of 18". This was the first time the ABA had taken a formal position on any aspect of capital punishment. Adoption of the resolution followed two years of research by the ABA's Section on Criminal Justice, and their report to the House of Delegates contained a detailed analysis of why the death penalty was inappropriate in such cases.[33] In 1988 the National Council of Juvenile and Family Court Judges also passed a resolution opposing the death penalty for offenders under 18.

As early as 1962, the Model Penal Code drafted by the American Law Institute contained a recommendation that the death penalty not be imposed on persons under 18, a position which was reaffirmed by revisers of the Code in 1980. In 1971 the National Commission on Reform of Federal Criminal Laws also took the position that 18 ought to be the minimum age for the imposition of the death penalty.

A number of other professional and religious organizations have also opposed the imposition of death sentences on minors in amicus curiae briefs to the US Supreme Court in juvenile cases. In the *Stanford v Kentucky* case (see US Supreme Court rulings above), briefs in support of the petitioners were submitted by numerous organizations, including the ABA; a joint brief by the Child Welfare League of America, National Parents and Teachers Association, National Council on Crime and Delinquency and other bodies; and the American Society for Adolescent Psychiatry and American Orthopsychiatric Association.

Opposition to the execution of children is based on recognition that minors are not fully mature - hence not fully responsible - and are more likely to be capable of reform, thus rendering the death penalty a particularly inhumane punishment in their cases. The reduced culpability of children and adolescents has been generally recognized by criminologists. A Presidential Commission reporting on youth crime in the 1970s observed that "... adolescents, particularly in the early and middle teen years, are more vulnerable, more impulsive, and less self-disciplined than adults. Crimes committed by youths may be just as harmful to victims as those committed

[33]ABA, Criminal Justice Section, Report with Recommendations to the House of Delegates, Report No. 117A (August 1983). (The report examined penological arguments for and against the execution of juvenile offenders, covering such issues as deterrence, retribution, characteristics of juvenile offenders and the need to protect society.)

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."[34]

In its amicus curiae brief in *Stanford v Kentucky*, the ABA reiterated its opposition to the execution of minors stating inter alia that "... Our society recognizes that minors are less mature, less experienced, less able to exercise good judgment and self-restraint, more susceptible to environmental influence (both positive and negative), and as a result less responsible and less culpable in a moral sense than adults".[35]

The ABA acknowledged in its brief that some minors charged with serious crimes must be subject to trial and sentencing in the adult criminal courts in order adequately to protect society. However, it added that, for the reasons stated above "... They should not be held to the degree of moral accountability necessary to justify the ultimate sanction of execution".

It has also been argued that the goals of retribution or deterrence - arguments commonly used to support the death penalty - are especially inapplicable in the case of young people, who are more likely to act on impulse, or under the domination or influence of others, with little thought for the long-term consequences of their actions.

Citing the findings of the report by its Section on Criminal Justice in its brief in *Stanford v Kentucky*, the ABA said "...in light of the characteristics associated with childhood - impulsiveness, lack of self control, poor judgment, feelings of invincibility- the deterrent value of the juvenile death penalty is likely of little consequence... in any event, it would be difficult to support a claim that the death penalty as a deterrent for juvenile crime, as opposed to life imprisonment,'is an indispensable part of the State's criminal justice system' (citation omitted)."

Criminologists and others who have studied the application of the death penalty in juvenile cases have also noted that many juveniles convicted of terrible crimes themselves come from brutalizing and deprived backgrounds.[36] This was borne out in a recent study by psychiatrists of juveniles under sentence of death in four US states in the 1980s (see above). It has been argued that to execute such offenders, whether as retribution or as an intended deterrent, is not only inhuman but denies the special responsibility which society has toward children.

Appeals against the execution of juvenile offenders have also pointed out that a child's capacity for development continues throughout adolescence, making it impossible to make firm predictions about his or her future behaviour. A petition to the US Supreme Court in the case of 15-year-old offender William Wayne Thompson quoted from the American Psychiatric Association's diagnostic guide to mental disorders, which states: "...Since (the typical childhood signs of Antisocial Personality Disorder) may terminate spontaneously ..., a diagnosis of Anti-

[34]Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders Confronting Youth Crime 7 (1978), cited in Eddings v Oklahoma 455 U.S. 104.

[35]The ABA amicus curiae brief was originally filed in the case of *High v Zant* and *Wilkins v Missouri*; the *High* case was subsequently dropped and *Stanford v Kentucky* substituted. *Stanford v Kentucky* and *Wilkins v Missouri* were decided together in June 1989.

[36]See, for example, Capital Punishment for Minors: An Eighth Amendment Analysis by Helene B.Greenwald, The Journal of Criminal Law and Criminology at p. 1495: "Society bears a greater responsibility for the crimes of minors than for those of adults ... The main characteristic shared by juveniles who commit serious crimes is membership in a family that provides inadequate supervision and in which there are conflicts, disharmony, and poor parent-child relationships."

social Personality Disorder should not be made in children; it is reserved for adults (18 or over), who have had time to show the full longitudinal pattern".[37]

Despite this, however, death sentences have been imposed on juvenile offenders on the basis of such a diagnosis, together with a finding that they are likely to be dangerous in the future. This applies particularly to cases in Texas, whose capital punishment statute requires juries to impose a death sentence on the finding (with two other circumstances) that there is a probability of the defendant committing "criminal acts of violence that would constitute a continuing threat to society."[38]

Cases submitted to the US Supreme Court have also argued that US law in many other areas recognizes that children under 18 are inherently less responsible than adults. In all US states and the District of Columbia, 18 is the minimum age, for example, at which a person may vote or sit on a jury. In 49 states the age of majority is 18 years or older.[39] Most states place numerous other restrictions on persons under 18 (regarding, for example, the right to purchase alcohol, to gamble, to marry, drive a car or join the armed forces without parental consent). It has been argued that this general recognition of the lesser responsibility of minors should be reflected in the criminal law - at least to the extent that the ultimate penalty of death should not be applied in such cases.

It has also been pointed out that, far from being more responsible than the average teenager, juvenile offenders are typically below their chronological age in terms of intelligence and emotional maturity, a factor confirmed in the cases reviewed by Amnesty International (see Part I). Justice Brennan, writing for the dissent in *Stanford v Kentucky* commented that "...Insofar as age 18 is a necessarily arbitrary social choice as a point at which to acknowledge a person's maturity and responsibility, given the different developmental rates of individuals, it is in fact 'a conservative estimate of the dividing line between adolescence and adulthood. Many of the psychological and emotional changes that an adolescent experiences in maturing do not actually occur until the early 20s." Brief for the American Society for Adolescent Psychiatry and American Orthopsychiatric Association as Amici Curiae 4 (citing social studies)."[40]

US PUBLIC OPINION ON THE DEATH PENALTY IN JUVENILE CASES

[37] *Thompson v Oklahoma*, petition for certiorari to the US Supreme Court, No. 86-6169, Oct 1986

[38] Under the Texas death penalty statute, the jury must impose a death sentence if they find unanimously that the following three factors are present: that the defendant's conduct was deliberate; that it was unreasonable in response to provocation, if any, by the victim; and the probability of the defendant committing "criminal acts of violence that would constitute a continuing threat to society". As the first two factors are likely to have been found present at the guilt phase, the sentencing hearing usually rests solely on the third factor cited.

[39] The age of majority is 18 in 44 states and 19 in five states.

[40] *Stanford v Kentucky* 87-5765 & 87-6026-Dissent.p.15.

Public opinion in the USA may be said generally to favour retention of the death penalty. However, in an opinion poll conducted in Tennessee and Georgia in December 1985, more than two to one of those polled opposed the execution of juveniles aged under 18 at the time of the crime. (The poll was conducted by the University of Georgia; 400 registered voters were polled in each of the towns of Macon (Georgia) and Nashville (Tennessee), areas where support for the death penalty in general is reported to be high.) A telephone survey of 509 respondents in Connecticut carried out in May 1986 showed that, while 68% favoured the death penalty in general, only 31% supported it for crimes committed by offenders under 18.[41]

Surveys have indicated that support for the death penalty in all cases diminishes when respondents are offered a choice between alternative penalties. A Gallup poll published in January 1985 showed that while 72% of the population supported the death penalty in general, this fell to 56% when those questioned were given the choice between executing murderers and sentencing them to life without parole. A poll carried out in Florida in 1986 for the US Section of Amnesty International also showed that 54% of those favouring the death penalty would be less likely to support it if dangerous murderers were sentenced to life without parole. Seventy per cent of respondents in the Florida poll also said they would support an alternative to the death penalty that would sentence convicted murderers to life in prison with their earnings going directly to the victims' families or victims' relief funds.

[41]Streib: The Death Penalty for Juveniles, 1987 p.34.

INTERNATIONAL STANDARDS

International human rights standards clearly prohibit the use of the death penalty on those aged under 18 at the time of the crime. The international consensus against such executions is reflected in leading international and regional human rights treaties and instruments.

Article 6(5) of the International Covenant on Civil and Political Rights states:

> "sentence of death shall not be imposed for crimes committed by persons below eighteen years of aged and shall not be carried out on pregnant women."

Article 4(5) of the American Convention on Human Rights (ACHR) contains a similar provision stating:

> "Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age..."

The United States Government signed both these treaties in 1977 but has not yet ratified them.

A minimum age of 18 years is also established in the death penalty provisions of the Fourth Geneva Convention of 12 August 1949 Relative to the Protection of Civilian Persons in Time of War, which has been ratified by the US Government.

On 25 May 1984 the United Nations (UN) Economic and Social Council (ECOSOC) adopted a series of Safeguards guaranteeing protection of the rights of those facing the death penalty (Resolution 1984/50) which reaffirms the age limit of 18. Safeguard No. 3 states

> "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death ..."

On 24 May 1989 ECOSOC adopted resolution 1989/64 inviting Member States which had not yet done so to review the extent to which their legislation provides for the above Safeguards. The United States of America has not undertaken this review. The Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, endorsed the Safeguards, and on 15 December 1989 the UN General Assembly, in resolution 44/159, adopted without a vote and welcomed the ECOSOC resolution on implementation of the Safeguards.

On 1 September 1989, The UN Subcommission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/33, urgently appealing to Member States which still applied the death penalty to juvenile offenders "to take the necessary legislative and administrative measures with a view to stopping forthwith this practice".

The UN Convention on the Rights of the Child, adopted in November 1989, provides at Article 37(a) that:

> "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility or release shall be imposed for offenses committed by persons below eighteen years of age..."

At the time of writing, the above Convention had not yet been signed or ratified by the United States Government.

The standards cited above are widely adhered to in practice. At least 72 countries have laws specifically setting a minimum age of 18 years or more below which the death penalty may not be used (these countries include the USSR, South Africa, Syria, Paraguay and Libya). A

further 12 countries may be presumed to exclude the use of the death penalty against such offenders under 18 by virtue of their accession to the ICCPR or the ACHR without reservation to the relevant provisions of those treaties.

The execution of juvenile offenders worldwide is extremely rare. The USA is one of only seven countries known to have carried out such executions in the past decade: there was one such execution in Barbados (which has since raised its minimum age to 18), one in Nigeria, three in Pakistan, four in the USA and one reported in Bangladesh (although the government disputed the age of the person concerned). An unknown number of young people under 18 have also been executed in Iran and Iraq. These statistics indicate that, with the exception of Iran and Iraq, the USA has executed more juvenile offenders in recent years than any other country.

APPENDIX

Relevant International Standards

Articles of the International Covenant on Civil and Political Rights

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Covention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes of the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article of the American Convention on Human Rights

Article 4 (Right to Life)

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, this may be imposed only for the most serious crimes and pursuant to a final judgement rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. · Its application shall not be extended to crimes to which it does not presently apply.

3. The death penalty shall not be re-established in states that have abolished it.

4. In no case shall capital punishment be inflicted for political offence or related common crimes.

5. Capital punishment shall not be imposed upon person who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending a decision by the competent authority.

Resolution 1984/50 on Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the United Nations Economic and Social Council at its 1984 Spring Session on 25 May 1984:

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes. it being understood that their scope should not go beyond intentional crimes, with lethal or other extremely grave consequences.

2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death nor shall the death sentence be carried out on pregnant women, or on new mothers or on persons who have become insane.

4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.

6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.

7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence: pardon or commutation of sentence may be granted in all cases of capital punishment.

8. Capital punishment shall be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1)

Article 77, paragraph 5

The death penalty related to the armed conflict shall not be executed on persons who had not attained the age of eighteen years at the time the offence was committed.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

Article 6, paragraph 4

The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.