

# UNITED STATES OF AMERICA

## Arbitrary, discriminatory, and cruel: an *aide-mémoire* to 25 years of judicial killing

*“For the rest of your life, you will have to move around in a world that wanted this death to happen. You will have to walk past people every day who were heartened by the killing of somebody in your family.”* Mikal Gilmore, brother of Gary Gilmore<sup>1</sup>

A quarter of a century has passed since a Utah firing squad shot Gary Gilmore and opened the modern era of judicial killing in the United States of America. Since that day on 17 January 1977 more than 750 men and women have been shot, gassed, electrocuted, hanged or poisoned to death in the execution chambers of 32 US states and of the federal government. More than 600 have been killed since 1990. Each has been the target of a ritualistic, politically expedient punishment which offers no constructive contribution to society's efforts to combat violent crime.

The US Supreme Court halted executions in 1972 because of the arbitrary way in which death sentences were being handed out. Justice Potter Stewart famously compared this arbitrariness to the freakishness of being struck by lightning. Four years later, the Court ruled that newly-enacted capital laws would cure the system of bias, and allowed executions to resume. Today, rarely a week goes by without at least one prisoner somewhere in the country being strapped down and killed by government executioners. In the past five years, an average of 78 people a year have met this fate. Perhaps Justice Stewart, if he were still alive, would note that this is similar to the number of people annually killed by lightning in the USA.<sup>2</sup> So, is the system successfully selecting the worst of the worst crimes and offenders for the death penalty, as its proponents would claim, or has it once again become a lethal lottery?

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<sup>1</sup> *Shot in the Heart*. Mikal Gilmore, Doubleday Books (1994).

<sup>2</sup> In 1995, 76 people were killed by lightning in the USA. National Center for Health Statistics.

The evidence suggests that the latter is closer to the truth. It is undeniable that those who have been executed were convicted of serious crimes with tragic consequences, but so too were many who were spared death. The 750 executions out of some 500,000 murders in the USA since 1977 were the irreversible result of a system in which fairness, equality and justice have given way to inequity, discrimination and error. Echoes of the death penalty's racist past still reverberate. The murderers of white victims remain more likely to receive a death sentence than someone who kills a black. Geographical bias, too, is an element of the equation. More than 80 per cent of the executions have occurred in the southern states, with Texas the perpetrator-in-chief, accounting for a third of the national judicial death toll. Politics has played its part. The Texas governorship of Ann Richards from 1991 to 1995 saw some 50 executions in the state. She was defeated in her bid for re-election by George W. Bush, whose 1994 election campaign argued that Texas should execute more.<sup>3</sup> His subsequent five-year term in office saw 152 executions, one in five of all the executions carried out nationwide since 1977. Fairness has all too often been sacrificed for finality. Last year, the new US administration allowed the first executions of federal death row prisoners since 1963 to proceed despite acknowledging the need to conduct further analysis of the disturbing and widespread racial and geographic disparities in federal capital sentencing.

In 2000, the *New York Times* examined murder rates in the 12 US states without the death penalty and the 36 states which reintroduced it before 1983. It found that rates had not declined any more in the states with capital punishment than in those without it; that 10 of the 12 non-death penalty states had murder rates below the national average, while half of the states with the death penalty had rates above the average; and that during the past 20 years, the murder rate in states with the death penalty was 48 to 101 per cent higher than in the states without it.

While US politicians remain unlikely to acknowledge any possible brutalizing effect of the death penalty, a majority has recognized its failure as a deterrent. Although the two main candidates in the 2000 presidential election said that they believed executions do deter crime. Rather, most have turned to retributive arguments. Supported by a victims' rights movement, some have suggested that executions may bring emotional relief to the families of murder victims (under which theory, the state presumably denies closure to the vast majority of such families). Over the years, however, many relatives of murder victims have spoken out against executions, arguing that they represent an appalling memorial to a murdered relative and simply create another grieving family, that of the condemned prisoner. How can the state justify the torment to which it subjects these families as it toys with the lives of their loved ones? Perhaps it tolerates their suffering as collateral damage in the war against crime.

The global trend away from this cruel and senseless punishment is clear. More than 60 countries have legislated against the death penalty since Gary Gilmore was killed, and today 109 countries are abolitionist in law or practice. The refusal by the United States to abandon an outdated punishment starkly gives the lie to its self-proclaimed status as a progressive force

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<sup>3</sup> *Bush brothers cast foes as soft for not killing enough.* Arizona Republic, 3 November 1994.

for human rights. This is particularly so given that the USA continues to contravene internationally-agreed safeguards in its pursuit of execution B including against child offenders, the mentally impaired, the inadequately represented, and those whose guilt remains in doubt.

Despite recent national concern over the fairness and reliability of the capital justice system B a reaction to the large number of innocent prisoners being found on the country=s death rows B few politicians publicly endorse abolition. Where political support for a moratorium exists, it tends to be framed in terms of repairing what is broken rather than recognizing a policy that is too fundamentally flawed to fix. Amnesty International urges all US politicians, legislators and prosecutors to reflect upon the damage done to their country and its reputation by 25 years of executions and to answer the question B what measurable benefit to society has this killing achieved? This paper, recalling the cases of about 200 of those executed in the United States since 1977, is offered as an *aide-mémoire* and an exhortation to abolition.

## Shameful

*AI don=t think we should be proud of the fact that the United States is the world leader in the execution of child offenders@.* US Senator Russ Feingold, 11 November 1999

The USA is one of the few countries left in the world still prepared to use the death penalty against child offenders B those under 18 at the time of the crime. Indeed, it holds the shameful title of world leader, accounting for 15 of the 29 executions of child offenders known worldwide since 1990. During the same period only Democratic Republic of Congo (1), Iran (7), Nigeria (1), Pakistan (3), Saudi Arabia (1) and Yemen (1) are known to have carried out such executions. Yemen has since abolished this practice, and in December 2001, Pakistan=s President commuted the death sentences of all child offenders in his country. In contrast, over 80 people remain on US death rows for crimes committed when they were aged 16 or 17. Each of these death sentences is internationally illegal, violating the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and customary international law.

Anyone asked to list characteristics they associate with childhood would likely include at least one of the following: immaturity, impulsiveness, lack of self-control, poor judgement, an underdeveloped sense of responsibility, and a vulnerability to the domination or example of elders. Common agreement about such attributes lies behind the global ban on the use of the death penalty for the crimes of children. For such traits render the would-be goals of deterrence or retribution unachievable in such cases, and lead to the inescapable conclusion that executing child offenders is an exercise in state-sanctioned vengeance. The global consensus also reflects a universal recognition of a young person=s capacity for growth and change. The life of a child, it is agreed, should never be written off, no matter what he or she has done. Rather, the guiding principle for officialdom must be to maximize the child offender=s potential for eventual successful reintegration into society. Execution is the ultimate denial of this principle.

The following people were executed for crimes committed when they were 17 years old (except Sean Sellers who was 16). Their cases raise familiar issues: possible innocence, mental

impairment, inadequate legal representation and racial bias (five of the eight African Americans in this list were sentenced to death by all-white juries for the murder of a white victim after prosecutors peremptorily removed prospective black jurors during jury selection).

<b>Charles Rumbaugh</b>	Executed, Texas 1985. Suffered serious mental illness, including bipolar disorder, and gave up his appeals.
<b>James Roach</b>	Executed, South Carolina, 1986. Had mental retardation and an IQ of 70. The trial judge found he had acted under the domination of his older co-defendant.
<b>Jay Pinkerton</b>	Executed, Texas 1986. He wrote his final appeal himself from his death watch cell and it was delivered to federal court by his mother.
<b>Dalton Prejean</b>	Executed, Louisiana 1990. Had borderline mental retardation, an IQ of 71, and diagnosed as suffering from schizophrenia. Was abused as a child.
<b>Johnny Garrett</b>	Executed, Texas 1992. His history of mental illness and severe sexual and physical childhood abuse were not revealed at trial.
<b>Curtis Harris</b>	Executed, Texas 1993. Jury unaware of his low IQ (77) and brain damage resulting from childhood beatings at the hands of an alcoholic father.
<b>Frederick Lashley</b>	Executed, Missouri 1993. He began drinking alcohol heavily at the age of 10 and at the time of the crime was homeless and under the influence of drugs.
<b>Ruben Cantu</b>	Executed, Texas 1993. His lawyer had never handled a capital case. Failed to present mitigation, including Cantu=s borderline retardation (IQ 70-80).
<b>Christopher Burgher</b>	Executed, Georgia 1993. His jury was not told of his low IQ, that he was mentally ill and brain damaged from physical abuse received as a child.
<b>Joseph Cannon</b>	Executed, Texas 1998. Suffered from brain damage, mental illness, borderline mental retardation. Subjected to sexual abuse by male relatives.
<b>Robert Carter</b>	Executed, Texas 1998. The jury, unaware of his borderline mental retardation, brain damage or childhood abuse, took 10 minutes to sentence him.
<b>Dwayne Wright</b>	Executed, Virginia 1998. Treated for mental illness. Mental capacity evaluated as borderline retarded, verbal ability as retarded.
<b>Sean Sellers</b>	Executed, Oklahoma 1999. After conviction, was found to have symptoms of paranoid schizophrenia, and diagnosed with multiple personality disorder.
<b>Christopher Thomas</b>	Executed, Virginia 2000. Under the effects of drugs and alcohol, and without an adult present, he confessed, possibly to protect his girlfriend who may have fired the fatal shot in the killing for which he was sentenced to die.

- Steve Roach** Executed, Virginia 2000. Found to be *particularly immature* for his age with *poor impulse control*. Executed for his only recorded act of violence.
- Glen McGinnis** Executed, Texas 2000. Aged 11, ran away from severe physical and sexual abuse at home and got into petty crime living on the streets.
- Gary Graham** Executed, Texas 2000. Convicted on the testimony of a single eyewitness. Lawyers failed to investigate or present other available exculpatory evidence. Graham maintained his innocence throughout his 19 years on death row.
- Gerald Mitchell** Executed, Texas 2001. His IQ was assessed at 75 at the time of the crime. Had an extensive history of drug abuse and addiction.

## Indecent

*Today, at 6pm, the State of Florida is scheduled to kill my brother, Thomas Provenzano, despite clear evidence that he is mentally ill.... I have to wonder: Where is the justice in killing a sick human being?* Thomas Provenzano's sister, June 2000.

**Thomas Provenzano** was put to death in Florida's execution chamber on 21 June 2000. He had been diagnosed as suffering from paranoid schizophrenia from before the crime for which he was sentenced to die. A judge who ruled him competent for execution did so despite finding *clear and convincing evidence* that Provenzano has a delusional belief that the real reason he is being executed is because he is Jesus Christ. The constitutional ban on the execution of the legally insane provides minimal protection, as the judge admitted.

Unlike in the case of those who were under 18 at the time of the crime, the execution of the mentally impaired is not expressly prohibited by international treaty. Nevertheless, safeguards on the use of the death penalty formulated and agreed to by the international community make it clear that the use of the death penalty against the mentally ill and prisoners with learning disabilities contravenes international standards of justice and decency. International safeguards prohibit the execution of the insane, and it is over a dozen years since the international community urged retentionist countries not to use the death penalty against defendants with *mental retardation or extremely limited mental competence*. In recent years, the United Nations Commission on Human Rights has repeatedly called on the diminishing list of countries that still use the death penalty not to impose it or carry it out on any individual *suffering from any form of mental disorder*.

Since 1977, scores of prisoners with borderline or actual mental retardation and/or histories of mental illness have been put to death. They include the following individuals:

- Arthur Goode** Executed, Florida 1984. Documented history of mental illness since age of three. He had mental retardation, with an IQ of 60-63.

<b>David Funchness</b>	Executed, Florida 1986. Jury was unaware that he suffered severe Post-Traumatic Stress Disorder as a result of his wartime experiences in Vietnam.
<b>Jerome Bowden</b>	Executed, Georgia 1986. Had mental retardation and an IQ of 59-65.
<b>Charles Coleman</b>	Executed, Oklahoma 1990. Had a history of schizophrenia and brain damage first diagnosed when he was 15 years old.
<b>Ignacio Cuevas</b>	Executed, Texas 1991. Reportedly had an IQ of 61.
<b>Nollie Martin</b>	Executed, Florida, 1992. Had an IQ of 59, and had severe mental impairment as a result of serious head injuries he received in childhood.
<b>Robert Sawyer</b>	Executed, Louisiana 1993. Had mental retardation, with an IQ of 65-68, organic brain damage and suffered from schizophrenia.
<b>John Thanos</b>	Executed, Maryland 1994. He had a long history of mental illness and suicide attempts. Four medical experts concluded that he had been mentally incompetent to stand trial, and five experts considered that he was incompetent to waive his appeals.
<b>Varnell Weeks</b>	Executed, Alabama 1995. Diagnosed with schizophrenia, and suffered from pervasive religious delusions. A judge found that he was competent for execution despite being <i>Ainsane</i> according to <i>The dictionary...definition</i> .
<b>Mario Marquez</b>	Executed, Texas 1995. He had mental retardation, with an IQ of 62-66. The jury was left unaware of either his retardation or his childhood abuse.
<b>Sylvester Adams</b>	Executed, South Carolina 1995. Had mental retardation, with an IQ of 65-69.
<b>Larry Bell</b>	Executed, South Carolina 1996. Diagnosed with schizophrenia, including the delusion that he was Jesus Christ. Chose to die in the electric chair, saying it was made of <i>Atrue blue oak</i> , the same as the cross on which Christ died.
<b>Terry Washington</b>	Executed, Texas 1997. Had mental retardation, with an IQ of 58-69.
<b>Tony Mackall</b>	Executed, Virginia 1998. Had mental retardation, with an IQ of 64.
<b>Reginald Powell</b>	Executed, Missouri, 1998. Had mental retardation, with an IQ of 65.
<b>Tuan Nguyen</b>	Executed, Oklahoma 1998. His mental health deteriorated during his years on one of the harshest death rows. There was serious doubt about his sanity. He used to spend prolonged periods screaming in his cell.
<b>Charles Boyd</b>	Executed, Texas 1999. His IQ was measured at 64.

<b>Willie Sullivan</b>	Executed, Delaware 1999. Mental health experts concluded he had mental retardation, brain damage, and met the criteria for fetal alcohol syndrome.
<b>Juan Soria</b>	Executed, Texas 2000. His mental condition had deteriorated on death row with acts of self-mutilation and suicide attempts. His final words were: AThey say I=m going to have surgery, so I guess I will see everyone after the surgery is performed.@
<b>John Satterwhite</b>	Executed, Texas 2000. Diagnosed as suffering from schizophrenia, and his IQ was assessed at 74, in the borderline mental retardation range.
<b>Jose Martinez High</b>	Executed, Georgia 2001. Diagnosed as suffering from serious mental illness and borderline mental retardation.

## Discriminatory

*The state wanted a lily-white jury, and by golly, that's what they got.* Trial lawyer for Thomas Nevius, an African American man sentenced to death in 1982 by an all-white jury.

The history of the death penalty is one of racist use. There was a stark reminder of this in February 2000 when a Tennessee judge overturned Ed Johnson's conviction and death sentence. It came too late for Johnson, an African American man sentenced to death in February 1906 by an all-white jury for the rape of a white woman, and lynched five weeks later by a mob angry with a US Supreme Court decision to stay his execution.

Race, particularly of the murder victim, continues to play a role in US capital justice. In 80 per cent of the executions since 1977, the victims of the original murders were white. Yet blacks and whites are the victims of murder in the USA in almost equal numbers. Studies have consistently shown that the murder of white victims carries a greater possibility of a death sentence than the murder of blacks in the USA's overwhelmingly white judicial system.

**Robert Tarver**, an African American man executed in Alabama in 2000, was tried for the murder of a white man by a jury of 11 whites and one black, after the prosecutor peremptorily struck 13 of 14 blacks during jury selection. The trial took place in a county whose population was nearly 40 per cent African American. **William Hance**, black, was sentenced to death in Georgia by a jury of 11 whites and one black in a county where 34 per cent of the population was black. The sole black juror later came forward to say that she had not voted for death because of Hance's mental impairment, but that the 11 white jurors had decided to tell the judge that all 12 had reached a unanimous verdict for execution. The black juror B who claimed that one of the white jurors had characterized Hance as 'just one more sorry nigger that no one would miss' B said that she had been too intimidated to protest. William Hance was executed in 1994. **Louis Truesdale**, black, was executed in South Carolina in 1998 for the murder of a white. An affidavit from the lone black juror at his trial said that she had been alone in voting for life, but had felt intimidated into changing her vote to death. She recalled that one of the 11 white jurors had said of Truesdale, 'this nigger has to fry'.

**Harvey Green**, black, was executed in North Carolina in 1999 for the murder of two white people in Pitt County in 1983. He became the only person to be executed for a crime committed in North Carolina in 1983, although there were 550 other murders there that year. In Pitt County, there were 11 murders; in nine cases the victims were black. Harvey Green's was the only case in which the state sought the death penalty. From 1983 to 1992, there were 88 murders in Pitt County. Over two-thirds of the victims were black. Only four murders were inter-racial. The state sought death in all three cases involving white victims and black defendants. It did not do so in the white-on-black killing. In all four cases in which Pitt County juries returned death sentences between 1983 and 1992, the defendants were black.

Harvey Green was tried by a jury of 11 whites and one black after prospective black jurors were rejected by the state. The same happened to **Willie Fisher** and **Michael Sexton**, executed in North Carolina in 1999 and 2000, and to **Brian Roberson** and **Gary Graham**, put to death in Texas in 2000. All four were black, three of them sentenced to death for the murder of whites. **Ronald Watkins** faced a jury of 11 whites and one black in Danville, Virginia, for the murder of a white man. An unsuccessful appeal against his death sentence pointed out that since 1970 Danville prosecutors had charged 126 people with murder: 93 blacks and 33 whites. Eighteen were charged with capital murder: 16 blacks and two whites. The death penalty was eventually sought against eight blacks and no whites. Seven black men were sentenced to death. Watkins was one of them. He was executed in 1998.

The 50 men listed below have all been executed. All were African Americans convicted by all-white juries, their cases showing a pattern of black juror exclusion by government prosecutors. The crimes for which they were sentenced to die involved white victims (except those marked with an asterisk in which cases the victims were black). This is not an exhaustive list. Furthermore, Hispanics have also been tried by all-white juries. **Ramon Mata** died on death row in Texas in July 2000 after 15 years under a death sentence imposed by an all-white jury selected after the prosecution and defence agreed to remove all the black jurors. **Rudy Esquivel** was sentenced to death by an all-white jury and executed in Texas in 1986.

**Robert Williams** (Louisiana, 1983)\*  
**John Taylor** (Louisiana, 1984)  
**James Adams** (Florida, 1984)  
**Ernest Knighton** (Louisiana, 1984)  
**Alpha Stephens** (Georgia, 1984)  
**Jerome Bowden** (Georgia, 1986)  
**Larry Smith** (Texas, 1986)  
**Dale Selby** (Utah, 1987)  
**Alvin Moore** (Louisiana, 1987)  
**Willie Darden** (Florida, 1988)  
**Henry Willis** (Georgia, 1989)  
**Leo Edwards** (Mississippi, 1989)\*  
**Horace Dunkins** (Alabama, 1989)  
**Winfred Stokes** (Missouri, 1990)  
**Dalton Prejean** (Louisiana, 1990)  
**Maurice Byrd** (Missouri, 1991)  
**Andrew Jones** (Louisiana, 1991)\*  
**James Russell** (Texas, 1991)  
**Ricky Rector** (Arkansas, 1992)  
**William Andrews** (Utah, 1992)  
**Cornelius Singleton** (Alabama, 1992)  
**Curtis Harris** (Texas, 1993)  
**Richard Wilkerson** (Texas, 1993)  
**Frederick Lashley** (Missouri, 1993)\*

**Walter Blair** (Missouri, 1993)  
**Clifford Phillips** (Texas, 1993)  
**Antonio Bonham** (Texas, 1993)  
**Johnny Watkins** (Virginia, 1994)  
**Paul Rougeau** (Texas, 1994)\*  
**Girvies Davis** (Illinois, 1995)  
**Hernando Williams** (Illinois, 1995)  
**Emmett Foster** (Missouri, 1995)\*  
**John Fearance** (Texas, 1995)  
**Edward Horsley** (Alabama, 1996)  
**Richard Townes** (Virginia, 1996)  
**Coleman Gray** (Virginia, 1997)  
**Dwight Adanandus** (Texas, 1997)  
**Kelvin Malone** (Missouri, 1999)  
**Manny Babbitt** (California, 1999)  
**Victor Kennedy** (Alabama, 1999)  
**Brian Baldwin** (Alabama, 1999)  
**David Brown** (North Carolina, 1999)  
**Bobby Ross** (Oklahoma, 1999)  
**Malcolm Johnson** (Oklahoma, 2000)  
**Glen McGinnis** (Texas, 2000)  
**Freddie Wright** (Alabama, 2000)  
**Pernell Ford** (Alabama, 2000)  
**Caruthers Alexander** (Texas, 2001)

**Jerome Mallett** (Missouri, 2001)

**Gerald Mitchell** (Texas, 2001)

## Cruel

*You call me a cold-blooded murderer. I didn't tie anyone to a stretcher. I didn't pump any poison into anybody's veins from behind a locked door.* © Final statement of Henry Porter, executed in Texas on 9 July 1985.

The list below could contain the names of the more than 750 men and women put to death since 1977, as well as of the 3,700 others currently awaiting execution. For the death penalty is the ultimate cruel, inhuman and degrading punishment. The state toys with the life of the prisoner, who goes through an inevitable cycle of hope and despair over the years of his or her incarceration. The family of the prisoner is put through immense suffering too, for years anticipating the killing of their loved one. As the mother of Brian Roberson wrote in 1995: *The worst fear every mother has is losing her child. Every day I have lived with that threat for the past eight years... This is the true torture of the death penalty.* © She had to endure a further five years of this cruelty. Brian Roberson was executed in Texas in 2000.

Judicial killing in the USA is now mostly carried out by lethal injection, which is promoted as a humane method. It is, of course, no such thing. It cannot alleviate the suffering caused by the death sentence and, like all methods, carries the risk of being botched. This has frequently occurred when the execution team has been unable to find a suitable vein in which to insert the needle, for example due to the prisoner's prior intravenous drug use.

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| <b>James Autry</b>    | Executed, Texas 1984. In 1983 he received a stay 23 minutes before the lethal injection was due. Saline solution was already being dripped into his veins. At his execution, he took at least 10 minutes to die and throughout much of that time was conscious, moving about and complaining of pain. |
| <b>Alpha Stephens</b> | Executed, Georgia 1984. The first charge of electricity failed to kill him. His body was too hot for doctors to examine him, so there was a six-minute delay for it to cool. During that time, Stephens took 23 breaths.  |
| <b>Jesse Tafero</b>   | Executed, Florida 1990. Eyewitnesses reported that the first surge of electricity caused flames and smoke to rise from his headpiece and his body continued to jerk. The flames and smoke continued during two more charges.  |
| <b>Donald Harding</b> | Executed, Arizona 1992. During the execution by lethal gas, Harding thrashed and struggled violently in the gas chamber. A witness said that Harding's spasms and jerks lasted 6 minutes and 37 seconds.  |
| <b>Robyn Parks</b>    | Executed, Oklahoma 1992. Two minutes after the lethal solution began to flow, he went into spasm for about 45 seconds. Parks continued to gasp and violently gag until death came, some 10 minutes later.   |

- Charles Stamper** Executed, Virginia 1993. Partially paralysed, wheelchair-bound Stamper was carried to the electric chair by prison staff, his feet dragging on the floor. He was denied his final request to be allowed a semblance of dignity by walking himself to the chair with the aid of leg braces and a steel walker.
- Kirt Wainwright** Executed, Arkansas, 1997. Spent about 45 minutes strapped to the gurney, with the lethal injection needle already inserted in his arm while the state Supreme Court considered a last-minute appeal.
- Frank McFarland** Executed, Texas 1998. Five years earlier, he had been strapped down for execution when a stay was granted 10 minutes before he was due to be killed.
- John Duvall** Executed, Oklahoma 1998. Under prison anti-suicide policy, he spent the last 60 days of his life in solitary confinement in a special double-doored high-max punishment cell. He was subjected to excessive searching and shackling to ensure that he remained unharmed until the state killed him.
- David Long** Executed, Texas 1999. Had attempted suicide by overdose two days before, and was flown to his execution from intensive care. Lethally injected, he snorted and began gurgling. A blackish-brown liquid spouted from his nose and mouth and dribbled to the floor. The niece of one of the murder victims became distressed and had to leave the witness room. It took nine minutes for David Long to die.
- Bert Hunter** Executed, Missouri 2000. His lawyer wrote of his execution: "When Bert was executed, I learned lethal injection can inflict visible pain and suffering before the condemned loses consciousness."
- Lonnie Weeks** Executed, Virginia 2000. The murder victim's son appealed for the cycle of cruelty to stop: "I never want to see anyone in my lifetime ever go through what I have, and currently the state is about to make another child fatherless."
- Gerald Bivins** Executed, Indiana 2001. His mother attempted suicide a few hours after she had visited him for the last time on the eve of his execution.
- Jay Scott** Executed, Ohio 2001. In the months before this mentally ill man was killed, he twice came minutes from execution. On the second occasion, catheters had already been inserted in his arms in preparation for the lethal injection.
- Fred Gilreath** Executed, Georgia 2001. Put to death after 21 years on death row for killing his wife and her father. Appealing for clemency, his son wrote: "The execution of my father will require

[my sister] and I to relive the traumatic experiences of losing a parent. We also fear the impact that my father=s death will have on our children (his grandchildren) who visit him regularly in prison. It tears me apart to think with this execution, they may have to go through what I went through as a child.©

## Brutalizing

*“The death penalty cannot be useful, because of the example of barbarity it gives men.” © Cesare Beccaria, 1764.*

The death penalty carries the message that killing is an appropriate response to killing. It encourages feelings of vengeance, hatred, and division.

**James Briley** Executed, Virginia 1985. Pro-execution demonstrators held signs saying “Burn Briley Burn”, and “Kill the Negro”. One woman carried a sign which said: “How does it feel to be burned in a chair? Burn - damn you - koon!”.©

**James Raulerson** Executed, Florida 1985. Convicted of killing a police officer. More than 70 police officers, some of them wearing T-shirts with a drawing of the electric chair and the words “Crank up Old Sparky”, celebrated with champagne and cheering outside the prison as the execution took place.

**Pedro Medina** Executed, Florida 1997. During his execution flames shot out of the face mask. The state Attorney General said: “People who wish to commit murder, they better not do it in the State of Florida because we may have a problem with our electric chair.”©

**Steve Roach** Executed, Virginia 2000. One of the volunteer witnesses at the execution reportedly said that it was her third one, and that she kept volunteering because executions were “interesting”. Another witness reportedly said he came to watch Roach die as a way of avenging the death of his own son, who was beaten to death with nobody ever convicted of the crime.

**Darrell Rich** Executed, California 2000. At the clemency hearing relatives of his victims spoke of their pain and their wish to have Darrell Rich killed without further

delay. Opponents of the death penalty spoke for clemency, drawing hisses and an angry walkout from relatives of the victims. One relative reportedly said 'We're wasting time, just kill him', another: 'I think we should take him out to that dump and use a rock, maybe a gun. No, a gun's too fast.'

**Loyd LaFavers**

Executed, Oklahoma 2001. The victim's nephew, a Colorado Senator, voiced his anger at an earlier stay granted because of doubts over LaFavers' guilt: 'It's beyond me what's happening to the justice system and the courts when we let a convicted killer foul Oklahoma air for 15 years. And then right at the moment of execution, some court... grants more time. It's outrageous.' Shortly before the execution went ahead in 2001, the Senator said: '[The murder] was almost 16 years ago... this guy should have been exterminated the next day. I would have been glad to do it for them, without hesitation.'

## Futile

*I want to die*. Christina Riggs, executed in 2000, urging her jury to sentence her to death.

**Gary Gilmore** refused to appeal his death sentence, which is why he became the first to die after the US Supreme Court lifted the moratorium on executions in 1976. He fought every attempt to stop his execution. Nearly two and a half decades later, **Timothy McVeigh** became the first federal death row prisoner to be executed in the USA since 1963 amidst a media circus similar to that which had surrounded the Gilmore execution. McVeigh, like Gilmore, had waived his appeals. They have been far from alone since 1977. More than 90 other prisoners have gone to their deaths after dropping their appeals, including those listed below. Such cases have been described as state-assisted suicide, but are perhaps more accurately characterized as prisoner-assisted homicide. In any event, the cases of 'volunteers' serve to illustrate the cruel exercise in futility that is capital punishment. In some cases, the individual actually claimed to have committed the crime in the first place in order that the state would kill them, not only showing the death penalty's failure as a deterrent, but also its possible counter-deterrent effect.

**Robert Smith**

Executed, Indiana 1998. He pleaded guilty to murder on the guarantee that the prosecution would pursue a death sentence. Prior to this arrangement, the prosecutor had not planned to seek the death penalty.

**Jeremy Sagastegui**

Executed, Washington 1998. Acting as his own lawyer, he rejected jurors less likely to favour execution. He offered no mitigation, and urged the jurors to sentence him to death. In an interview before his execution, he said: 'If the state wouldn't have had the death penalty, those people would still be alive.'

- Christina Riggs** Executed, Arkansas 2000. Killed her two children in a bout of suicidal depression. Her own suicide attempt failed. She refused to allow any mitigating evidence at her trial and urged the jury to vote for death.
- Dan Hauser** Executed, Florida 2000. He allegedly made up gruesome details of the crime - inconsistent with the evidence - to ensure a death sentence. He also lied to the trial court when he said that he had never been treated for mental illness.
- Thomas Akers** Executed, Virginia 2001. At 17, he was sentenced to adult prison for stealing. He wrote to the judge, asking to be put to death in the electric chair. After being paroled, he began wearing a necklace with an electric chair pendant, and told his family that he was going to be executed. Four months later, he was arrested for murder and within 16 months had been executed.
- Ronald Fluke** Executed, Oklahoma 2001. Turned himself in to police, confessed to the murder of his wife and daughters and to being unable to kill himself. He pleaded guilty, presented no mitigation and asked for a death sentence.

## Unfair

*Competent counsel ought to require more than a human being with a law licence and a pulse.* Judge Price, Texas Court of Criminal Appeals, dissenting, 2 January 2002.

International safeguards require that capital defendants receive adequate legal assistance at all stages, above and beyond that provided in non-capital cases. In the USA, most such defendants are too poor to afford their own attorney, and so receive court-appointed representation. While the fact of incompetent or inexperienced counsel helps to explain why so many innocent people have been sentenced to death, perhaps a more widespread failure has been at the sentencing phase of capital trials. It is at this stage, after the defendant has been convicted, that the state argues for execution and the defence is supposed to present evidence in support of a lesser sentence. In case after case, despite the availability of mitigating factors, defence lawyers have presented little or no such evidence, giving the jury little or no reason to vote for leniency. Many jurors have later come forward to say that they would not have voted for death if they had heard the mitigating evidence of which they learned only after the trial.

In order to win an appeal on this issue, a defendant must prove that, but for the lawyer's performance, the outcome of the trial would have been different. In 1984 the US Supreme Court instructed the appeal courts to be highly deferential to a lawyer's conduct and to indulge a strong presumption that it was reasonable. This hurdle was further raised by the 1996 Anti-Terrorism and Effective Death Penalty Act which restricted federal review of state court decisions. For example, a federal court recently allowed the death sentence of Howard Neal to stand despite finding that the Mississippi Supreme Court had erred in ruling that his lawyer's inadequate performance had not altered the outcome. It ruled that, under the AEDPA, the state court had not been unreasonably wrong. The following list could be much longer.

- |                       |   |
|-----------------------|---|
| <b>John Young</b>     | Executed, Georgia 1985. His lawyer admitted to being unprepared because of personal problems. He was disbarred (on conviction of a drug offence) days after the trial. He presented no mitigation on behalf of his teenage client.                          |
| <b>Billy Mitchell</b> | Executed, Georgia 1987. His trial lawyer presented no mitigating evidence at the sentencing. The affidavits of individuals who would have testified if they had been asked filled 170 pages of the record in federal court.                                 |
| <b>Earl Clanton</b>   | Executed, Virginia 1988. His lawyer spent eight hours with Clanton, including the trial. A federal judge found his failure to make the slightest effort to obtain mitigating evidence... tantamount to complete dereliction of his professional obligation. |
| <b>James Messer</b>   | Executed, Georgia 1988. Numerous federal judges described his lawyer's performance as unreasonable and prejudicial, a complete breakdown of the adversarial process, and egregiously unprofessional.  |

<b>Leonard Laws</b>	Executed, Virginia 1990. His lawyer failed to present mitigation, including that Laws had severe psychological damage in the Vietnam war. A US Supreme Court dissent described the lawyer=s conduct as Aplainly deficient@.
<b>John Gardner</b>	Executed, North Carolina 1992. His lawyer, abusing drugs and alcohol at the time of the trial and later suspended from legal practice on the grounds of professional negligence, failed to conduct any mitigation investigation.
<b>Jesus Romero</b>	Executed, Texas 1992. His lawyer=s entire closing argument was: AYou are an extremely intelligent jury. You=ve got that man=s life in your hands. You can take it or not. That=s all I have to say.@ A federal judge found that this conduct was Apatently unreasonable@, but was overruled on appeal.
<b>Martsay Bolder</b>	Executed, Missouri 1993. His attorney failed to present any mitigating evidence. A federal judge overturned the death sentence, but it was reinstated on appeal. A dissenting judge said it was Aa miscarriage of justice@.
<b>Joe Wise</b>	Executed, Virginia 1993. Represented by a lawyer who had never represented a criminal defendant. His argument against execution lasted two minutes, compressing the case for his client=s life into 22 sentences.
<b>Carl Johnson</b>	Executed, Texas 1995. At the trial, the lead lawyer slept through Asignificant periods on numerous occasions@, according to an affidavit given by the co-counsel, an inexperienced attorney just out of law school.
<b>Larry Stout</b>	Executed, Virginia 1996. His lawyer presented no mitigating evidence at the sentencing phase. A federal judge ruled that this had been constitutionally inadequate conduct, but this decision was overturned by a higher court.
<b>Durlyn Edmonds</b>	Executed, Illinois 1997. His court-appointed lawyer failed to investigate and present evidence of Edmonds= mental illness, despite the fact that he had been repeatedly diagnosed as suffering from schizophrenia.
<b>Victor Kennedy</b>	Executed, Alabama 1999. His lawyer failed to present mitigating evidence. A new trial was granted, but this was reversed by a higher court on the grounds that the claim of ineffective representation had been raised too late.
<b>Cornel Cooks</b>	Executed, Oklahoma 1999. His lawyer called no witnesses and presented none of the substantial available mitigation evidence at the sentencing phase.
<b>Wanda Jean Allen</b>	Executed, Oklahoma 2001. She was her lawyer=s first capital case, done for a payment of \$800. He was unaware of Allen=s borderline mental retardation.

**Ronald Frye**

Executed, North Carolina 2001. His lawyer was an alcoholic who routinely drank instead of working on Frye=s case. Several jurors later stated that they would not have voted for death if that had heard about Frye=s background.

## Arbitrary

*Something is terribly wrong when a body of law upon which we rely to determine who lives and who dies can no longer, in reality, reasonably and logically be comprehended and applied...Yet this is how cluttered and confusing our nation=s effort to exact the ultimate punishment has become.* Dissent, US Court of Appeals for the Third Circuit, October 1995.

Predicting which murders will result in the death penalty is impossible. Issues such as race, politics, prosecutorial discretion and quality of legal representation can influence the outcome of a case as much as the circumstances of the crime itself. Geographical bias is very marked. For example, Texas accounts for a third of executions carried out in the USA since 1977, yet accounts for less than 10 per cent of the country=s population. More than 60 of the executed were prosecuted in a single Texas jurisdiction, Harris County. Over 150 men and women prosecuted in Harris County currently await execution.

The International Covenant on Civil and Political Rights prohibits the arbitrary deprivation of life. The Human Rights Committee, regarding the right to liberty, has stated that >arbitrariness= should not be equated to >against the law=, but that it should be interpreted more broadly, to include notions of inappropriateness, injustice and lack of predictability.

**Charles Brooks** Executed, Texas 1982. His co-defendant, whose death sentence was overturned on a legal technicality, was subsequently sentenced to 40-year prison term under a plea bargain. It was not known which of the two men had shot the victim. The prosecutor in the Brooks case unsuccessfully appealed for him not to be executed on the grounds that the two men, convicted on the same evidence for the same acts, had ended up with such different sentences.

**Gregory Resnover** Executed, Indiana 1994. Resnover was one of two black men sentenced to death for the shooting of a white police officer. The state=s position was that Resnover had not been the individual who had actually shot the officer. An Indiana legislator opposed the execution of Resnover, noting the gross disparity between his sentence and that of a white Indianapolis man who was sentenced to seven years for fatally shooting a police officer in 1988.

**Steve Hatch** Executed, Oklahoma 1996. Hatch was executed for two murders committed by his severely mentally ill co-defendant Glen Ake in 1979. Ake committed the murders after the two men had robbed the victims= home. Hatch had already left the house when Ake shot the couple. Ake=s death sentence was overturned and he was subsequently sentenced to life imprisonment.

**Scott Carpenter** Executed, Oklahoma 1997. The prosecutor consulted with the victim=s family, who told him that a plea bargain to life imprisonment was unacceptable. In contrast, another Oklahoma prosecutor agreed in 2001 to drop its pursuit of the death penalty against Dallas Hastings for murder, in return for a guilty plea and a sentence of life imprisonment. The prosecutor

said that the victim=s family had been consulted and agreed with the plea agreement. Carpenter and Hastings were both 19 at the time of the crimes.

**Roy Roberts**

Executed, Missouri 1999. Sentenced to death for a murder committed in prison, involving two other inmates - one was sentenced to life, the other had his death sentence overturned. Roberts was convicted despite conflicting eyewitness testimony. In North Carolina, Wendell Flowers was convicted of a prison murder involving other inmates. He was the only one of four defendants to be sentenced to death, despite questions as to whether he was principally responsible. In 1999, the North Carolina governor recognized the arbitrariness and commuted Flowers= death sentence 48 hours before his execution. No such mercy was shown to Roberts by the Missouri governor.

**Brian Roberson**

Executed, Texas 2000. Roberson, black, was convicted by a jury of 11 whites and one black of the 1986 murder of a white couple committed when he was high on drugs. Twenty-six years earlier he had lost his father to murder, killed by a white man high on drugs, who was released after three years in prison. In Utah, Joseph Franklin, who had a history of racist attacks on African Americans, was sentenced in 1981 to life imprisonment for the racially motivated sniper killing of two young black men.

**Oliver Cruz**

Executed, Texas 2000. This Latino defendant with mental retardation was put to death for the rape and murder of a white woman. Cruz=s white co-defendant, not mentally impaired, was charged with the same crime, but pleaded guilty and testified against Cruz in return for a life sentence.

**Juan Garza**

Executed, Federal 2001. Convicted of killing three people in the context of a drug trafficking enterprise. His co-defendants, charged with direct involvement in the same murders received prison terms, despite being equally culpable, according to Garza=s jury. Other federal defendants against whom the US government did not seek the death penalty include a hitman for a cocaine ring in Washington DC, charged with eight murders; five defendants in a Michigan cocaine conspiracy charged with 11 drug-related murders; an alleged head of a Louisiana drug ring charged in eight drug-related murders.

**Terry Mincey**

Executed, Georgia 2001. Convicted of the shooting murder of a woman during a robbery in Bibb County in 1982. Other cases in which the same Bibb County prosecutor decided not to pursue the death penalty, and which resulted in life sentences, include: George Grant - for robbing and killing a 74-year-old woman in 1986 by stabbing her 19 times. Vincent Jerome Allen - for the rape and beating murder of a woman. Earl Louis Jones - for the murder of four men in 1989. Alfred Palmer - for the robbery, rape and murder of an 81-year-old woman in 1988. James Stokes - for killing a prison employee while serving a life sentence for murder.

## **Damaging**

*We are the leading force for human rights around the world.* President Bill Clinton, 14 August 2000.

The USA likes to see itself as a champion of human rights. Its refusal to abandon the death penalty starkly gives the lie to this claim, and inflicts serious damage on the USA's reputation abroad. While this is true of all executions in an increasingly abolitionist world, executions which violate internationally-agreed safeguards are particularly damaging to a country's image.

In a brief filed in the US Supreme Court in June 2001, nine senior former US diplomats argued that the execution of people with mental disabilities – one of numerous aspects of the US death penalty which violate specific international safeguards – had become manifestly inconsistent with evolving international standards of decency. Such executions, the brief asserted, strain diplomatic relations with close American allies, provide ammunition to countries with demonstrably worse human rights records, increase US diplomatic isolation, and impair the United States foreign policy interests.

Also in June, the abolitionist Council of Europe – 43 member countries with 800 million inhabitants – adopted a resolution calling into question the USA's observer status with the organization because of continuing US resort to capital punishment.

In April 2001, the USA was voted off the United Nations Commission on Human Rights. Harold Koh, Assistant Secretary of State for Democracy, Human Rights, and Labor under the Clinton administration, described the vote as 'a wake-up call that the era of automatic global deference to US leadership on human rights is over. Our belief in our global exceptionalism has too often led us to vote alone at the commission, falsely assuming that such isolationism has no costs'. He cited the USA's refusal to support a moratorium on the death penalty as an example of the problem.

Again and again, international experts have taken issue with particular cases in the USA. Each such intervention inflicts a little more damage on the reputation of the USA and shows up the hypocrisy of its claims to be the world's most progressive force for human rights.

**William Andrews** Executed, Utah 1993. The Inter-American Commission on Human Rights found that William Andrews' rights to equality before the law and to an impartial hearing had been violated. Andrews and his co-defendant, both black, were sentenced to death by an all-white jury for a crime involving white victims. Court officials were handed a note that one of the jurors had come across. The note said *Hang the Niggers* and contained a drawing of a figure hanging on a gallows. No US court ever held a hearing into who wrote the note and what effect it had on the jury.

**Betty Beets** Executed, Texas 2000. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the UN Special Rapporteur on violence

against women appealed to Governor George W. Bush not to allow the execution to go ahead because the jury had not heard important mitigating evidence of the abuse Betty Beets had suffered at the hands of various men.

**Gary Graham** Executed, Texas 2000. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the UN High Commissioner for Human Rights expressed their deep concern over the execution of Gary Graham, a child offender put to death in Texas despite serious doubts about his guilt.

**Juan Garza** Executed, Federal 2001. The Inter-American Commission on Human Rights called for clemency, concluding that he had been sentenced to death in an arbitrary and capricious manner and that his execution would be a deliberate and egregious violation of the American Declaration of the Rights and Duties of Man. It was concerned by the government's use, as aggravating evidence at the sentencing phase, of evidence of unsolved crimes committed in Mexico for which Garza had neither been charged or convicted. The Commission stated that the introduction of this evidence was antithetical to the most basic and fundamental judicial guarantees.

**Karl & Walter LaGrand** Executed, Arizona 1999. These two German nationals were put to death despite a call for a stay by the International Court of Justice (ICJ). In June 2001, the ICJ issued a landmark judgement in the subsequent case brought by Germany. By an overwhelming majority, the ICJ found that the USA had breached its obligations to Germany and to the LaGrand brothers under the Vienna Convention on Consular Relations, by failing to promptly inform the brothers upon arrest of their right to contact their consulate.

What would be the reaction of the USA if one of its citizens was arrested abroad, put on trial and sentenced to death while denied their internationally-agreed consular rights? Presumably, outrage. Yet this is precisely what the USA has done and continues to do to citizens of other countries. There are more than 100 foreign nationals on death row in the USA. In the vast majority of cases, the US authorities failed to inform the individual upon arrest of their right, under the Vienna Convention on Consular Relations, to contact their consulate for assistance. At least 17 foreign nationals have been executed in the USA since 1977:

**Leslie Lowenfield**, Guyana (Louisiana, 1988)  
**Carlos Santana**, Dom. Republic (Texas, 1993)  
**Ramon Montoya**, Mexico (Texas, 1993)  
**Irineo Montoya**, Mexico (Texas, 1997)  
**Mario Murphy**, Mexico (Virginia, 1997)  
**Pedro Medina**, Cuba (Florida, 1997)  
**Angel Breard**, Paraguay (Virginia, 1998)  
**Jose Villafuerte**, Honduras (Arizona, 1998)  
**Tuan Nguyen**, Vietnam (Oklahoma, 1998)  
**Karl LaGrand**, Germany (Arizona, 1999)  
**Walter LaGrand**, Germany (Arizona, 1999)

**Jaturun Siripongs**, Thailand (California, 1999)  
**Alvaro Calambro**, Philippines (Nevada, 1999)  
**Joseph Faulder**, Canada (Texas, 1999)  
**Miguel Flores**, Mexico (Texas, 2000)  
**Sebastian Bridges**, South Africa (Nevada, 2001)  
**Sahib al-Mosawi**, Iraq (Oklahoma, 2001)

## Dehumanizing

*I committed a heinous act... That's why I'm on death row. I'm perceived in society to be a monster - irredeemable.* Jonathan Nobles shortly before his execution in Texas in 1998

At the trial of **Willie Darden**, a black man facing an all-white jury, the prosecutor described him as *Aan animal@ who should only be let out of his cell on Aa leash@*. Darden was executed in Florida in 1988 after the US Supreme Court said that his trial, although *Anot perfect@*, was not unduly prejudicial. In Gary Burris=s case, it was his own lawyer who described him to the jury as *Aan insignificant, snively, little street person@*. **Gary Burris**, abandoned as an infant and raised by a pimp who introduced him to crime, was executed in Indiana in 1997.

The dehumanization of the person whom the state wishes to kill is crucial to maintaining support for the death penalty. At the 1987 Oklahoma trial of **Eddie Trice**, the prosecutor urged the jury to return a death sentence, saying: *AThis man is unique because he is without compassion; he is without human feelings; he is without love for his fellow human beings. Thank God he is different. Because he is different, he sits where he sits.* Thirteen years later a state prosecutor urged the clemency board not to spare Eddie Trice=s life. He described him as *Aevil@* and said *AMr Trice is someone who has demonstrated over and over again he is someone who has an inability to comply with the rules of society, but that inability is a moral defect, not a mental one.* The state needed to ensure that the board members would not be swayed by the prisoner=s expressions of remorse, his excellent disciplinary record on death row, expert psychological testimony about his childhood abuse and mental impairment, and his lawyer=s exhortation to the board not to limit its consideration to Eddie Trice=s crime, but to consider *Awhat Eddie has become and what he could be@*. The board rejected clemency and Eddie Trice was executed in 2001.

Many inmates manage remarkable personal growth and social rehabilitation on death row, despite being incarcerated in a system that is geared not to their rehabilitation, but to their warehousing and execution. It is a sad reflection on US society that it continues to employ a sanction that denies the possibility of such change.

### Harold Otey

Executed, Nebraska 1994. Beaten, neglected and abused as a child. He began using drugs and was thrown out of school at the age of 15. During 17 years on death row, he obtained his high school diploma, and went on to study literature, logic and philosophy, and published three volumes of poetry. A professor of psychiatry, who had evaluated over 1,000 inmates convicted of murder, said that he *Apresents one of the strongest cases for commutation which I have seen.* A clinical psychologist said that *Ai am not aware of a death row inmate who has made more dramatic progress in rehabilitation@*. A professor of sociology said that Otey presented *Aan exceptionally strong case for clemency - stronger than any other case I have ever seen@*.

- Harold McQueen** Executed, Kentucky 1997. At the time of the crime, McQueen was addicted to valium, heroin and alcohol. Spent 15 years on death row in Kentucky State Prison (KSP). The death row administrator said that, but for his death sentence, McQueen would have been transferred out of maximum security 5 years ago for good conduct. A former warden of KSP signed an affidavit that McQueen would not be a threat if released from death row into the general prison population. A KSP psychologist described McQueen as rehabilitated, remorseful and a positive influence on other inmates.
- Karla Tucker** Executed, Texas 1998. Her case provoked a huge debate on the death penalty versus rehabilitation. During her 14 years on death row, she educated herself and became very religious. The pro-death penalty conservative TV evangelist Pat Robertson was among those who called for clemency, saying that Tucker no longer posed any threat. She was addicted to heroin by the age of 10 and by 11 had become a prostitute to pay for her habit. On death row, she had expressed her wish to use her experience to turn offenders away from crime.
- Jaturun Siripongs** Executed, California 1999. During his 16 years on death row he had a spotless disciplinary record, studying Buddhism and becoming an accomplished artist. A prison officer supported clemency based on his contribution to the safety and well-being of correctional officers and other inmates. A former warden of San Quentin, a supporter of the death penalty, wrote that clemency for Jaturun Siripongs would promote the safety and security of the institution. The Governor denied clemency: Remorse is not sufficient... The fact that Mr Siripongs may have been a model prisoner for 16 years...is beside the central point: model behaviour cannot bring back the lives of the two innocent murder victims.
- Abdullah Hameen** Executed, Delaware 2001. His clemency bid centred on his rehabilitation and his stated desire to help others reject violence. During his time on death row, Hameen had counselled other inmates and worked with at-risk youths, encouraging them to turn away from lives of crime, guns and drug abuse. After several days of deliberation, the Board of Pardons held a second hearing after the sister of the murder victim said that she had been unaware of the first hearing. At the reconvened session, she urged the Board to reject clemency for Hameen whom she referred to as "garbage", "evil" and lacking any remorse for his crime. The Board denied clemency despite concluding that Abdullah Hameen's remorse and rehabilitation were genuine.
- Byron Parker** Executed, Georgia 2001. He was on death row for 17 years, during which time he pursued his education at his own expense, achieving his high school diploma, as well as a university degree. He published poetry, short stories and screenplays. A former poet laureate of Georgia used his writings in classes she taught at state college. A majority of the jurors from the original trial supported clemency. At his trial they had been left largely unaware of the abuse Parker suffered as a child.

## Diversionsary

*The death penalty is a mirage that distracts society from more fruitful, less facile answers. It exacts a terrible price in dollars, lives and human decency. Rather than tamping down the flames of violence, it fuels them while draining millions of dollars from more promising efforts to restore safety to our lives.* © Manhattan District Attorney, New York, 1996

The death penalty consumes enormous resources and human energy for no measurable benefit to society. It is an absolute punishment, which assumes absolute culpability on the part of the accused. It says that wider society should take no responsibility, however minimal, in the crimes of capital defendants.

The USA has executed nine child offenders in the past four years. Each of the murders for which they died was committed using a gun. Should wider society not accept some responsibility in the apparent ease with which these teenagers had access to lethal weapons? Many of those executed came from backgrounds of extreme abuse, but their state-appointed lawyers never made the jury aware of their client=s background. **Kenneth Ransom**, for example, executed in Texas in 1997, was subjected to appalling physical torture as a child. His lawyer, later disbarred for unprofessional behaviour, never bothered to find out. Numerous mentally ill individuals have been sentenced to death. In some cases, there was a failure to heed warnings of an individual=s potential for violence before the crime was committed. Would it not be better for society to devote the resources the death penalty consumes to preventive measures and other constructive responses, including assistance to those who have lost family members to murder?

**Morris Mason** Executed, Virginia 1985. Diagnosed as having schizophrenia and mental retardation (IQ of 66). At the time of the murder, he was on parole for arson. In the week before the killing, he twice sought help from his parole officer for his drinking and drug abuse problem. The day before the crime he asked to be placed in a half-way house; however, no facilities were available.

**Dalton Prejean** Executed, Louisiana 1990. He was committed to a mental facility at the age of 14. It was recommended that he receive long-term medical in-patient hospitalization under strict supervision. Despite finding that Prejean was a definite danger to himself and others, he was released from the facility without supervision because no more funding was available for his care. Six months later, age 17, he committed a murder and was sentenced to death.

**Thomas Baal** Executed, Nevada 1990. Baal had been in out of mental institutions since childhood. His parents said: 'If [the government] had listened to us for the last 20 years when we asked for help, [the victim] would still be alive'. They said that their pleas for government assistance for psychiatric help when their money ran out were ignored.

- Robert Harris** Executed, California 1992. He was born two months prematurely after his mother was kicked in the stomach by her husband. Both parents were alcoholics. At the age of two Robert Harris was beaten unconscious by his father, and was beaten throughout his early childhood by his father and stepfather. When he was nine, his father was convicted and imprisoned for sexually abusing his daughters. At 14 he was abandoned by his mother. When he was 15 he was caught with others driving a stolen car. The others were claimed by their families, Robert Harris was not, and was sentenced to four years in a juvenile facility. There he was diagnosed as pre-psychotic, schizophrenic, suicidal and self-destructive. At 19 he was released with a recommendation that he seek treatment for his mental illness. There was no evidence that this happened. His jury was left unaware of the extent of his childhood abuse or mental impairments.
- Zane Hill** Executed, North Carolina 1998. Convicted of killing his 29-year-old son during a prolonged spate of heavy drinking. The Carolina Justice Policy Center said: 'The state of North Carolina cannot show genuine concern for [Hill's wife] and other victims of family violence by killing the husband she has been visiting. Family tragedies such as this cry out for better prevention strategies. Family violence is far too common and preventive approaches - not executions - are desperately needed to reduce the level of violence...'
- Larry Robison** Executed, Texas 2000. He was diagnosed as suffering from schizophrenia from before the crime which he said he committed as a result of his mental illness. His mother said that she attempted to get treatment for him, but that the Texas mental health care services repeatedly said that they did not have the resources to treat him unless he turned violent.
- Glen McGinnis** Executed, Texas 2000. Subjected to a childhood of abuse and neglect. The state Child Protective Services (CPS) intervened on three occasions, once after the boy was raped by his stepfather when he was about nine or 10 years old, a second time when he was beaten on the head with a baseball bat, and thirdly after his mother and stepfather burned his stomach with hot sausage grease. Each time the CPS returned him to his mother's home after he had been treated for his injuries, and each time he ran away, only to be caught shoplifting and returned home again by the authorities. He ran away from home for good when he was 11, and alternated between the streets of Houston and juvenile detention, where he was sent when he was caught stealing cars. He was executed for a murder committed during a robbery when he was 17.
- Dion Smallwood** Executed, Oklahoma 2001. Had a history of mental illness. Smallwood had sought psychiatric help less than a month before the murder because his condition was deteriorating. He went to a mental health facility, stating that he was having 'a crisis', but the relevant counselor was busy and asked him to come back in two hours. Although she noted that he was 'obviously in relapse', she did not follow up on his whereabouts when he did not return.

## Politicized

*We are human tools, political pawns, political human sacrifices for the politicians.* Final statement of Daniel Thomas, executed Florida, 15 April 1986

Politics is never far from the death penalty, threatening to undermine the independence of the judiciary or jeopardize the possibility of an impartial clemency consideration by the executive. Over the years, legislators, prosecutors and judges running for election in the USA have cited their support for judicial killing to show that they are *Atough on crime*. They react to their critics by saying that this is democracy in action, and that they are responding to public support for the death penalty. History, of course, is littered with human rights abuses that had broad public support, including slavery, lynching and racial segregation. Moreover, while asserting that they are *Agiving the people what the people want*, politicians are failing to offer information and education about alternatives to capital punishment, world trends, international standards, the death penalty's costs to society, its failure as a deterrent, and its brutalizing effect.

### **Ricky Rector**

Executed, Arkansas 1992. Rector was severely impaired, exacerbated by a frontal lobotomy conducted after he shot himself in the head on arrest. Whether or not to proceed with his execution, as one journalist later wrote, *A*became a test in Arkansas of the lengths to which a society would pursue the old urge to expiate one killing by performing another *B* and a test of the state's highest temporal authority, the governor, who alone could stop it. *C* The governor, who at the time was seeking the highest office in the country, chose not to stop it. Breaking off from presidential campaigning, Bill Clinton flew back from New Hampshire to oversee Rector's execution. Taken to be executed, Rector left the slice of pecan pie from his final meal *A*for later. *D* Shortly before that, catching a glimpse of Governor Clinton on the television news, Rector told one of his lawyers, *A*I'm gonna vote for him for President.

### **Thomas Grasso**

Executed, Oklahoma 1995. During the 1994 New York gubernatorial campaign, pro-death penalty George Pataki promised to reintroduce capital punishment in the state. He also promised to return Thomas Grasso to Oklahoma. Grasso was serving a life prison sentence in New York, but was also under sentence of death in Oklahoma. The anti-death penalty Governor of New York, Mario Cuomo, had refused to return Grasso to his death. Pataki won the election, defeating Cuomo. One of his first acts as governor was to return Grasso to Oklahoma to be executed. Soon afterwards, he signed a bill reinstating the death penalty in New York, 32 years after its last execution.

### **Luis Mata**

Executed, Arizona 1996. In 1995, Governor Fife Symington criticized the Arizona Supreme Court for staying the execution of Mata, a mentally retarded inmate with an IQ of 64-70 (which the jury never knew). The

governor stated that the case was another study in how judicial activism is making the United States a land where vicious killers become media stars and escape their punishment while their victims suffer for years in anonymous silence. At his side were the parents of Luis Mata's victim, who called for his execution. Executive clemency was subsequently denied, despite the fact that the prosecutor said that he would not have sought the death penalty had he known about Mata's mental impairment and his childhood abuse.

**Brian Baldwin**

Executed, Alabama 1999. Governor Don Siegelman, who took office in 1999, joined the angry public criticism of his predecessor's decision to commute the death sentence of Judith Neelley before he left office. The first request for clemency to come before the new governor was compelling. It was that of Brian Baldwin, an African American convicted in 1977 of the murder of a white girl when he was 18. His confession, allegedly extracted under police torture and death threats, was admitted as evidence. The trial, in front of an all-white jury after the prosecutor had removed all blacks during jury selection, lasted a day and a half. He had been referred to in racially derogatory terms in the court by both his defence lawyer and the prosecutor.

Clemency, called for among others by a former US president, was denied by Governor Siegelman. Perhaps the politics of the death penalty clouded his judgement. Only weeks earlier he had told reporters at a meeting of state prosecutors, 'Judith Neelley would have been shown the same compassion under Don Siegelman that she showed her victims'.

**Robert Coe**

Executed, Tennessee 2000. In 1995, Governor Don Sundquist held a press conference close to where Robert Coe's alleged child victim was abducted in 1979. Standing with the child's mother, he pushed for legislation to restrict the number of appeals in capital cases. He was quoted as saying: 'It offends me - no it outrages me - that our criminal justice system can be manipulated through endless filings and appeals... What Coe and many others are doing is thumbing their noses at the law and mocking the memory of their victims.' Five years later, Governor Sundquist denied clemency for Robert Coe and this mentally ill man became the first person to be executed in Tennessee in 40 years.

**James Johnson**

Executed, Missouri 2002. Missouri Supreme Court Judge Ronnie White dissented in the case, saying that Johnson should receive a new trial on the grounds of inadequate legal representation. In 1999, President Clinton nominated Judge White to be a federal judge. A Republican Party campaign against the nomination was led by Missouri Senator John Ashcroft. Citing among other things the James Johnson case, the Senator depicted White, the first African-American judge to sit on the Missouri Supreme Court, as 'pro-criminal'. Yet Judge White had affirmed the death sentence in 41 out of 59 capital cases that had come before him, and in 10 out of the 18 cases in which he voted against the death sentence, he was in the company of a unanimous court. The US Senate voted to reject White's nomination, voting along party lines. John Ashcroft has since become US Attorney General.

## Irrevocable

*They can give me a billion dollars and they cannot pay for what they did to me. The only way they can compensate me is to give me my 18 years back.* © Juan Melendez, 3 January 2002, on being released after 18 years on Florida's death row.

Since executions resumed in 1977, more than 90 people have been released from death rows after evidence of their innocence emerged. Some had received inadequate trial representation, some had faced prosecutorial misconduct, some had given false confessions under duress.

Supporters of the death penalty may argue that the fact that these individuals were not killed by the state is a sign of a system working. But numerous cases make a mockery of such claims. Anthony Porter came within 48 hours of execution in Illinois in 1998 after over 16 years on death row. His innocence was proved by a group of students who took up his case as a class project. The system would have killed Anthony Porter for a crime he did not commit.

The system has allowed blatant prosecutorial misconduct to lead to questionable verdicts. **James Beathard** was executed in Texas in 1999. He and his co-defendant Gene Hathorn had been tried separately, Beathard first. At Beathard's trial, Hathorn testified that Beathard had shot the victims. The prosecutor agreed with Hathorn, saying that there has not been one piece of evidence that says Gene Hathorn is a liar... he is telling the truth. At Hathorn's own trial, the now defendant repeated his version of events. However, this time the same prosecutor told the jurors that if Hathorn was telling the truth then I'm a one-eyed hunting dog. The prosecutor argued that Hathorn had been the gunman, the jury agreed, and Hathorn, too, was sent to death row. One prosecutor, two versions of the crime, two death sentences. After the trials, Gene Hathorn came forward and said that he had lied at both trials under threats from law enforcement officials and a prospect of receiving a sentence less than death in return for his testimony, and that James Beathard was innocent. No evidentiary hearing was ever held into the merits of Hathorn's recantation. Hathorn remains on death row.

**Willie Williams** was executed in Texas in 1995. He and Joseph Nichols were tried for the same murder. The victim died of a single gunshot wound, but the authorities were unable to establish who had fired the fatal bullet. At Williams's trial, the prosecutor asserted that Williams had been the gunman and he was sentenced to death. Nichols' first trial resulted in a hung jury, apparently as a result of juror concern about the identity of the trigger man. At a second trial, he was sentenced to death by another jury after the prosecutor this time asserted that Williams could not have fired the fatal shot, but that Joseph Nichols had. One of the two men did not kill the victim. Williams has been executed. Nichols awaits the same fate.

As the concern over the number of wrongful convictions in capital cases has grown, particular attention has fallen on the potential for DNA testing techniques to exonerate or incriminate. Such testing is undoubtedly an important forensic tool, but provides no guarantee that fatal errors will be eliminated in death penalty cases. Only a relatively small number of

murder cases produce any DNA evidence. Of the more than 90 wrongfully convicted prisoners discovered since 1977, only 11 were found to be innocent on the basis of DNA testing.

Like any forensic evidence, DNA testing is vulnerable to human fallibility or misconduct. The state lost potentially exonerating DNA evidence in the case of Charlie Alston. The North Carolina governor commuted his death sentence in 2002 hours before it was due to be carried out. **Derek Barnabei** was executed in Virginia in 2000. Two weeks earlier, DNA evidence from his case had gone missing for three days, sparking a police investigation and raising questions as to whether the evidence may have been compromised. The day before **Robert Clayton** was to be put to death in Oklahoma, the state found physical evidence that his appeal lawyers had been requesting for years. He was executed in 2001 after forensic testing failed to exonerate him. **Odell Barnes** was put to death in Texas in 2000. Among the most incriminating evidence had been blood found on his clothing, identified by DNA testing as the victim=s. Post-conviction investigation found that the bloodstains contained a preservative using in the storing of blood. An expert concluded from the level of preservative that the blood did not come directly from the victim, but was deposited on the clothing *after* the crime.

Proponents of capital punishment challenge abolitionists to point to proof of an innocent prisoner having been executed. But this cannot be a priority for those trying to stop the conveyor belt of death. The investigation required to uncover such a case takes time and resources, luxuries unavailable when there is a steady stream of inmates facing execution.

In the United Kingdom, for example, cases of wrongful execution have been uncovered years after abolition. Amnesty International has little doubt that after the executing stops in the USA, proof will be found that innocent people have been put to death. Perhaps there will be one or more from among the following individuals, who were executed despite serious doubts surrounding their guilt. Such executions violate the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty which state: ACapital 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@.

**Edward Johnson** (Mississippi, 1987)

**Willie Darden** (Florida, 1988)

**Roger Coleman** (Virginia, 1992)

**Leonel Herrera** (Texas, 1993)

**Roy Stewart** (Florida, 1994)

**Robert Drew** (Texas, 1994)

**Jesse Jacobs** (Texas, 1995)

**Girvies Davies** (Illinois, 1995)

**Larry Griffin** (Missouri, 1995)

**Dennis Stockton** (Virginia, 1995)

**Antonio James** (Louisiana, 1996)

**Ellis Felker** (Georgia, 1996)

**David Stoker** (Texas, 1997)

**David Spence** (Texas, 1997)

**Joseph O=Dell** (Virginia, 1997)

**Leo Jones** (Florida, 1998)

**Troy Farris** (Texas, 1999)

**Roy Roberts** (Missouri, 1999)

**Richard Jones** (Texas, 2000)

**Gary Graham** (Texas, 2000)