
amnesty international

UNITED STATES OF AMERICA

An open letter to Governor Bush of Texas on the planned killing of John Paul Penry

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Dear Governor

John Paul Penry, a man with severe learning disabilities and an IQ of between 50 and 63, is scheduled to be executed in Texas on 16 November. Amnesty International calls for your intervention in accordance with your claim to be a “compassionate” leader whose term in office has seen Texas become a “beacon” state.

Twenty-one years ago, Pamela Moseley Carpenter was murdered in her home in Livingston. Amnesty International seeks neither to excuse this shocking crime, nor to belittle the immeasurable suffering it has caused. We seek only a government response to it that reflects modern standards of justice and decency.

For two decades Texas has pursued its goal of killing John Penry for the murder of Pamela Carpenter. But while the state’s intention has remained fixed, the bigger picture has not. Since John Penry was first sentenced to death in 1980, 13 US states have enacted laws that would exempt this man from the death that Texas has in store for him. Given that the laws of a further 12 states do not provide for execution at all, this means that in half of the states of the Union, as well as under federal law, John Penry would not be executed. It is difficult to see how Texas’s growing isolation on this issue squares with your claim that your state sets a shining example to others.

The US Supreme Court considers “the evolving standards of decency that mark the progress of a maturing society” when ruling on the constitutionality of certain executions. Amnesty International urges you to apply that same test to this case, and to consider the extent to which Texan standards of decency can be said to have evolved if the state is still willing to countenance the execution of a man who has the mind of a seven-year-old child?

The American Bar Association opposes the execution of people with mental retardation. It took up this policy in 1989 after much research and deliberation. In the same year, the United Nations adopted a resolution opposing the death penalty “for persons suffering from mental retardation or extremely limited mental competence, whether at the

stage of sentence or execution". Eleven years on, the overwhelming majority of countries respect this international human rights standard. As the current ABA President, Martha W. Barnett, wrote in a letter to you on 7 August, the execution of individuals with mental retardation is a practice that should be "unacceptable in a civilized society".

Many people react instinctively against the suggestion that executing defendants with learning disabilities can serve justice. Perhaps yours was an instinctive reaction when, during presidential campaigning in California on 9 August, you responded to reporters that Texas does not execute such individuals. In fact, Texas executioners have killed several mentally retarded prisoners. We regret that a proposed bill to prohibit such use of the death penalty, a bill you reportedly opposed, failed to be enacted in Texas in 1999. The case of John Penry provides you with an immediate opportunity to show that in future you will stand against a practice that so many legislators in your own and other countries have consigned to history.

You have said many times that what you look for in capital cases that come before you is whether the defendant is guilty of the crime for which he or she was condemned. With respect, we submit that now is the time to broaden your view of justice beyond the narrow confines of guilt and innocence, and to consider the question of culpability.

The American Association on Mental Retardation, now in its 125th year, holds that the death penalty is disproportionate to the level of culpability possible for people with mental retardation. This expert organization is not saying that such individuals should not be held responsible for criminal acts – just not killed for them. In the Supreme Court's 1989 decision on John Penry's case, Justice Brennan observed that the execution of the mentally retarded cannot advance the goals of either retribution or deterrence, and therefore amounts to "nothing more than the purposeless and needless imposition of pain and suffering". During a presidential debate in October, you stated that "the only reason" to support the death penalty is as a deterrent, adding "I don't think you should support the death penalty to seek revenge". We urge you to reflect upon Justice Brennan's opinion and to consider whether the execution of John Penry can amount to anything other than an act of state-sanctioned vengeance.

The other question you say you ask yourself when deciding whether or not to intervene in an execution is whether the condemned prisoner has had full and fair access to the courts. Putting aside the disputed question of whether the jury at John Penry's second trial in 1990 was able to give mitigating effect to his childhood abuse and mental impairment, we would remind you that the power of executive mercy exists precisely to compensate for the rigidities of the courts. Whatever reasons lie behind the absence of judicial remedy in this case, the fact that John Penry's death sentence has emerged intact from the courts makes executive reprieve and clemency no less appropriate.

Violence runs through this tragic case. From the appalling torture and abuse that John Paul Penry was subjected to as a child, to the terrible murder of Pamela Moseley Carpenter. It surely should not be the role of government to perpetuate the violence in any way.

Amnesty International urges you to do all in your power and influence to prevent the execution of John Paul Penry.

Yours sincerely

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