

2007

12 April

UA 84/07

Death penalty / Legal concern

USA (Nebraska)

Carey Dean Moore (m), white, aged 49

Carey Moore is due to be executed in Nebraska's electric chair on 8 May. He was sentenced to death in 1980 for the murder of two men in Omaha in August 1979. Carey Moore was aged 21 at the time of the crimes. He is now 49. He has given up his appeals. Nebraska has not carried out an execution for 10 years.

Carey Moore was convicted of killing taxi drivers Reuel Eugene Van Ness and Maynard Helgeland, both aged 47, after having called their cabs out to remote locations. His death sentence was overturned in 1990 by the US Court of Appeals for the Eighth Circuit on the grounds that one of the aggravating factors making the crime punishable by death – namely that it had shown "exceptional depravity" – was unconstitutionally vague. The case was subsequently remanded for re-sentencing. Despite a request by the state to redefine what was meant by "exceptional depravity", the Nebraska Supreme Court declined to do so. At the 1995 re-sentencing, the trial court therefore constructed its own definition of the term, under which a number of factors would be considered. This included whether there was "cold, calculated planning of the victim's death as exemplified... by the purposeful selection of a particular victim on the basis of special characteristics", including age. Because of evidence that Carey Moore had deliberately picked victims who were older than him, the three-judge panel decided that this constituted "exceptional depravity" and sentenced him to death.

In 2003, this issue split the Eighth Circuit. Seven judges upheld the death sentence, while six dissented. Noting that "Moore was truly without prior notice that age would become part of the 'exceptional depravity' calculus", the six dissenters argued that the re-sentencing court's "post hoc application of its newly-defined 'exceptional depravity' aggravator", had "left Moore in the unenviable position of trying to argue for his life without any idea of what would guide the panel's decision". Sentencing under such circumstances, they argued, "denies defendants due process in the most basic sense, for they have no prior notice of the law to be used against them". Four of the judges also added that "throughout the entirety of this case, one thing has remained static: neither the Nebraska Legislature nor the Nebraska Supreme Court has fashioned a death penalty sentencing scheme that provides the sentencing body with a cogent, meaningful basis for distinguishing the few cases in which the death penalty is imposed from the many cases in which it is not".

The phenomenon of prisoners giving up their appeals and "volunteering" for execution contributes to the arbitrariness of the death penalty in the USA. Given the rate of reversible error found in capital cases, if the more than 120 "volunteers" executed since 1977 had pursued their appeals, there is a significant possibility that a number of them would have had their death sentences overturned to prison terms by the appeal courts. Any number of factors may lead a prisoner not to pursue appeals against their death sentence, including mental disorder, physical illness, remorse, bravado, religious belief, the severity of conditions of confinement, including prolonged isolation and lack of physical contact visits, the bleak alternative of life imprisonment without the possibility of parole, pessimism about appeal prospects, being worn down by the cycle of hope and despair generated by winning and then losing appeals, a quest for notoriety, or simply a desire to gain a semblance of control over a situation in which the prisoner is otherwise powerless. Rational or irrational, a decision taken by someone who is under threat of death at the hands of others cannot be consensual. What is more, it cannot disguise the fact that the state is involved in a killing involving "cold, calculated planning", and is contributing to a culture of violence. In this case, two children of one of the murder victims have said that they do not want Carey Moore's execution to go ahead. According to information received by Amnesty International, they have said that they do not believe that justice requires another man to be killed.

Carey Moore has been facing execution for more than a quarter of a century. The US Supreme Court has not ruled on whether prolonged confinement on death row violates the US Constitution, but individual Justices have raised concerns. In 1995, Justice Stevens wrote that executing a prisoner who had been on death row for 17 years arguably negated any deterrent or retributive justification for the punishment, supposedly the two main social purposes of the death penalty. If these goals no longer existed, he suggested, the outcome would be "patently excessive and cruel". In 1999, Justice Breyer expressed concern in Carey Moore's case (and the case of an inmate on Florida's death row for 24 years) at the "astonishingly long delays flowing in significant part from constitutionally defective death penalty procedures". He suggested that "where a delay, measured in decades, reflects the State's own failure to comply with the Constitution's demands, the claim that time has rendered the execution inhuman is a particularly strong one." In 2002, in the case of a Florida inmate on death row for about 27 years, Justice Breyer stated that if executed, the prisoner would have been "punished both by death and also by more than a generation spent in death row's twilight. It

is fairly asked whether such punishment is both unusual and cruel."

Amnesty International, which unconditionally opposes the death penalty in all cases, believes that abolition is the only solution to the inherent flaws of this cruel punishment. In Nebraska's legislative assembly in March 2007, a measure to abolish the state's death penalty failed by one vote (25-24) to pass to the second of three stages. Efforts to narrow the state's death penalty law are continuing in the legislature.

Since 1913, Nebraska's method of execution has been electrocution, and it is now the only US state where this is the sole method. Nebraska's Department of Correctional Services, which "has no official opinion on the death penalty", states: "One of the issues regarding the use of the electric chair is whether the inmate feels any pain or discomfort when the execution procedure is applied. Some experts would argue that the voltage applied renders instant unconsciousness; others suggest that that is not the case". Of the 1,070 executions carried out in the USA since judicial killing resumed in 1977, three have been in Nebraska, the most recent of which was carried out on 2 December 1997. Today, 128 countries are abolitionist in law or practice, more than 60 of which have been added to this list since Carey Moore was first sent to death row.

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- expressing sympathy for the families of Reuel Eugene Van Ness and Maynard Helgeland, explaining that you are not seeking to condone the manner of their deaths, or to downplay the suffering caused;
- opposing the execution of Carey Moore, and the death penalty in general;
- noting that six federal judges dissented against Moore's death sentence in 2003 on the basis that he had been denied due process at his re-sentencing;
- noting that Carey Moore has faced execution for over two decades, and that a number of US Supreme Court Justices have expressed concern about the constitutionality of an execution under such circumstances;
- welcoming signs of increasing support for repeal or narrowing of Nebraska's capital statute, and that the state has not carried out an execution for a decade, during which time public support for the death penalty has diminished in the face of compelling evidence of unfairness and error in capital cases across the country;
- urging the Nebraska authorities to do all in their power to stop this execution.

APPEALS TO:

Governor Dave Heineman, Office of the Governor, P.O. Box 94848, Lincoln, NE 68509-4848, USA

Fax: +1 402-471-6031

Email via: <http://www.gov.state.ne.us/mail/govmail.html>

Salutation: Dear Governor

Attorney General Jon Bruning, 2115 State Capitol, Lincoln, NE 68509, USA

Fax: +1 402 471-3297

Email via: <http://www.ago.state.ne.us/>

Salutation: Dear Attorney General

Secretary of State John A. Gale, 1445 K Street, Suite 2300, Lincoln, NE 68508, USA

Fax: +1 402 471 3237

Email: SecretaryOfState@sos.ne.gov

Salutation: Dear Secretary of State

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PLEASE SEND APPEALS IMMEDIATELY.
