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Death penalty / Legal concern

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USA (Texas) Cathy Lynn Henderson (f), white, aged 50

Cathy Henderson is scheduled to be executed in Texas on 13 June. She was sentenced to death in May 1995 for the murder of a three-and-a-half-month-old baby, Brandon Baugh, in January 1994.

On the morning of 21 January 1994, Brandon Baugh's parents left him with Cathy Henderson, who was the daily caregiver, at her home in Pflugerville, near Austin, Texas. When the child's mother returned to collect him later in the day, both he and Cathy Henderson had disappeared. The FBI arrested Cathy Henderson in Kansas City, Missouri, on 1 February 1994.

Cathy Henderson admitted that she had killed the child, but stated that it had been an accident, which she has maintained ever since. She said that she had dropped the baby and that he had struck his head on a concrete floor. She said that after her efforts to resuscitate him had been unsuccessful, she had panicked, buried the baby's body and fled to Missouri, her native state. After the body was located on 8 February, Cathy Henderson was charged with capital murder. Under the Texas penal code, the murder of a child under six years old is punishable by the death penalty.

The jury heard expert opinion that the head injuries sustained by the baby could not have been the result of an accidental fall from the defendant's arms. Dr Roberto Bayardo, who conducted the autopsy, stated that the nature of the injuries "proved" that Cathy Henderson had deliberately murdered Brandon Baugh by a blow to the head. For example, he said that the baby would have to have fallen "from a height higher than a two-storey building", or to have been "involved in a motor vehicle accident" in order to have sustained the head injury in question. Dr Sparks Veasey suggested that the death had occurred as a result of "the child's head impacting in an extremely forceful manner a blunt surface – a floor, counter top, a desk top, a wall". The prosecution provided no crime scene evidence to support such hypotheses offered by its experts.

The analysis of the amount of "force" necessary to break or shatter an object, including a skull, requires expertise in the sciences of physics and engineering, rather than medicine, and this has led to the science of "biomechanical" analysis. Prior to the trial, the defence lawyers had sought funds to hire an expert to conduct a biomechanical investigation of Cathy Henderson's claim that the baby's death had been accidental. The request was denied. The jury convicted Cathy Henderson of capital child murder and after finding that she would pose a danger to society if allowed to live, voted for execution.

In an appeal just filed in the Texas Court of Criminal Appeals, Cathy Henderson's current lawyers point out that the biomechanical analysis of infant head trauma has developed substantially in the dozen years since her trial. With accompanying reports from four experts, the appeal argues that the trial of Cathy Henderson would today be conducted against a fundamentally different scientific landscape than existed in 1995. For example, in his report, Dr Peter Stephens states that "biomechanical consultation and testimony is essential to the understanding of any impact injury to the head, and is mandatory for any case proceeding to litigation, civil or criminal... I would not contemplate assigning a cause and manner of death in any controversial case involving head injury without obtaining, or recommending consulting, a biomechanical evaluation."

Dr John Plunkett, a forensic pathologist with an expertise in infant head trauma, states that while he agrees with the experts at trial that an impact injury caused Brandon Baugh's death, Dr Bayardo's conclusions were "wrong" and that he had "strayed from his area of medical competence and expertise when he opined about the amount of 'force' sustained by Brandon Baugh, and opined that this 'force' could not have been sustained accidentally". Dr Plunkett notes that the trial transcripts indicate that "none of the medical witnesses in Ms Henderson's trial understood [the science of biomechanics]". Dr Plunkett states that he has

reviewed at least two cases of accidental falls of less than four and half feet involving infants that “caused fractures virtually identical to Brandon’s”. Dr Stephens concurs, stating that “since 2000, physicians have increasingly recognized that lethal injury to the infant can, and does, occur from an accidental fall, even of a short distance... It is simply incorrect to state that only a fall from a bunk bed, balcony, or upper story window can cause such an injury. Forensic pathologists, biomechanical scientists and many paediatricians now agree that such comparisons are without scientific merit and should not be made.”

In her report on the case, Dr Janice Ophoven notes: “In the past, the characteristics of a fracture of the type seen in Brandon were assumed to denote an abusive injury. However, current scientific experience reflects a more conservative analytical approach to skull fracture evaluation. The nature of the fracture itself cannot be used to determine whether the injury is due to an accident or inflicted injury”. Fourthly, Dr Kenneth Monson, a leading biomechanics expert, states that the ‘force’ at which Brandon Baugh’s skull would have hit the floor under Cathy Henderson’s version of events was enough to cause the injury that killed him. The accidental death of Brandon Baugh, he states, “cannot be ruled out given the current state of knowledge”.

The large number of errors discovered in capital cases in the USA over recent years may have been one of the factors contributing to a lessening in public support for this irrevocable punishment. Science has played its part in revealing such errors. For example, in 15 of the 124 cases of prisoners released from death rows since 1973 on grounds of wrongful conviction, DNA testing played a substantial role in establishing the inmate’s innocence. In each of these cases at the original trial, the prosecution had argued, and the jury or judge had found, that the defendant was guilty beyond a reasonable doubt. In some cases, the state had supported its theory of guilt with expert evidence. For example, in Texas, investigators concluded that a house fire that killed two people in 1986 was arson, and Ernest Willis was sentenced to death. Post-conviction investigations using modern methods concluded that there was no evidence of arson, and Willis was released after more than 15 years on death row. In Mississippi, Sabrina Butler was acquitted at a retrial in 1995, five years after she was sentenced to death for the murder of her nine-month-old child. It is now believed that the baby may have died either of cystic kidney disease or from sudden infant death syndrome.

Since the USA resumed executions in 1977, 1,076 prisoners have been put to death, 11 of them women. There have been 393 executions in Texas, three of them of women. There have been 19 executions in 2007, 14 of them in Texas. Amnesty International opposes the death penalty unconditionally. Today, 129 countries are abolitionist in law or practice. The UN Safeguards Guaranteeing Protection of the Rights of those facing the Death Penalty state that “capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.”

RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words (please include Cathy Henderson’s inmate number, #999148)

- expressing sympathy for the parents of Brandon Baugh, and explaining that you are not seeking to downplay the suffering they will have endured as a result of their child’s death;
- opposing the execution of Cathy Henderson;
- noting the recent conclusions from experts, including experts in biomechanical analysis, not heard at the trial, supportive of Cathy Henderson’s claim that the baby’s death was the result of an accidental fall;
- noting that developments in science have been one of the reasons why numerous wrongful capital convictions have been uncovered in the USA in the past three decades;
- calling for Cathy Henderson to be granted clemency.

APPEALS TO:

Rissie Owens, Presiding Officer, Board of Pardons and Paroles, Executive Clemency Section
8610 Shoal Creek Boulevard, Austin, TX 78757, USA

Fax: +1 512 463 8120

Salutation: Dear Ms Owens

Governor Rick Perry, Office of the Governor, P.O. Box 12428, Austin, Texas 78711-2428, USA

Fax: +1 512 463 1849

Salutation: Dear Governor

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 13 June 2007.