TABLE OF CONTENTS

£UNITED STATES OF AMERICA
@Death penalty developments in 1992

INTRODUCTION

This document updates statistical and other information given in Amnesty International's earlier papers about the death penalty in the USA (see in particular, *Developments in 1987 (AMR 51/01/88); Developments in 1988 (AMR 51/01/89); Developments from January to August 1989 (AMR 51/46/89); Developments from 1 September 1989 to 31 December 1990 (AMR 51/13/91; and Developments in 1991 (AMR 51/01/92).* Those requiring a general explanatory background about the application on the death penalty under state and federal law should consult Amnesty International's 1987 publication, *United States of America: The Death Penalty (AMR 51/01/87).* This document provides information about the 31 prisoners executed during 1992, and other statistics on death sentencing and executions. It summarises state and federal legislative and judicial developments over the year and looks at issues including the application of the death penalty on juvenile offenders, execution of the mentally-ill/mentally retarded, race and the death penalty, and inadequate assistance of counsel in death penalty cases.

At the end of 1992 2,636 prisoners were under sentence of death in 36 states, under US federal military law and under US federal civilian law. Thirty-one prisoners were executed in 1992, more than in any one year since US states reinstated the death penalty in the mid 1970s, bringing to 188 the total number of executions carried out in the USA since that date. Four states, including California, carried out their first executions in a quarter century or more.

During the year, legislatures of eleven of the fourteen states which do not have death penalty laws proposed bills to reinstate capital punishment. None of these passed. Citizens of Washington, in the District of Columbia (D.C.), were asked to vote on legislation proposed by Congress that would reinstate the death penalty in the District. Voters in D.C. overwhelmingly rejected the proposed legislation.

Among those executed in 1992 was Johnny Garrett, a mentally impaired, chronically psychotic and brain-damaged juvenile offender, who was executed by lethal injection in Texas on 11 February. The USA remains one of the few countries in the world to execute people under 18 at the time of the crime, contrary to international standards.

At least six prisoners suffering from mental illness, brain damage or mental retardation were executed in 1992. One of these was Nollie Martin, executed in Florida in May, who suffered from brain damage as a result of several serious head injuries in childhood.

Amnesty International opposes the death penalty fundamentally, on the grounds that it is the ultimate form of cruel, inhuman and degrading punishment. Witnesses to the execution of Ricky Rector, a black, mentally impaired prisoner, in Arkansas in January, reported hearing moans or outbursts coming from the execution chamber as technicians searched for almost an hour to find suitable veins in which to inject the lethal chemicals. Ricky Rector was apparently aware of the problem and helped the execution team in their task.

Evidence indicates that many of the prisoners executed in 1992 received inadequate legal representation at their trials, with court-appointed lawyers failing, for example, to present crucial mitigating evidence to the sentencing hearing, including a history of mental illness or abuse.

The execution of Roger Coleman in Virginia in May went ahead despite doubts which had been raised about his guilt. He had been represented at trial by lawyers who had never handled a murder case before, and who failed to investigate many points of evidence. His appeal lawyers were unfamiliar with virginia law, and inadvertently filed an appeal to the state court one day too late, resulting in its dismissal on procedural grounds. The US Supreme Court dismissed his appeal by six votes to three in June 1991,

stating that "Coleman must bear the risk of attorney error that results in a procedural default".

Racism in the application of the death penalty in the USA continues to be of concern to Amnesty International. Of the 188 prisoners executed by the USA between 1976, until the end of 1992, 83% were sentenced to death for crimes involving white victims.

Delma Banks is one of many black prisoners sentenced to death by all-white juries after prosecutors had excluded prospective black jurors from jury service. Banks received seven execution dates by the state of Texas in 1992, each of which was stayed. At the time of writing, Banks' was awaiting the outcome of an appeal filed on his behalf by his attorneys who had presented evidence that prosecutors in the jurisdiction where he was tried had systematically excluded black jurors from serving on trial juries on racial grounds for at least six years prior to, and up to, the time of Banks' trial.

Andrew Williams, black, also sentenced to death by an all-white jury, was executed by the state of Utah on 30 July despite concern that racial prejudice may have played a part in influencing the jury's decision to sentence him to death.

Prisoners scheduled to be executed in 1992 included Leonel Herrera in Texas, who was convicted of the murder of two police officers, and who may be innocent. He was granted a stay of execution by the Texas Court of Appeals in April, two days before the execution was to be carried out, to allow the US Supreme Court to consider late evidence claiming that another man was the actual killer. On 25 January 1993 the US Supreme Court issued its 6-to-3 decision that death row inmates who present belated evidence of innocence are not normally entitled to a new hearing in Federal Court. The majority opinion, written by Chief Justice William H Rehnquist, stated that in a capital case a "truly persuasive" demonstration of actual innocence made after trial would render the execution of a defendant unconstitutional, but "because of the very disruptive effect that entertaining claims of actual innocence would have...the threshold showing for such an assumed right would necessarily be extraordinarily high". The majority opinion of the Court was that this threshold was not reached by Leonel Herrera. In an 18-page dissent, Justice Harry A Blackmun wrote that the "execution of a person who can show that he is innocent comes perilously close to simple murder".

The majority Supreme Court opinion in the Herrera case stated that "Clemency...is the historic remedy for preventing miscarriage of justice where judicial process has been exhausted." However, since the death penalty was reinstated, the Texas Board of Pardon and Paroles have never recommended clemency in a capital case, despite strong grounds presented in a number of cases.

In other states, two prisoners were granted clemency in 1992. In January, Governor Douglas Wilder commuted Herbert Bassett's death sentence to life imprisonment, just hours before he was scheduled to be executed, and Governor James Martin of North Carolina granted executive clemency also in January, to Anson Avery Maynard, a Coharie Indian, seven days before his scheduled execution.

Juvenile Offenders

Thirty-four of the 2636 prisoners under sentence of death in the USA at the end of 1992 were juvenile offenders (children or adolescents who were aged under 18 at the time of the crime). Juvenile offenders were under sentence of death in the following 13 states: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, Pennsylvania, Texas, Virginia and Washington. Sixteen were white, fifteen black, and three Hispanic. Twenty-four of the 36 US states with the death penalty have laws allowing the imposition of death sentences on juveniles. During 1992, four states (Georgia, Mississippi, Ohio, and Pennsylvania) introduced bills to prohibit the execution of juvenile offenders; none of these bills passed. Five juvenile offenders were executed between 1985 and the end of 1992; the most recent being Johnny Garrett (see below), who was executed by the state of Texas on 11 February 1992.

The execution of juvenile offenders is extremely rare. More than 70 countries which retain the death penalty in law have abolished it for people aged under 18 at the time of the crime. The USA is one of only seven countries known to have carried out executions of juvenile offenders in the last decade. (The other countries are Barbados, which has since raised the minimum age to 18, Iran, Iraq, Nigeria and Pakistan; one such execution was also reported in Bangladesh). The imposition of death sentences on minors is in clear contravention of international human rights treaties and standards, including the International Covenant on Civil and Political Rights (ICCPR), and the American Convention on Human Rights. The United States government signed both these treaties in 1977, and ratified the ICCPR in April 1992. However, in ratifying the ICCPR, the USA government reserved its rights "subject to its Constitutional constraints" to impose capital punishment on persons below 18 years of age. Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the United Nations Economic and Social Council (ECOSOC) in 1984 (Resolution 1984/50), prohibit the execution of offenders aged under 18 at the time of the crime (Safeguard 3).

In January 1993, the US Supreme Court, by a narrow majority of five votes to four, in rejected a claim in *Graham v Collins* that the Texas death penalty law was unconstitutional in not allowing the jury to consider youth as a separate mitigating circumstance in the sentencing proceeding. The Court did not consider the merits of the claim, holding instead that petitioner Gary Graham (a 17 year old offender), was seeking a "new rule of law" which could not retroactively applied to his case. The dissenting opinion vigorously disputed this ruling.

In October 1991, Amnesty International published a report, USA; The Death Penalty and Juvenile Offenders,[1] and launched a campaign to draw attention to the USA's use of the death penalty against juvenile offenders. The report summarized Amnesty International's findings regarding the cases of 23 juveniles sentenced to death under present US statutes. Amnesty International's investigations suggested that safeguards in US capital punishment law, intended to ensure that the death penalty is fairly applied and imposed only for the worst crimes and most culpable offenders, had not been met in the cases of many juvenile offenders under sentence of death. The large majority of these offenders came from acutely deprived backgrounds; at least 12 had been seriously physically or sexually abused; ten were known to have been regularly taking drugs or alcohol from an early age. In many cases the parents had histories of alcoholism, mental illness or drug abuse. At least 14 of the prisoners suffered from mental illness or brain damage. Most were of below-average intelligence; four were borderline mentally retarded, and one was significantly retarded. It found that in a disturbing number of cases, trial juries had no opportunity to consider the defendant's mental capacity or background as factors mitigating against a possible death sentence. This was often through failure of court-appointed attorneys to conduct an

1AI Index: AMR 51/23/91.

adequate investigation into the defendant's background and to present the relevant information at time of trial. In some cases the defendant's youth itself was not mentioned or fully considered, as a mitigating circumstance at the sentencing hearing.

Juvenile death sentences overturned

In **Alabama** Frederick Lynn, black, was resentenced in March to life in prison without parole. Lynn had been sentenced to death for the murder of Marie Driggers Smith, white, in 1981 during a robbery at her home. He was 16 at the time of the crime. Lynn had initially been sentenced to death in May 1983, but his conviction was set aside on appeal. In 1986 Lynn was again convicted and sentenced to death. The resentencing followed an agreement reached between Lynn's attorney and state prosecutors that Lynn never challenges his capital murder conviction again at a hearing on a sentence reduction after Lynn's attorney had filed a request for another retrial. In January, Andrew LeGare, white, also under sentence of death in **Alabama** for a crime he committed when he was 17 was resentenced to life imprisonment during a fourth retrial of his case. Legare's death sentences had previously been overturned three times on appeal. He was sentenced to death in November 1977 for the murder of George Hill, black, in 1977.

Death sentences imposed on juvenile offenders during 1992

Four juvenile offenders were sentenced to death during 1992. In **Florida**, Jeffrey Farina, white, was sentenced to death for a crime he committed at age 16; William T Knotts, white, was sentenced to death in **Alabama** for a crime committed when he was 17; Miguel Martinez, Hispanic, and Dwayne Allen Wright, black, were sentenced to death in **Texas** and **Virginia** respectively for crimes committed when they were 17 years old.

Juvenile offenders under sentence of death (to 31 December 1992):[2]

STATE PRISONER'S NAME	DATE OF BIRTH	DATE OF CRIME	AGE AT CRIME	SEX/ RACE	SEX/ RACE OF VICTIM
ALABAMA					
Davis, Timothy	18/03/61	20/07/78	17	M/W	F/W
Hart, Gary		12/08/89	16	M/B	M/W
Knotts, William		18/10/89	17 17	M/W	F/B
Slaton, Nathan	05/10/69			M/W	F/W
FLORIDA					
Allen, Jerome	19/04/75	10/12/90	15	M/B	M/W
Bonifay, James		26/01/91	17	M/W	M/W
Ellis, Ralph		20/03/78	17	M/W	2xM/B
Farina, Jeffrey		09/05/92	17	M/W	F/W
LeCroy, Cleo		04/01/81	17	M/W	M/W F/W
Morgan, James	28/11/60	06/06/76	16	M/W	F/W
GEORGIA					
Burger, Christopher	30/12/59	04/09/77	17	M/W	M/W
Williams, Alexander		04/03/86	17	M/B	F/W
KENTUCKY					
Stanford, Kevin	23/08/63	07/01/81	17	M/B	F/W
LOUISIANA					
Dugar, Troy	01/05/71	26/10/86	15	M/B	M/W
MISSISSIPPI					
Foster, Ron	08/01/72	10/06/89	17	M/B	M/W
MISSOURI					
Lashley, Frederick	10/03/64	09/04/81	17	M/B	F/B
Wilkins, Heath	07/01/69	27/07/85	16	M/W	F/W
NORTH CAROLINA					
Adams, Thomas	07/01/69	13/12/87	17	M/W	F/W
OKLAHOMA					
Hain, Scott	02/06/70	06/10/87	17	M/W	M/W F/W
Sellers, Sean	18/05/69	08/09/85	16	M/W	M/W
		05/03/86			F/W M/W
PENNSYLVANIA					
Blount, John		28/09/89	17	M/B	2 x M/B
Hughes, Kevin	07/03/62	01/03/79	16	M/B	F/B
Lee, Percy		26/02/86	17	M/B	2 x F/B
TEXAS					

2Sources: information compiled by Professor Victor L Streibe, Cleveland-Marshall College of Law, Cleveland State University, Ohio, Professor Streibe's statistics dated 1 February 1993; NAACP Legal Defense and Educational Fund, Inc., Amnesty International.

Barraza, Mauro		14/06/89	17	M/H	F/W
Cannon, Joseph	13/01/60	30/09/77	17	M/W	F/W
Cantu, Ruben	05/12/66	08/11/84	17	M/H	M/W
Carter, Robert	10/02/64	24/06/81	17	M/B	F/H
Graham, Gary	05/09/63	13/05/81	17	M/B	M/B
Harris, Curtis	31/08/61	12/12/78	17	M/B	M/W
Martinez, Miguel		18/01/91	17	M/H	M/W and 2 x M/H
Robert Willis	28/01/67	17/01/85	17	MB	F/W
VIRGINIA					
Thomas, Chris		10/11/90	17	M/W	F/W M/W
Wright, Dwayne			17	M/B	F/B
WASHINGTON					
Furman, Michael	22/06/71	27/04/89	17	M/W	F/W

Abbreviations:
M = Male; F = Female; B = Black; W = White; H = Hispanic

Johnny Garrett

On 11 February Johnny Garrett, became the fifth juvenile offender to be executed in the USA since the death penalty was reintroduced in the 1970s, and the third in Texas under its current death penalty laws.

Johnny Garrett was sentenced to death in September 1982 for the rape and murder in October 1981 of a 76 year-old white nun. He was 17 years old at the time of the crime. He had a long history of mental illness and was severely physically and sexually abused as a child. This information was not made available to the jury at his trial in 1982. According to three medical experts who examined him between 1986 and 1992, Johnny Garrett was extremely mentally impaired, chronically psychotic, and brain-damaged as the result of several severe head injuries he sustained as a child. He reportedly suffered from paranoid delusions, including a belief that the lethal injection used to execute prisoners in Texas would not kill him.

Johnny Garrett's upbringing and home environment were, in the words of the psychologist who examined him in 1988, "one of the most virulent histories of abuse and neglect...I have encountered in over 28 years of practice." According to the psychologist's report, Johnny Garrett was frequently beaten manually and with leather belts by his natural father, and by his step-fathers. If he wet or dirtied the bed his nose was rubbed in excrement. On one occasion, when he would not stop crying, he was put on the burner of a hot stove, and retained the scars from the burns he received.

According to medical reports, Johnny Garrett was raped by a step-father who then hired him to another man for sex. It is also reported that from the age of 14 he was forced to perform bizarre sexual acts and participate in homosexual pornographic films. He was first introduced to alcohol and other drugs by members of his family when he was ten years-old and subsequently indulged in serious substance abuse involving brain-damaging substances, such as paint-thinner and amphetamines.

Johnny Garrett was executed despite appeals for clemency from Pope John Paul II and the religious community of Texas. A statement by the Bishops of Texas, issued in early January 1992, called on the Texas Board of Pardons and Paroles to commute Johnny Garrett's death sentence to life imprisonment without parole. They said: "We, as religious leaders, are gravely concerned about the increase of violence

in our State. Violence seems to be begetting more violence. At the same time, there is no compelling evidence that the death penalty is deterring murder in Texas or elsewhere." Calls for clemency also came from the Franciscan Sisters of Mary Immaculate in Amarillo, the convent to which Sister Tadea Benz belonged.

Garrett had previously been scheduled to die on 7 January, but received a last-minute 30-day reprieve from Texas Governor, Ann Richards, to give more time for his case to be considered by the state Board of Pardons and Paroles. This was the first time Governor Richards had intervened to stop an execution since she took office in 1990. However, the Board of Pardons and Paroles recommended that Governor Richards deny clemency to Johnny Garrett.

Inadequate assistance of counsel in death penalty cases

Indigent capital defendants are provided with state paid lawyers only for the trial and first appeal to the state supreme court. There is no right of state paid lawyers for any further appeals. However, since 1988, federal grants have helped to establish "resource centres" in a number of states specifically for the purpose of finding legal representation for capital defendants on appeal. These centres specialize in finding well qualified lawyers prepared to take on cases without a fee, on a pro bono basis. Many states also now provide some funding for state and federal *habeas corpus* appeals. However, while the situation is better than before, there continues to be a shortage of lawyers prepared to take on such cases.

The poor quality of legal representation afforded to capital defendants at trial continues to be a major concern. Most capital defendants cannot afford to retain their own counsel and are represented by court-appointed lawyers (private attorneys assigned by the trial court to take a particular case) or public defenders (lawyers attached to state-funded offices specializing in legal aid cases). Public defender offices are mainly in urban areas and do not exist at all in some states. In practice most capital defendants, especially those in states in the South, are represented by court-appointed private attorneys who are paid extremely low fees.

In **South Carolina** in December 1992, the state Supreme Court ruled that the state's unrealistic limits on defense attorney fees and costs for representing indigents charged with capital murder fail to ensure effective assistance of counsel in death penalty cases. In its ruling, the Court noted that South Carolina's hourly rates for state appointed counsel in capital cases were the lowest in the nation, with a ceiling of $5,000 for a capital trial. Within that limit is another limit of $2,500 on expert and investigative services and private appointed counsel received $15 per hour for in-court time, and $10 per hour for out-of-court time. At the time of writing, Amnesty International had no further information on what measures had been taken in the light of this ruling.

In response to a severe shortage of attorneys prepared to represent death row inmates on appeal in **California**, the state Supreme Court in March decided to take over the job of recruiting attorneys for condemned inmates whose cases are delayed because they do not have counsel. This announcement came at a time when the number of inmates under sentence of death without attorneys reached a record level in the state - 73 inmates (approximately one-quarter of those on death row at the time) were reported as being unrepresented. About half of these had been sentenced to death over two years ago, but still had no attorney to handle their appeals. A provision in the reforms will allow experienced trial lawyers to assist the appellate lawyers when death penalty cases are referred back to the trial court for evidentiary hearings. Previously, the recruitment of defense attorneys for capital cases had been carried out by the California Appellate Project (CAP), which will continue to advise attorneys in death penalty cases. Although the reforms were welcomed by CAP, some defense attorneys have apparently expressed concern that standards of counsel representing condemned inmates may drop. In September the newly

appointed court monitor had screened and recruited eight attorneys to represent capital cases. According to newspaper reports, most of these had never handled a capital case before.

According to an article in the Texas Bar Journal[3], **Texas** has the most unrepresented condemned inmates in the USA. It reported that of the 198 death row inmates at that time in the post-conviction appeals stage, 31 did not have attorneys to represent them. Steps were being taken to remedy the situation by recruiting volunteer attorneys by the State Bar of Texas, with the help of local bar associations and law firms in the state. Unlike some other states with large death row populations, no state funding for death penalty appeals past the direct appeal stage is provided in Texas.

Louisiana's system for enlisting lawyers for indigents was declared unconstitutional by a New Orleans judge in February 1992. In doing so, he ordered the state legislature to take steps to solve the system's failures which, he said, "deny criminal defendants their constitutional right to the assistance of qualified counsel."[4] In announcing his decision, the judge said: "The likelihood that an innocent person will choose a plea of guilty at arraignment, because of no meaningful representation, is great".[5]
The decision was made in response to a motion brought by a Louisiana public defender.

Evidence indicated that many of the prisoners executed in 1992 received inadequate legal representation at their trials, with court- appointed lawyers failing, for example, to present crucial mitigating evidence to the sentencing hearing, including a history of mental illness or abuse.

Roger Coleman

Roger Coleman was executed in Virginia's electric chair on 20 May 1992, despite doubts which had been raised about his guilt.

Coleman was convicted of the rape and murder of his sister-in-law, Wanda McCoy, in Grundy, Virginia, in 1981, and steadfastly maintained his innocence throughout his 11 years in prison.

Coleman had been represented at trial by lawyers who had never handled a murder or rape case before, and who failed to investigate many points of evidence, including Coleman's alibi. The lawyers were unprepared for the sentencing phase of the trial and failed to present mitigating evidence including the fact that Roger Coleman was abandoned by his parents at a very young age and survived hardship and poverty. Witnesses were available but were not called to testify on his behalf at the sentencing hearing.

There was extensive, prejudicial pre-trial publicity in the small town of Grundy where the crime occurred and Roger Coleman's lawyers requested that the trial venue be changed. However, they were unprepared for the hearing and had no affidavits ready to support their motion. The judge denied the motion. There is evidence that at least one of the jurors who convicted Roger Coleman and sentenced him to death, had already formed a strong opinion that he was guilty before the trial began.

Coleman was represented on appeal by volunteer counsel who were able, but were unfamiliar with Virginia courts. When a state judge ruled against Coleman's petition in 1986, they misjudged the time available to file their notice of appeal to the State Supreme Court, and inadvertently filed the paperwork one day late. The Virginia prosecutors asked the Court to dismiss the appeal without hearing its merits because it was "procedurally defaulted." This the Court did in a one paragraph order. In June 1991, the US Supreme Court, by six votes to three, ruled that Roger Coleman had lost his right to federal review of

3Vol. 56, No.2, 1993
4Taken from an article published in The National Law Journal, February 24 1992.
5*State of Louisiana v. Peart*, 346-331, as quoted in an article in The National Law Journal, 24 February 1992.

his conviction and death sentence because of his lawyers' unintentional procedural mistake. Justice O'Connor, for the majority, spoke of the need to show adequate respect for state courts, and the need to protect state officials from having to endure uncertainty and delay in criminal cases. She said, "Coleman must bear the risk of attorney error that results in a procedural default." The three dissenting judges accused the majority of elevating state interests over the protection of individuals' constitutional rights.

Governor Douglas Wilder denied clemency to Roger Coleman on 18 May 1992. Announcing the decision Governor Wilder told a press conference, "I am not convinced he is innocent." He declined to say if he believed Coleman was guilty, but asserted that the execution would do "no substantial injustice." In an editorial comment highly critical of Governor Wilder's action, the New York Times on 20 May said "he has toughened his former clemency standard, which required only a reasonable doubt about guilt."

In a bizarre move, Governor Wilder allowed Coleman to take a lie-detector test on the day of his execution. Coleman failed it. Because such tests are considered unreliable they are not, as a general rule, admissible in a court of law. Coleman's lawyers protested that the emotional stress of his situation distorted the results of the test, which is based on blood pressure measurements. However, Governor Wilder later told the press, "If he had passed...it could have affected what the ultimate result would have been," indicating that he may have been ready to reverse his decision not to intervene. The Governor had the power to grant a stay of execution as well as executive clemency.

Safeguards guaranteeing the protection of the rights of those facing the death penalty, adopted by the United Nations Economic and Social Council in 1984 (Ecosoc Resolution 1984/50), provide at (4) 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." The circumstances suggest that this standard was not met in the case of Roger Coleman.

"An innocent man is going to be murdered tonight," he said after being strapped into the chair. "When my innocence is proven, I hope Americans will realise the injustice of the death penalty as all other civilized countries have."

Race and the imposition of the death penalty

As of 15 January 1993, there were 2676 prisoners under sentence of death in the USA of whom 1,047 - nearly 40% - were black.[6] The percentage of black prisoners on death rows in some individual states is much higher. Blacks make up only 12% of the total US population. However, statistics based on the race of the offender alone do not necessarily indicate bias. The most marked disparities in death sentencing are revealed when considering the race of the victim in capital cases. Of the 31 prisoners executed in 1992, twenty-five were sentenced to death for crimes involving white victims. Of the 189 prisoners executed in the USA between 1977 and 5 January 1993, 152 (83%) were sentenced to death for the murder of white victims. Racial disparities in death sentencing are borne out by the findings of many research studies, and confirmed by the findings of the General Accounting Office (GAO), an independent agency of the federal government, in February 1990. The GAO review found that persons convicted of the murder of white victims are far more likely to be sentenced to death than those convicted of black-victim homicides. These racial disparities remained after all other legally relevant factors had been taken into account.

6Source: NAACP legal Defense and Educational Fund, Inc, New York, statistics published January 1993 give racial breakdown as follows: 1353 (50.56%) were white; 1047 (39.13%) were black; 195 (7.29%) were Hispanic; 48 (1.79%) were Native American; 20 (0.75%) were Asian, and the remainder were unknown.

It is common for black defendants accused of capital crimes in some states to be convicted by all-white juries from which prosecutors have deliberately excluded prospective black jurors.

Delma Banks

Delma Banks was scheduled to be executed in Texas seven times during 1992, but each time received a stay of execution pending appeals filed on his behalf by his attorneys.

Delma Banks, black, was convicted in 1980 of the shooting murder of Richard Wayne Whitehead, white. He was tried and sentenced by an all-white jury after the prosecutor had excluded all prospective black jurors from jury service, by use of peremptory challenges (the right to exclude jurors without giving reasons). At the time of writing, the case was pending a decision on an appeal filed by Banks' attorneys based on recent research they had conducted in conjunction with the legal rights group, the NAACP Legal Defense Fund. This found that prosecutors in Bowie County, Texas, where Banks was tried, had systematically excluded blacks from serving on trial juries for at least the six years prior to and up to the time of Banks' trial. As a result, blacks comprised less than 2 per cent of the criminal trial juries in the county, although making up 21 per cent of the county population. An NAACP LDF spokesperson has said that this evidence constitutes one of the strongest examples of racial discrimination in jury selection the organization has encountered in recent years.

The US Supreme Court ruled in 1986, in *Batson v Kentucky*, that prosecutors may not exclude jurors in any case solely on account of their race as this was contrary to the Equal Protection clause of the US Constitution. However, the *Batson* ruling was held not to be retroactive to past cases and Banks cannot benefit from it. However, his lawyers have filed an appeal based on an earlier Supreme Court ruling which would allow reversal of a conviction if it can be proved that prosecutors have systematically excluded jurors on racial grounds in a particular jurisdiction. This appeal was still pending at the time of writing but may not be heard before the execution is carried out.

A major study on racial discrimination conducted in the 1970s found that, in Texas black offenders who killed white victims were six times more likely to be sentenced to death than white offenders in white-victim cases.

William Andrews

William Andrews, black, was executed in Utah on 30 July despite concern nationally and internationally that racism may have tainted the fairness of his trial, and even though the state had conceded he was not present when the victims were shot. Andrews was sentenced to death for his role in the murder of five white victims during the robbery of a hi-fi store in April 1974. They were tortured and shot, and three of them died as a result. Dale Pierre Selby, black, the admitted leader and the one responsible for shooting the victims, was convicted of capital murder and was executed in August 1987.

Amnesty International was deeply disturbed at suggestions that racial prejudice may have played a part in influencing the jury's decision to sentence William Andrews, who is black, to death. He was tried before an all-white jury from the community in which the highly publicized crime occurred. In the middle of the trial the jury received an anonymous, hand-written note calling on them to "Hang the Niggers." The judge told the jury to ignore the note, but it may have influenced the sentence. Two members of the US Supreme Court later expressed deep concern at the courts' failure to remedy this error.

Andrews' individual culpability was less than Selby's. The evidence suggests that Andrews was a somewhat reluctant accomplice who followed Selby's lead but ultimately refused to participate in the killings and left the hi-fi store before Selby raped one victim and shot all five. The trial judge refused

numerous defence requests to separate the trials of Selby and Andrews and the two men were tried jointly in November 1974. The State of Utah has conceded on various occasions that Andrews was not present at the scene of the crime when the five victims were shot. And the Board of Pardons and Paroles, denying clemency on 18 August 1989, wrote that "Mr. Andrews left the final killing to his partner and was not present when the rape and killings occurred."

William Andrews was 19 years old at the time of the crime. He was too poor to hire a lawyer and was represented at trial by an inexperienced court-appointed attorney who had left law school less than a year beforehand. The lawyer reportedly failed to present relevant defence and mitigating evidence which would have established Andrews' lesser role in the crime. As a result of inadequate legal representation, several important appeal issues were procedurally barred from review by the courts. William Andrews was 37 when he was executed, and had been under sentence of death for more than 17½ years: longer than almost any other death row inmate in the USA. He had previously received six warrants for his execution. William Andrews was also reported to be the only person under sentence of death in Utah who did not directly kill any victim. The jury at his joint trial with Dale Pierre Selby may have believed otherwise after the extent of his involvement in the crime was exaggerated, but the State of Utah conceded this point.

In August 1989, the Utah Board of Pardons and Paroles denied Andrews' clemency petition by a vote of two to one, and in July 1992 refused to meet to reconsider the case.

Execution of Mentally Ill/Mentally Retarded

At least six prisoners suffering from mental illness, brain damage or mental retardation were executed in 1992, in violation of United Nations Economic and Social Council (ECOSOC) resolution 1989/64, adopted in May 1989, which recommends "eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence."

In June 1989, the US Supreme Court ruled in *Penry v Lynaugh* that the execution of mentally retarded defendants is not categorically prohibited under the Constitution. However, it held that juries in capital cases must be instructed to consider reduced mental capacity as a possible mitigating circumstance at the sentencing hearing. Despite the *Penry* ruling, five US states (Georgia, Maryland, Kentucky, Tennessee, and New Mexico have passed legislation in recent years prohibiting the execution of the mentally retarded.

Mentally ill/mentally retarded prisoners executed during 1992

Johnny Garrett, white, a mentally impaired, chronically psychotic and brain damaged juvenile offender was executed in Texas on 11 February. He was sentenced to death in September 1982 for the rape and murder in October 1981 of a 76 year-old white nun. He was 17 years old at the time of the crime. Johnny Garrett had a long history of mental illness and was severely physically and sexually abused as a child. He was described by a psychiatrist as "one of the most psychiatrically impaired inmates" she had ever examined, and by a psychologist as having "one of the most virulent histories of abuse and neglect...encountered in over 28 years of practice". The Texas Board of Pardons and Paroles denied clemency despite appeals from nuns belonging to the convent of the murdered nun, and other religious leaders (see case history, page 7).

Nollie Martin, white, executed in Florida in May, had an IQ of 59, and suffered from severe mental impairment as a result of several serious head injuries he received in childhood. He had a history of

psychosis, suicidal depression and self-mutilation, and had been physically and sexually abused from infancy. He was sentenced to death in November 1978 for the kidnap, robbery and murder of a white female.

Cornelius Singleton, black, was executed in Alabama on 20 November. He was sentenced to death for the November 1977 murder of a white Roman Catholic nun. Cornelius Singleton was mentally retarded, with an IQ of between 58 and 69. He was tried by an all-white jury which was given no information about his mental retardation before voting to sentence him to death. This sentence was later reversed but he was resentenced to death by a judge without a jury. According to reports, some evidence of his mental retardation was presented to this second hearing, but was disregarded.

Donald Harding, white, sentenced to death for the murders of three men in two separate incidents in 1980, was executed by the state of Arizona on 6 April 1992. Harding experienced an extremely disturbed upbringing, during which he was abused and neglected and witnessed serious violence between his mother and stepfather. He tried to commit suicide at age 9 by slashing his wrists. Several neurological experts who examined Harding agreed that he suffered from organic brain dysfunction which prohibited him from controlling aggressive and violent impulses, or behaving appropriately, especially when under the influence of alcohol or other sedating drugs. According to another medical expert, Donald Harding also suffered from untreated Post Traumatic Stress Disorder as a result of the brutal treatment and sexual assaults he received in an adult prison from the age of 16 to 24.

Ricky Grubbs, white, was executed in Missouri on 20 October. He was sentenced to death in May 1986 for the murder of Jerry Thornton, white, while he was under the influence of alcohol. Important mitigating evidence relating to his mental retardation was not investigated by his defence attorneys and, as a result, never presented to the jury responsible for sentencing him to death. In an affidavit in 1992, the court-appointed psychiatrist who carried out a psychiatric evaluation of Grubbs in 1985 stated that at the time, he been given no access to information indicating that Ricky Grubbs was borderline mentally retarded, or to school records which showed that he had received psychological testing throughout his childhood. This lack of information meant that his report "did not provide the court with a complete and accurate assessment of Mr Grubbs' mental capacity at the time of the charged offense". His affidavit concluded: "In light of the above information the combined factors of severe intoxication and low intellectual functioning, I believe Mr Grubbs was incapable of forming the necessary mental intent for capital murder..." and that "Petitioner Ricky Grubbs lacked the mental capacity to deliberate and coolly reflect upon his actions".

Ricky Rector

Ricky Rector, black, was executed in Arkansas on 24 January 1992. He was convicted in 1982 of the murder of Bob Martin, a white police officer, in November 1981.

After shooting Bob Martin, Rector had attempted to take his own life by shooting himself in the head. The bullet wound, and subsequent surgery to remove the bullet from Rector's head resulted in the loss of a three-inch section of his brain (a frontal lobotomy). He suffered memory loss and medical examinations revealed him to be severely limited in his mental capacity.

On 24 June 1991, the US Supreme Court denied Rector's final petition for federal review of his conviction and death sentence. Justice Thurgood Marshall dissented in a lengthy opinion, three days before he retired from the Court. Justice Marshall argued that the Court should have granted review of

Rector's petition in order to decide a comprehensive definition of insanity or mental incompetence for execution. He concluded: "Unavoidably, the question whether such persons can be put to death once the deterioration of their faculties has rendered them unable even to appeal to the law or the compassion of the society that has condemned them is central to the administration of the death penalty in this Nation."

Rick Rector's execution was carried out in a manner which demonstrated the extreme cruelty of the death penalty. Witnesses to the execution reported hearing moans or outbursts coming from the execution chamber as technicians searched for almost an hour to find suitable veins in which to inject the lethal chemicals. Ricky Rector was apparently aware of the problem and helped the execution team in their task. In an article in one of the state newspapers, the Arkansas Democrat Gazette, on January 26 1992, John Byus, the administrator of medical and dental services for the Arkansas Department of Correction said, "We weren't just sticking him every minute. We were looking for a new vein. We kept thinking the next one would be it...We thought we had it, but we didn't, that's unusual, but it happens. He had spindly veins that collapsed easily. We searched. We were lucky to find a vein at all."

Louisiana Supreme Court ruling that an incompetent prisoner cannot be forced to take drugs to render him same enough to be executed

In October 1992 the Louisiana Supreme Court voted in a 5-2 decision that an incompetent prisoner cannot be forced to take drugs for the sole purpose of rendering him sane enough to be executed. The decision resolved a question that had been presented to the United State Supreme Court in 1990, involving the case of Michael Own Perry.

Michael Owen Perry was sentenced to death in Louisiana in 1984 after being convicted of murdering his parents and three other relatives. Although Perry was found competent to stand trial, he had suffered from regular bouts of psychosis (including auditory hallucinations, paranoia and delusions) throughout his imprisonment and had been periodically placed on psychotropic medication.

In 1986, the US Supreme Court ruled that the execution of an insane prisoner would be "cruel and unusual" punishment in violation of the Eighth Amendment to the Constitution. After hearing evidence about Michael Perry's mental illness, the Louisiana Supreme Court in 1987 upheld his conviction and death sentence, but ordered the trial court to hold a hearing into the question of his mental competency to be executed. The standard for competency under US law is that a condemned prisoner must be aware of the death penalty and the reason for it. after hearing evidence, the trial court concluded that, while Perry suffered from a major schizophrenic illness, his condition could be stabilised sufficiently to meet the above standard "only when maintained on psychotropic medication in the form of Haldol" (an anti-psychotic drug). The court ordered that he be maintained under continuous medication, against his will if necessary, for the sole purpose of rendering him competent to be executed.

Perry's lawyers argued that the forcible medication of a prisoner solely for the purpose of rendering him competent to be executed violated the due process clause of the Fourteenth Amendment to the Constitution. A further argument in this appeal was that the withholding of medical treatment from a psychotic prisoner would be cruel and unusual treatment in violation of the Eighth Amendment, and that the only proper course of action was therefore to commute Perry's death sentence to life imprisonment and to commit him to an institution for treatment.

The US Supreme Court failed to rule on the case, but remanded it back to the Louisiana courts for reconsideration in light of its decision earlier that year in the (non-capital) case of *Washington v Harper*, which held that a prisoner could be forcibly medicated with antipsychotic drugs only if suffering from mental illness likely to cause harm and the treatment was in the prisoner's medical interest.

The Louisiana Supreme Court's decision in October 1992, which left open the possibility of an

execution if Perry should ever regain his sanity without the use of drugs, said that forcing Perry to take drugs would violate the Louisiana Constitution by infringing on his privacy rights and his protection against cruel and unusual punishment.

State Legislative And Other Developments

According to the National Coalition to Abolish the Death Penalty (NCADP)[7], 172 legislative bills relating to the death penalty were introduced in 38 states during 1992. Nine of these had passed by November 1992, and three of these were vetoed by state governors, including a bill to reintroduce the death penalty in New York. The remaining bills were defeated, carried over to 1993, or shelved indefinitely. The majority of the bills proposed expanding the number of crimes for which the death penalty is imposed, and sought to expedite the process of appeals and executions.

Four states: Georgia, Mississippi, Ohio and Pennsylvania, considered bills to prohibit the execution of offenders under the age of 18 at the time of the crime, and 14 states (Arizona, Colorado, Delaware, Florida, Idaho, Illinois, Louisiana, Mississippi, Missouri, North Carolina, Ohio, Pennsylvania, South Carolina and Wyoming) considered bills to prohibit the execution of the mentally retarded. None of these bills passed. In **South Carolina** a bill proposing to prohibit the execution of the mentally retarded failed to become law; however, an amended version was passed, requiring evidence of mental retardation to be considered as a mitigating factor.

Four states - Arizona, California, Delaware and Wyoming carried out their first executions in a quarter century or more. (Delaware's execution in March was the first in the state for 46 years).

Arizona

In a referendum in Arizona in November, voters overwhelmingly approved proposed legislation changing the state's method of execution from the gas chamber to lethal injection. Prisoners who were under sentence of death before the change was introduced may choose to die between lethal injection or the gas chamber.

Congress decision to hold referendum on the death penalty in the District of Columbia

In a referendum at the beginning of November, voters of Washington, District of Columbia (D.C.) voted overwhelmingly against legislation proposed by Congress which, if it had passed, would have reinstated the death penalty in the District. The referendum took place among widespread opposition to the bill from local lawmakers who had had no opportunity to contribute to the proposal.

At the beginning of September in an unusual move, and in response to an increase in violent crime in the District[8], the US Congress passed a measure providing for a referendum on proposals to reinstate the death penalty in D.C.

The District of Columbia is the seat of the US government, and includes the city of Washington. Although it has an elected mayor and officials who have power to legislate in local matters, Congress has

7 1992 Survey of State Legislation, published by the National Coalition to Abolish the Death Penalty (NCADP).

8 According to Federal Bureau of Investigation (FBI) statistics released in August, there was a record level of violent crime in the USA in 1991, and Washington had the highest murder rate of any large city.

authority to enact legislation in the District and to veto or supersede legislature proposed by the District of Columbia Council. It is one of only 15 jurisdictions which has not reintroduced the death penalty following the US Supreme Court ruling (Furman v Georgia) in 1972 which nullified states' death penalty laws - declaring that the death penalty, as imposed under then existing laws, constituted "cruel and unusual punishment". In 1981 the District of Columbia Council repealed its death penalty law; the last execution was carried out in 1957.

The measure, which was in clear conflict with Article 4(2) of the American Convention on Human Rights, which states that the death penalty "shall not be extended to crimes to which it does not presently apply" would have increased the penalty for first degree murder in D.C. to a mandatory penalty of death or life imprisonment without parole. Some critics of the proposals pointed out that the measure as drafted would have allowed the death penalty for killings which could include acts until then classified as second degree murder or manslaughter. It listed 14 aggravating circumstances which would have made crimes eligible for the death penalty, including "conduct resulting in death in the course of or in furtherance of drug trafficking activity." The measure did not prohibit the execution of the mentally retarded, or juvenile offenders (persons under the age of 18 at the time of the crime), both of which are prohibited under international law. The method or place of execution was not specified, but the measure provided for the court to designate a US state in which it should be carried out.

According to unofficial returns, 67% of voters rejected the death penalty initiative, which would have been among the most broadest laws of its kind in the country.

Clemencies granted during 1992

Two clemencies were granted during the year.

On 23 January, hours before his execution was scheduled to take place Governor Wilder of **Virginia** commuted the death sentence of Herbert Bassett to life imprisonment. Bassett, black, was convicted of the murder of a 16-year-old petrol station attendant, Albert Burwell, black, who was shot during a robbery in November 1979. He was convicted on the testimony of three co-accused. No other corroborating evidence linked him to the crime. Although the three co-accused were themselves charged with capital murder, they were granted favourable treatment in exchange for their testimony against Bassett. Two were permitted to plead guilty as accessories to murder, and were give one-year suspended sentences. The third was acquitted as an accessory. Bassett's first trial jury could not agree as to his guilt or innocence. At his second trial, he was convicted and sentenced to death. Bassett had always denied any participation in the murder. In a statement announcing his decision to commute Bassett's death sentence, Governor Wilder said: "It is axiomatic that the ultimate sentence of death must be applied solely to those who have been demonstrated beyond a reasonable doubt to have committed the crime for which they are charged...After a thorough review of the evidence, including evidence presented to me by counsel for Herbert Russell Bassett which was not before the jury when they rendered their verdict, ...I cannot in good conscience erase the presence of a reasonable doubt and fail to employ the powers vested in me as Governor to intervene." This was the second commutation to be granted by Governor Wilder during his period in office. Joe Giarratano's death sentence was commuted by the Governor on 20 February 1991.

Anson Avery Maynard, a Coharie Indian from Dunn, **North Carolina**, was granted executive clemency and his death sentence was commuted to life imprisonment without parole on 10 January 1992. Maynard was due to be executed on 17 January for the 1981 murder of Steven Henry, a white man. He would have been the first American Indian executed under current US state death penalty laws[9]. Governor James

9Edward Ellis, executed in Texas on 3 March 1992, was the first American Indian to be executed in the USA under its present death penalty laws.

Martin granted executive clemency because of doubts about Maynard's guilt. He said no physical evidence linked him to the crime and the only eyewitness to testify was an admitted participant in the murder who was granted immunity from prosecution.
This was the first time a North Carolina governor had commuted a death sentence since the death penalty was reinstated in 1976. North Carolina has executed five prisoners under its current death penalty law, including one woman.

On 10 January 1992, in a statement announcing the commutation, Governor James Martin said: "After extensive review of all of the claims and counterclaims, I am not convinced that Anson Maynard pulled the trigger to kill Stephen Henry. Nor am I convinced that Anson Maynard is totally innocent...I appreciate the efforts of the jury to arrive at the truth. There was much conflicting evidence presented to them in 1981 and we all respect the decision they reached at that time, based upon what they saw and heard. It is only with the benefit of additional time, and with information that they may not have had available, that my decision modifies their sentence. There is reasonable doubt in my mind as to whether the degree of involvement of Anson Avery Maynard in the murder of Stephen Henry is sufficiently clear to justify the death penalty. For that reason, I have commuted Anson Maynard's death sentence to life in prison without parole. It is for cases like this that the power of clemency is given to the governor."

The case of Robert Alton Harris

California carried out its first execution since 1967 on 21 April.
The execution was postponed four times in a series of agonizing last-minute delays, beginning less than six hours before Robert Alton Harris was due to be put to death, as lawyers filed appeals including arguments that execution by gas was "cruel and unusual" punishment, prohibited by the US Constitution. The last stay came as Harris was strapped in the gas chamber chair, and, according to witnesses, after the cyanide pellets had been released into the chamber. Harris was quickly unstrapped from the chair and taken to a holding cell, only to be returned to the chamber two hours later, moments after the US Supreme Court overturned the last stay, ordering the execution to go ahead without delay, and barring any further appeals from the lower courts. The execution was videotaped on the orders of a federal judge to decide whether execution by lethal gas is cruel and unusual punishment.

Robert Harris was executed despite the fact that one-half of the Ninth Circuit Court of Appeals judges who voted on the case in December 1991 reportedly thought he should have been granted a full court review to determine whether he was deprived of effective psychiatric assistance at his original trial.

According to press accounts, the vote was a tie, 13 to 13, with one judge not participating. On 2 March 1992 the US Supreme Court denied Harris' petition for leave to appeal. On 13 March 1992, a hearing convened by the Attorney General set Robert Harris' execution date.
Robert Harris was convicted of the kidnap, robbery and murder of two teenage boys in July 1978 and was sentenced to death on 6 March 1979.
New evidence, including Fetal Alcohol Syndrome (FAS), childhood abuse, and organic brain damage not available to the jury at Robert Harris' trial was presented as strong grounds for granting clemency.

Robert Harris was born more than 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 required hospital treatment. He was beaten throughout his early childhood by his father and a step-father. When Harris was nine, his father was convicted and imprisoned for sexually abusing his

daughters.
At the age of 14, Robert Harris was abandoned by his mother. He lived rough for a while near his brother's house, then tried to settle with a sister in Oklahoma. When he was 15 he was caught with others driving a stolen car. The others were claimed by their families; he was not, and was sentenced to four years at a federal youth center. There he was diagnosed pre-psychotic, schizophrenic, suicidal and self-destructive. At 19 he was released with a recommendation that he seek treatment for mental health problems. There was no evidence that he received treatment.

Tests performed on Robert Harris after he was sentenced to death revealed frontal lobe damage of a severity likely to have affected his ability to reflect on actions, weigh consequences, plan or organize, or reason rationally. In addition to FAS, and the physical beatings he received as a child, Robert Harris was known to have sniffed gasoline, glue and paint fumes from the age of eight or nine.
The jury at Robert Harris' trial did not learn the full extent of his ill-treatment as a child or his mental disabilities.
It was after hearing the above evidence that the Court of Appeals for the Ninth Circuit was split by a 13 to 13 tie vote: which meant, in effect, a refusal to grant the full evidentiary hearing Harris' lawyers had sought. Judge John Noonan, (a member of the three-judge panel who had considered Harris' petition earlier) argued that Harris had indeed raised an issue of "bedrock fairness" concerning the jury's decision to sentence him to death rather than life imprisonment.
Following the tied vote, Judge Stephen Reinhardt wrote in dissent: "Can we really justify the taking of a human life in a case in which, for example... up to half the members of this court of twenty-eight may believe that the law prohibits us from doing so? Should life or death depend on the vote of one judge among many, when there are legitimate arguments on both sides and the decision could as easily go the other way?"

Prisoners Executed in 1992

Date of Execution	No. since 1977	Name	State	Race	Victim Race	Issues
22 January	158	Joe Angel Cordova	Texas	H	H	
22 January	159	Mark Hopkinson	Wyoming	W	W	
24 January	160	Ricky Rector	Arkansas	B	W	BD
11 February	161	Johnny Garrett	Texas	W	W	Juv/ MI/BD
28 February	162	David Clark	Texas	W	W	
3 March	163	Edward Ellis	Texas	N	W	
10 March	164	Robyn Parks	Oklahoma	W	Asian	
13 March	165	Olan Robinson	Oklahoma	W	Wx3	
14 March	166	Steven Pennell	Delaware	W	Wx3	
20 March	167	Larry Heath	Alabama	W	Wx3	
6 April	168	Donald Harding	Arizona	W	Wx2	BD
21 April	169	Robert Harris	California	W	Wx2	

23 April	170	William White	Texas	B	W	
7 May	171	Justin Lee May	Texas	W	W	
7 May	172	Steven Hill	Arkansas	W	W	
12 May	173	Nollie Martin	Florida	W	W	MR
20 May	174	Jesus Romero	Texas	H	H	
20 May	175	Robert Black	Texas	W	W	
22 May	176	Roger Coleman	Virginia	W	W	
21 July	177	Edward Kennedy	Florida	B	Wx2	
23 July	178	Edward Fitzgerald	Virginia	W	W	
30 July	179	William Andrews	Utah	B	Wx3	
11 August	180	Curtis Johnson	Texas	B	W	
11 September	181	Willie Jones	Virginia	B	Bx2	
22 September	182	James Demouchette	Texas	B	Wx3	
21 October	183	Ricky Lee Grubbs	Missouri	W	W	MR
23 October	184	John Gardner	North Carolina	W	Wx2	
19 November	185	Jeffrey Griffin	Texas	B	Bx2	
20 November	186	Cornelius Singleton	Alabama	B	W	MR
10 December	187	Kevin Lincecum	Texas	B	Wx2	
10 December	188	Timothy Bunch	Virginia	W	Asian	

Key:

B = Black W = White H = Hispanic N = Native American
MR = Mentally retarded MI = Mentally ill BD = Brain damaged J = Juvenile