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USA: Basic instinct - another milestone in the ugly history of the death penalty

By securing a third death sentence against John Paul Penry for the murder of Pamela Moseley Carpenter in 1979, Texas has achieved another milestone in its ugly history of judicial killing, Amnesty International said today.

"It is just two weeks since the US Supreme Court ruled that the execution of people with mental retardation violates contemporary standards of decency," Amnesty International said. "Texas has responded by showing that it will continue to err on the side of the indecent".

John Penry, who has consistently been assessed as having mental retardation and an IQ of 50-63, came 13 hours from execution in 1988, and less than four hours from execution in 2000 before the US Supreme Court intervened and sent his case back to Texas for new trial proceedings.

"Texas has been pursuing the execution of John Penry for over two decades," Amnesty International continued. "It is difficult to view the state's apparent need to kill this man as anything but vengeance."

In its landmark 1989 decision in the Penry case, the Supreme Court ruled that the execution of people with mental retardation did not violate the constitutional ban on "cruel and unusual" punishment. That ruling was overturned on 20 June 2002 in *Atkins v Virginia*, in which the Court ruled that US "standards of decency" had evolved to the extent that there now was a "national consensus" against such executions. However, the Court did not say what constitutes mental retardation, leaving it for the individual states to decide. Yesterday, a Texas judge and jury concluded that John Penry was not learning disabled and he was sentenced to death.

"In 1986, the Supreme Court ruled that the execution of the insane was unconstitutional, but left it to the individual states to establish who fell within this protection," Amnesty International said. "That decision has allowed a number of seriously mentally ill people to be put to death. We fear that the *Atkins* ruling may allow the same to occur in the case of people with mental retardation."

Amnesty International pointed to the case of Thomas Provenzano, executed in June 2000 despite his long history of serious mental illness. A Florida judge ruled him competent for execution 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 judge expressed concern at the "minimal standard" for competency determinations that allowed the state to kill Provenzano.

"In 1972, US Supreme Court Justice Thurgood Marshall described the constitutional ban on cruel and unusual punishment as 'insulation from our baser selves'," Amnesty International recalled. "It would seem that Texas, and other states, need more protection from their basic instincts."

Following the Supreme Court's *Atkins* decision on 20 June, Governor Rick Perry told the *Houston Chronicle*: "I think we've got a justice system that works in the state of Texas. The justice system in the state of Texas is basically for Texans." Last year, Governor Perry vetoed a bill aimed at exempting the mentally retarded from execution.

"It is time for Texas and the rest of the USA to aspire to higher standards of decency and join the 111 countries that have turned their backs on this ultimate cruel, inhuman and degrading punishment," Amnesty International said.

In the 23 years that Texas has been seeking to execute John Penry, it has killed 274 people in its death chamber, a third of the national total.

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