
amnesty international

UNITED STATES OF AMERICA

***“The day of my scheduled
execution is fast approaching...”***

A plea for life and respect for international law

12 October 2001

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Amnesty International has warned of the danger that, as the aftermath of the 11 September attacks on the USA continues to dominate public attention, other human rights concerns will be ignored, obscured or pushed to the bottom of the international agenda. This is as true of human rights violations in the United States as elsewhere.

Gerald Mitchell is scheduled to be put to death in the Texas lethal injection chamber on 22 October for a murder committed when he was 17 years old. His execution will violate international law and break an overwhelming global consensus that child offenders - those under 18 at the time of their crimes - must be exempted from the death penalty.

The International Covenant on Civil and Political Rights prohibits such use of the death penalty. When the USA ratified this treaty it reserved the right to execute child offenders. This “reservation” has been widely condemned as invalid, including by the Human Rights Committee, the expert body which monitors compliance with the Covenant. The Convention on the Rights of the Child also prohibits the use of the death penalty against children. This treaty has been ratified by 191 countries, all but the USA and Somalia.

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The prohibition on the use of the death penalty for child offenders is so widely respected that it has become a principle of customary international law, binding on all countries regardless of which treaties they have or have not ratified. In the past four years, Amnesty International has documented the execution of 12 child offenders worldwide - eight were killed in the United States, with Iran (3) and Democratic Republic of Congo (1) accounting for the remainder.

As the USA continues to seek a broad international alliance in responding to the appalling crimes of 11 September, it has been suggested that one result of such coalition-building might be a greater future respect by the USA for international treaties and organizations. For example, former US Senator and Nobel Peace Prize nominee George Mitchell has said that he believes that “the approach that the administration appeared to be taking in its first few months - of America going it alone, of withdrawing from multilateral efforts, of criticizing some international institutions and repudiating treaties - I think that approach is interred in the rubble of the World Trade Centre”.¹

Whether or not this turns about to be an accurate forecast – Amnesty International has for years been calling on the USA to become a less reluctant partner in the international community’s efforts to build a system of universal human rights protection – there is an immediate need for the US administration to oppose the internationally illegal execution of Gerald Mitchell.²

Amnesty International has welcomed the strong stand that President George Bush and other US officials have taken opposing the racist backlash against Arab Americans and members of other minority communities that has followed the 11 September attacks on New York and Washington. But racism must be challenged wherever and whenever it arises. Just such principled leadership is called for in the case of Gerald Mitchell which, like so many others, has been marked by allegations of racial discrimination.

Gerald Mitchell, who is African American, was sentenced to death in 1986 for the murder of Charles Marino, white, who was shot dead in Houston in June 1985. Mitchell was convicted and sentenced by an all-white jury, in a county whose population was 20 per cent African American. After the original jury pool had been pared down to individuals who were qualified to serve, the state removed all seven African Americans from the remaining group using peremptory strikes, the right to dismiss jurors without giving a reason.

After the prosecutor was challenged on his apparently discriminatory use of peremptory strikes, he stated that he used a basic standard when selecting jurors: “I was

¹ *Today*. BBC Radio 4, 5 October 2001. Interview with James Naughtie.

² This is not just a matter for the Texas authorities - there is an obligation on the federal government to act. Under the Vienna Convention on the Law of Treaties, no system of government - unitary, decentralized or federal - can be used to justify a country’s failure to fulfill its international obligations. On 11 May 2000 in Geneva, US Assistant Secretary of State Harold Koh affirmed to the UN Committee Against Torture that “[w]e entirely agree with the Committee’s restatement of this principle of treaty law”.

looking for someone who's a solid citizen, who had a background in the community, had a stake in the community...". He also said that he did not want jurors who would view youth as such a mitigating factor that they could not vote for a death sentence, or those who would look at the defendant as if he were their son. The trial court ruled that his use of peremptory challenges had been racially neutral, emphasizing his removal of prospective black jurors who had friends or family who were or had been in prison, and those who had teenaged children. Yet among the white jurors selected were individuals who fell into this category.

On 14 August 2001, in its report on the USA, the UN Committee on the Elimination of Racial Discrimination noted the "disturbing correlation between race, both of the victim and the defendant, and the imposition of the death penalty..."³ The Committee urged the USA to ensure that "no death penalty is imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers..."

Since 5 September, Amnesty International activists worldwide have been appealing to the Texas Board of Pardons and Paroles, Texas Governor Rick Perry, and President George W. Bush to stop the execution of Gerald Mitchell.

The organization urges all concerned for human rights and international law to do the same.

"...there's not a lot of time left..."

The following is an abridged version of "An address to society" written by Gerald Mitchell and included as part of his appeal for clemency to the Texas Board of Pardons and Paroles and Governor Rick Perry

As the countdown continues towards the day of October 22nd, which is the scheduled day of my possible execution, my psychology is running wild with a considerable amount of different thoughts and emotions, what I am right now is an out of control and terrifying emotional roller coaster ride, there is a lot of psychological preparations struggling to be conducted. So much confusion, so many thoughts and emotions scrambling to be sorted

³ More than 730 people have been executed in the USA since it resumed executions in 1977. In over 80 per cent of cases, the original crime involved a white murder victim. Yet blacks and whites are the victims of murder in almost equal numbers in the USA. In Texas, which accounts for a third of US executions, over 20 per cent of executions have been of black defendants convicted of killing whites. In juvenile cases, the figure is 33 per cent. For more information, see *Too young to vote, old enough to be executed. Texas set to kill another child offender* (AMR 51/105/2001, July 2001).

out. But there doesn't seem to be enough days within a month to do so properly. I'm finding myself becoming more and more unprepared psychologically to face each tomorrow, hoping that each today will be selfish and stubborn and take it's time moving on and eventually giving way to tomorrow's turn. Though I have been incarcerated now for 16 years, beginning at the age of 17. Now that the threat of death is at its greatest - I am wondering where have all the years gone. It seem now that I have arrived at this point too quickly. Now I find myself reaching back for the years when I often made the comment - man, I've been locked up too long. Now I'm thinking not long enough. At one time I tried to daily busy myself with doing many different things. But now I find myself wanting to do very little. Because the busier you keep yourself, the faster the time passes by, and I'm trying my best to hold on to time, to preserve as much of it as I possibly can, and there's not a lot of time left til that approaching day....

As the days count down to the day of my scheduled execution, other executions are taking place around me. Guys who I have come to know and care a great deal about. Guys who haven't been locked up long enough - just like myself. Guys who like myself felt/feel that there is so much more to them than what they've presented to life during the point of their arrests. Guys who have over the years made great strides to better themselves. To right their wrongs. To kill off the character that had done so much wrong to so many people in this play called life and replace that character with a different one, a far better one, a favorable one to society...

On Saturday, August the 4th, 2001, I had an eminently emotional visit with my sister and mother. The visit was the first in what seemed like a century for my mother and I. But actually it has been - I guess - 2 or 3 years less than a decade since her and I last visited. It took only the sight of my sister and mother to enkindle an eminently extensive and heightened pain within me. Their faces bore great pain and suffering, disquietude, helplessness and a quavering of fear. They cried - I cried - we cried together. Throughout the 2 hour visit, there was interstices of silence, each of us were struggling to conjure up things to say. My mother asked me two of very questions in which I myself quietly ask daily, hourly. Her questions being (1) do you think it's really going to happen? and (2) what about the Parole Board, do you think if it comes down to then, they will spare your life, at least until they take look closer at the fact that you were just 17 years old at the time? I was completely honest and straightforward in answering her questions, and in answering the first - I told her that I really don't know, that I hope and pray that it doesn't, that I am with faith - that everything will work out favorably for me.

I was honest and straightforward in telling her that I am not ready to leave this world yet and that yes, I am with fear. In answering the other question I presented my mother and sister with a fact, and then I went on to share with them the consensus concerning the Texas Board of Pardons and Paroles - in relation to death row prisoners who turn to them - after all else fails - for abatement, of course I informed them that this consensus is of the death row community - and those throughout this country and around the world who are

fighting for the abolishment of the death penalty. The fact that I presented to them, that holds true to the best of my knowledge - is that there has been but a sole [prisoner] to receive such abatement for the Texas Board of Pardon and Parole...

That - my answer to my mother's question - proved to be a very tearfully frightening revelation, and the hopelessness and pain that they wore on their faces became even greater, but it all had to be shared with them. Not wanting them to envelope their minds within the state of false hope and reckless anticipation...

Though I strongly desire my life to be prolonged for many years more, I will not beg for my life. Yes, I ask that the Parole Board - and the governor of Texas - take my request for clemency under thoughtful and meaningful consideration. I am not all bad, there is so much good within me, many positive and socially winning qualities. I have come so very long a way since the year of that mentally disturbed and unsettled 17 year young person. I have truly matured. I am so knowledgeable of life now. I am with true understanding of the very essence of human benevolence and just as I have changed in such a great way for the better, I hope and pray that there will soon be a change in many peoples beliefs and opinions and attitude, a less severe judgment of others...

Yes, I continue to stumble - I am human - and to err is human, but I do not use this fact for my crutch. I strive to be the very best Christian that I can Humanly be... Over the years I have run empty of hate, never will I seek to resupply myself with any. Hate attributes to evil, and evil no longer holds possession of my life.

The time doesn't appear at this point to be promising for me to have the opportunity to prove my worth and value. The day of my scheduled execution is fast approaching, every day brings me nearer to the set date causes the light of hope to become just a little dimmer...

LIFE - I never really understood it - never desired to truly and righteously embrace it - never accepted the true meaning of it - until that dark day when I began standing in the very center of the shadows of death.

Peace and love - caring - understanding - prosperity - bountifulness and a long lasting life here on earth be with each and everyone of us, us being the whole of the human race.

Please appeal for Gerald Mitchell's execution to be stopped, to:

Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711-3401, USA.
Fax: +1 512 463 8120

Governor Rick Perry, c/o Bill Jones, General Counsel, P.O. Box 12428, Austin, Texas 78711, USA. **Fax: +1 512 463 1932 (General Counsel's Fax), or 463 1849 (Governor's fax)**

President George W. Bush, c/o Albert R. Gonzales, Counsel to the President, The White House, 1600 Pennsylvania Avenue, Washington, DC 20500, USA. **Fax: +1 202 456 6279 (Counsel) or +1 202 456 2461 (President).**

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