UNITED STATES OF AMERICA

Beyond Reason

The imminent execution of John Paul Penry

"*The death penalty is disproportionate to the level of culpability possible for people with mental retardation. Executing people with mental retardation does not serve justice.*" American Association on Mental Retardation

On 17 July 1990 a fax from the United States arrived at Amnesty International's London Secretariat. It read simply: "*Penry was sentenced to death again today by Texas jury*". It was a message no less shocking for its brevity. For behind those few words lay a tragic story of mental impairment and murder that continues to speak volumes about crime and punishment in the USA. The latest episode is due to be played out in the Texas lethal injection chamber on 13 January 2000, when John Paul Penry -- the defendant referred to in that now yellowing fax -- is scheduled to be put to death. His execution would be another chilling milestone in the ugly history of US judicial killing.

John Paul Penry, sentenced to death in 1980 for the murder of Pamela Moseley Carpenter, was 13 hours from execution in 1988 when the US Supreme Court agreed to hear his case. The following year, the Court overturned his sentence on the grounds that the rigid format of the Texas capital sentencing scheme had not allowed the trial jury to give effect to the mitigating evidence in the case -- namely Johnny Penry's mental retardation and his childhood of appalling abuse. However, in an accompanying ruling that stood in stark contrast to a United Nations resolution a month earlier opposing the use of the death penalty against the mentally impaired, the Supreme Court found that executing a mentally retarded individual did not *per se* violate the USA's constitutional ban on cruel and unusual punishments. This opened the door for the State of Texas to pursue a second death sentence against John Paul Penry, an opportunity it seized with little or no hesitation. In 1990 he was retried, re-convicted and sent back to death row, where he remains despite lingering doubts as to whether the jurors, like their 1980 predecessors, had been truly able to give their "reasoned moral response" to the mitigating evidence of his mental retardation.

What is clear, however, is that the planned execution of John Paul Penry violates fundamental human rights and contravenes international standards. The fact that two Texas juries emerged from their deliberations a decade apart with the same result does not alter this. John Paul Penry's death sentence was wrong in 1980, wrong in 1990, and is wrong now.

Amnesty International is appealing to George W. Bush, Governor of Texas and would-be US President, to stop the execution of John Paul Penry. There can be few

more compelling cases for Governor Bush to demonstrate the credibility of his presidential campaigning slogan of "*compassionate* conservatism".

1956-1979: The life and crime of John Paul Penry[1]

"*Terrible, terrible screams... They weren't like a two-year-old crying or even a baby crying. They were horrible screams...*" A neighbour's recollection of Johnny Penry's childhood

John Paul (Johnny) Penry was born in southern Oklahoma on 5 May 1956. His 18-year-old mother lost so much blood during the birth that the doctor ordered transfusions, but the father rejected such treatment on religious grounds. The mother barely survived, suffered a nervous breakdown, and spent close to a year in a mental hospital.

The family moved to Texas and for the next decade, Johnny Penry was subjected to vicious emotional and physical abuse by his mother. Believing him to be illegitimate, she would address him as "the little bastard" as well as "blackie carbon" on account of his hair, which unlike the rest of the family's, was dark black. When still a baby, she would hit him "when he would be sitting in the high chair eating, right in the mouth". She beat him severely on his head and body, using fists, fingernails, boards, mop sticks, belts and extension cords. His left arm was broken several times. Throughout his childhood he was burned with cigarettes all over his body. When he was four, she dipped him in scalding water in the kitchen sink, causing permanent scarring. Once she tried to drown him in the bath. He would often be locked in a room alone for long periods, where he would be forced to soil himself. Sometimes his mother would make him eat his own faeces. At other times, after he had urinated in the toilet, she would put some in a cup

[1] The details of Johnny Paul Penry's life are taken from various sources including Penry's appeal and the state's reply briefs, the 1989 Supreme Court ruling, and other literature on his case. The latter includes: *The Penry Penalty: Capital Punishment and Offenders with Mental Retardation*, Emily Fabrycki Reed, University Press of America 1993; and *Unequal Justice?* Robert Perske, Abingdon Press, 1991.

and make him drink it. One time, she took a butcher's knife and threatened to cut off his penis for wetting his bed. Neighbours would later tell of the toddler's daily "terrible, terrible screams." "Terrified screams.... would just go on and on."

By the time he was 10 years old, it had become apparent that Johnny Penry suffered from mental retardation.[2] He had been unable to learn in school and never finished the first grade (age 6-7). Various mental institutions made various diagnoses of his impairment, including "organic brain syndrome with mental retardation and behavioral disturbances" and "organic brain syndrome with psychosis due to repeated trauma and mild retardation". His Intelligence Quotient (IQ) scores ranged between 50 and 63, well into the retardation range. A teacher at the Mexia State School for the mentally retarded, near Waco, Texas, where Johnny Penry lived for a time, later testified that "he could not understand any of the things that I would ask of him. He couldn't reason logically, he had trouble learning in every area that we taught." When he was 12, an aunt had struggled for a year to try to teach him to print his name. At his second trial in 1990, the jury would be shown a page from a reading test given to Johnny Penry when he was 15, at Mexia State School. It contained pictures of a dog, a door, an aeroplane, a hen and a hat. He had been asked to underline one word from a list of five after each picture. He underlined "dog" and "airplane" correctly. He underlined "flag" for the hat, "drum" for the hen and "dress" for the door. As an adult he could not name the days of the week, or the months of the year, and was unable to remember his date of birth. To this day, he can barely read or write.

Taken out of Mexia State School at the age of 16, he lived with his aunt and father in Livingston, eastern Texas. Leading an aimless and often unsupervised life in this small town, he began to come into contact with the police. At age 17, he was briefly committed to psychiatric hospital after an act of arson. At 21, he was arrested and pleaded guilty to the rape of a woman near Livingston. He was given a five-year prison sentence, but was released on parole in August 1979 despite a psychological report for the Texas Rehabilitation Commission that he had "very poor coordination between body drives and intellectual control... He also tends to be very defensive and may tend to protect himself from anticipation of hurt from others through aggressive acts."

[2] The terminology used to refer to mental disability differs from country to country. In the USA, the term "mental retardation" is commonly used in the legal context, and is therefore the predominant term used in this report.

On the morning of 25 October 1979, 23-year-old Johnny Penry rode his bicycle to the home of Pamela Moseley Carpenter, a member of one of Livingston's best known families. Her oldest brother, Mark Moseley, was a professional football star who later was named Most Valuable Player of the National Football League.[3] Johnny Penry forced his way into Pamela Carpenter's home and beat and allegedly raped the 22-year-old woman, before stabbing her in the chest with the scissors she had tried to fend him off with. She died in hospital a few hours later, after giving a description that matched Penry's.

Johnny Penry was picked up by the police later the same day and found to have two small puncture wounds on his back consistent with being stabbed by scissors. According to the police, he waived his rights to remain silent and to have a lawyer present, and confessed to the crime.[4]

1980 - The first trial

"*He has the ability to learn and the learning or the knowledge of the average 6½-year-old kid*" Psychologist testifying at Johnny Penry's pre-trial competency hearing, 1980.

The level of community anger following the murder of Pamela Carpenter led to the trial being relocated to Groveton, 40 miles away from Livingston, a negligible distance in Texas terms. Firstly, a jury had to decide whether Johnny Penry was competent to stand trial. At a hearing on 13 March 1980, having heard evidence that he was a brain damaged, mentally disabled individual with the mind of a six-year-old child, and the social functioning of a nine-year-old, the jurors took 65 minutes to decide that he was competent -- that is, that he would be able to understand the proceedings and assist his lawyer.

The trial began on 24 March. Johnny Penry pleaded "not guilty by reason of insanity", in other words that his mental impairment deprived him of the knowledge that his actions were wrong and of the ability to conform his conduct to the requirements of

[3] The fact that Pamela Carpenter was related to Mark Moseley is apparently important enough to feature, to this day, in the Texas Department of Criminal Justice's 10-line summary of Johnny Penry's crime: "While the two struggled, Carpenter, the sister of former Washington Redskins place-kicker Mark Moseley, managed to grab a pair of scissors and stab Penry."

[4] The American Association on Mental Retardation (AAMR) states: "Characteristics associated with mental retardation (ie, easily led; willingness to talk; and poor understanding of cause/effect and consequences of their actions) often put these individuals at higher risk of unjust incarceration". The AAMR also states that "people with mental retardation often... desire to please authority figures, and often will acquiesce to the wishes of other individuals who are perceived to be more influential."

the law. His confession was ruled voluntary and admissible as evidence. For the defence, a psychiatrist testified that Penry suffered from brain damage and retardation which left him with poor impulse control and an inability to learn from experience. He argued that the brain damage was probably caused at birth, but may also have been the result of beatings at an early age. For the prosecution, two psychiatrists testified to their belief that Penry knew the difference between right and wrong, but had an "antisocial personality". However, both prosecution psychiatrists acknowledged that the defendant was a person of extremely limited mental ability, and that he seemed unable to learn from his mistakes. On 1 April, the jurors took just over an hour to reject Penry's insanity plea and find him guilty of murder. The trial moved into a separate sentencing phase on 2 April 1980.

Under Texas law in existence at that time, the jurors had to unanimously answer "yes" to three questions, known as "special issues", before they could pass a death sentence:

> (1) *Was the conduct of the defendant, Johnny Paul Penry, that caused the death of the deceased, Pamela Carpenter, committed deliberately and with the reasonable expectation that the death of the deceased or another would result?*
> (2) *Is there a probability that the defendant, Johnny Paul Penry, would commit criminal acts of violence that would constitute a continuing threat to society?*
> (3) *Was the conduct of the defendant, Johnny Paul Penry, in killing Pamela Carpenter, the deceased, unreasonable in response to the provocation, if any, by the deceased*.[5]

A single juror voting "no" on any of the questions would have resulted in life imprisonment for the defendant. However, it took the jurors just 46 minutes to vote unanimously "yes" on all three questions and Johnny Penry was sentenced to death. He arrived on death row on 9 April 1980.

1989 - The Supreme Court intervenes, half-heartedly

"*Killing mentally retarded offenders does not measurably further the penal goals of either retribution or deterrence.... the execution of mentally retarded individuals is*

[5] Over the years, the "special issues" sentencing scheme has been criticized for being biased in favour of the death sentence. For example, one study found that between 1974 and 1988, Texas juries returned death sentences in more than 75 per cent of capital murder cases in which the defendant was convicted, which represented, on average, a 50 per cent higher frequency rate than in other states. Marquart, J.W., S. Ekland-Olson, and J.R. Sorensen (1989) *Gazing into the Crystal Ball: Can Jurors Accurately Predict Dangerousness in Capital Cases?* Law and Society Review 23: 449-468

nothing more than the needless imposition of pain and suffering". US Supreme Court Justice Brennan[6]

On 30 June 1988, 13 hours from execution and having already been moved into the small holding cell next to the lethal injection chamber, Johnny Penry was granted a hearing by the US Supreme Court. The Court agreed to consider two questions: (1) had the trial jury been able to take into consideration all of the mitigating evidence within the format of the Texas "special issues" sentencing scheme? and (2) was it cruel and unusual punishment under the US Constitution's Eighth Amendment to execute a mentally retarded person?

The Supreme Court held a hearing on 11 January 1989 at which it heard evidence on the case, including from professional bodies in the field of mental retardation. On 26 June 1989, the Court handed down its two-part decision. On the first question, the Justices ruled, by five votes to four, in favour of Johnny Penry. They stated that capital juries must be allowed to consider mental retardation as mitigating evidence, but found that, in the absence of clarification instructions from the judge, the Texas "special issues" sentencing format had given Penry's jurors no place to give effect to his mitigating evidence by saying "no" to the death penalty.

On the first "special issue", the Supreme Court said that "*without a special instruction defining 'deliberately' in a way that would clearly direct the jury to fully consider* [Penry's] *mitigating evidence as it bears on his moral culpability, a juror who believed that that evidence made imposition of the death penalty unwarranted would be unable to give effect to that conclusion if the juror also believed that* [Penry] *committed the crime 'deliberately'".* On the second "special issue" -- future dangerousness -- the Supreme Court noted that evidence of Penry's mental impairment, specifically as it manifested in impulsive behaviour and an inability to learn from his mistakes, was relevant only as an aggravating factor: "*Penry's mental retardation and history of abuse is thus a two-edged sword: it may diminish his blameworthiness for his crime even as it indicates that there is a probability that he will be dangerous in the future."* Finally, the Supreme Court said, a juror who thought that Penry did not deserve the death penalty, could not express that view within the scope of the third "special issue" if that juror also believed that the defendant's conduct was not a reasonable response to any provocation by the victim.

[6] Dissenting in *Penry v. Lynaugh*, 492 U.S. 302 (1989)

In other words, the "special issues" format did not allow the jurors to express their "reasoned moral response" to the mitigating evidence as constitutional precedent demanded.[7] It was not enough for jurors simply to be presented with the evidence of mental retardation and child abuse; the mitigating value of such evidence must be placed within their effective reach. Under the Texas sentencing format, it was possible for a juror to answer "yes" to all three questions, while still believing that the death penalty was unwarranted. Johnny Penry's death sentence was overturned.

The US Supreme Court then went on to rule, again by five votes to four, that the execution of a mentally retarded person did not violate the Eighth Amendment ban on cruel and unusual punishments, as long as the jury had been able to consider such impairment when deciding the sentence. The Court recalled its 30-year-old decision that the definition of "cruel and unusual" is not static, but must move with the times in line with the "evolving standards of decency that mark the progress of a maturing society."[8] However, it found that US capital laws did not indicate that the country's standards of decency had evolved to a point where there was a "national consensus" against such executions. At the time, only Georgia had legislated against the use of the death penalty against mentally retarded defendants, with another, Maryland, about to do so. The Supreme Court accepted that public sentiment against such executions (as shown by opinion polls) "*may ultimately find expression in legislation which is an objective indicator of contemporary values upon which we can rely. But at present, there is insufficient evidence of a national consensus against executing mentally retarded people convicted of capital offenses for us to conclude that it is categorically prohibited by the Eighth Amendment*".

It was a shocking decision, emanating as it did from the highest court in a country which labels itself as the world's most progressive force for human rights. The ruling had come exactly one month after the United Nations had adopted a resolution recommending that member states eliminate the death penalty "for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of

[7] "[E]vidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background or to emotional and mental problems, may be less culpable than defendants who have no such excuse... Thus, the sentence imposed at the penalty stage should reflect a **reasoned moral response** to the defendant's background, character, and crime." [emphasis added] *California v Brown*, 479, U.S. 538 (1987).

[8] *Trop v Dulles*, 356 U.S. 86 (1958)

sentence or execution."[9] Once again, the USA was well out of step with international opinion and practice on the death penalty.[10]

[9] UN Economic and Social Council (ECOSOC) Resolution 1989/64, adopted 24 May 1989.

[10] Another area where the USA is out of step is in relation to its continuing use of the death penalty against children. See *USA - Shame in the 21st Century: Three child offenders scheduled for execution in January 2000* (AI Index: AMR 51/189/99, December 1999).

Four months before the Supreme Court decision, on 7 February 1989, the American Bar Association (ABA) had adopted a resolution urging that no person with mental retardation, as defined by the American Association on Mental Retardation[11], should be sentenced to death and executed. It further resolved that the ABA would support the enactment of legislation barring the execution of such individuals.

Since the Supreme Court's *Penry* ruling, another 11 states -- Arkansas, Colorado, Indiana, Kansas, Kentucky, Maryland, Nebraska, New Mexico, New York, Tennessee and Washington -- have joined Georgia in banning the execution of mentally retarded defendant. Nebraska was the most recent of these states to enact such a law, and has already seen its humane results. In June 1999, Clarence Victor was taken off death row after tests placed his IQ at 65. The Nebraska legislation makes it illegal to execute anyone with an IQ below 70.

A bill introduced into the Texas legislature in 1999, replacing execution with life imprisonment without parole as the maximum penalty for defendants with an IQ of 65 or less, failed to pass into law in late May 1999[12]. Governor Bush reportedly opposed the bill. On 5 May 1999, an editorial in the *Dallas Morning News* stated: "*The moral sentiment behind such bans is simple: the state should not kill prisoners who cannot fully understand the concept of death. To use the ultimate punishment against people who cannot comprehend it is an act of vengeance, not an act of justice*."

1990 - The second trial

"*This man is a human being. All I'm saying is give him life*." Johnny Penry's defence lawyer, retrial sentencing phase, 17 July 1990

Johnny Penry was granted a new trial. More than a decade after the murder of Pamela Carpenter, the prosecution, evidently untroubled by any notions of "evolving standards of decency", decided once again to pursue the death penalty. This time, the trial was transferred 45 miles west of Livingston to Huntsville, Walker County, home to Ellis 1 Unit -- the state's death row -- and a county where the main employer was, and still is,

[11] According to the AAMR, "Mental retardation refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more areas of the following applicable adaptive skill areas: communication, home living, community use, health and safety, leisure, self-care, social skills, self-direction, functional academics and work. Mental retardation manifests before age 18". See website: www.aamr.org

[12] Senate Bill 326, sponsored by Senator Rodney Ellis.

the prison industry.[13] A defence motion to have the venue changed, including on the grounds of prejudicial pre-trial media coverage of the case, was unsuccessful.

The competency hearing began on 10 May 1990. The defence presented testimony from a lawyer who had worked on Penry's appeal to the Supreme Court: "*I talked to him as best I could in one-syllable words. Then Johnny would ask a question, and I saw he didn't understand anything I had been telling him*." Testimony from fellow death row inmates and the psychologist from Ellis 1 Unit -- the latter stating that the defendant was the most mentally disabled person then on Texas death row -- confirmed that Johnny Penry had very limited capacity to understand, or function in, the world around him. For its part, the prosecution presented four death row guards and two mental health professionals to put forward the theory that Penry was faking the extent of his retardation and simply had an "antisocial personality disorder". This time it took the jurors one hour and 17 minutes to find Johnny Penry competent to stand trial.

[13] In 1999, approximately one in three employees in Walker County works in the prison system.

The trial was delayed as jury selection took over a month.[14] Proceedings finally began on 2 July 1990, and on 9 July the jury took one hour and 32 minutes to return a verdict of capital murder. The sentencing stage -- the phase of the first trial which had led the US Supreme Court to reverse Johnny Penry's original death sentence -- began on 11 July 1990.

This time the sentencing phase lasted over a period of several days. The defence retold the story of Johnny Penry's tortured childhood, and a psychiatrist presented the extensive medical records of Penry's mental impairment. The prosecution expert argued that Penry's true mental capacity was greater than that suggested by the majority of his IQ scores. The prosecution used the absence of physical damage shown up by brain scans to argue that Penry had suffered no brain injury. Finally, the prosecution's experts stated that there could be no link between the defendant's childhood abuse and his crime. In his summing up the prosecutor focussed on Johnny Penry's "future dangerousness" by relating alleged violent prison incidents involving Penry from 1982 and 1983. He had apparently been unable to find any such evidence from the intervening seven years with which to argue that the defendant should be killed. The jury retired at midday on 17 July 1990 to decide Johnny Penry's fate.

After the 1989 Supreme Court decision, the Texas legislature had set about rewriting the state's capital statute in order that future death sentences would not run into the same problem as Penry's first death sentence had. Today, Texas capital jurors are asked to consider a fourth "special issue" when deciding whether the defendant should live or die. This fourth question asks: "*Taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, is there still sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed*?" Under this system, a juror can still answer "yes" to the first three questions, but now has a clear opportunity to give effect to the mitigating evidence outside the scope of these three questions. If just one juror answers "yes" to the new fourth question, the defendant is sentenced to life imprisonment.

[14] One incident that took some time to resolve arose when the defence team mistakenly allowed a man who said that executions should be carried out as public hangings, to be seated on the jury. At first, the judge would not allow them to correct the error, but a few days later reversed his decision and the juror was replaced with another individual.

However, the legislature had not enacted this fourth "special issue" by the time of Johnny Penry's retrial, and so he did not benefit from the increased clarity that it brought to the Texas sentencing scheme. In its absence, the judge issued a long, and somewhat confusing, instruction to the jurors for them to consider the mitigating evidence in their deliberations[15]. Crucially, the judge's instruction restricted the jury's deliberations to the very same three questions that a year earlier the US Supreme Court had found so problematic. The jurors then retired with a form consisting of these three "special issues" -- deliberateness, future dangerousness, and victim provocation -- for them to answer. The form was identical to the one used in the first trial.

Two and a half hours later, the jury returned. This was over three times longer than at the first trial -- indicating, perhaps, a greater struggle for unanimity in the juryroom. Nevertheless, the jurors had once again all answered "yes" to each of the three questions.

Doubts as to the fairness of the procedure remain, on the grounds that the jurors were still restricted to the three questions, without clear and precise instruction as to how, and to which question, they could legitimately answer "no". The judge had offered no clear definition of the word "deliberately" in the first question; mental retardation could still serve as an aggravating factor in the second question; and the third issue could easily be answered "yes" by a juror who believed that a death sentence was not warranted.

[15] "*You are instructed that if you return an affirmative finding on each of the special issues submitted to you, the court shall sentence the defendant to death. You are further instructed that if you return a negative finding on any special issue submitted to you, the court shall sentence the defendant to the Texas Department of Corrections for life. You are therefore instructed that your answers to the special issues, which determine the punishment to be assessed the defendant by the court, should be reflective of your finding as to the personal culpability of the defendant, Johnny Paul Penry, in this case. You are instructed that when you deliberate on the questions posed in the special issues, you are to consider mitigating circumstances, if any, supported by the evidence presented in both phases of the trial, whether presented by the state or the defendant. A mitigating circumstance includes, but is not limited to, any aspect of the defendant's character and record or circumstances of the crime that you believe could make a death sentence inappropriate in this case. If you find that there are any mitigating circumstances in this case, you must decide how much weight they deserve, if any, and therefore, give effect and consideration to them in assessing the defendant's personal culpability at the time you answer the special issue. If you determine, when giving effect to the mitigating evidence, if any, that a life sentence, as reflected by a negative finding to the issue under consideration, rather than a death sentence, is an appropriate response to the personal culpability of the defendant, a negative finding should be given to one of the three special questions*." As cited in the state's reply brief, dated 16 November 1999, opposing a stay of execution.

Did the "special issues" format tip the jury's decision in favour of death? Would a juror who had doubts about Penry's culpability be more easily swayed by fellow jurors arguing that a "yes" could fit each of the three questions, than if the current fourth question had been before them? Would the new fourth question have given this wavering juror greater ability and confidence to record a vote for life imprisonment on the basis of evidence of Johnny Penry's mental retardation? Did the jurors really feel that they could lawfully answer "no" to any of the questions even if they actually believed that the answer to all three was "yes"? Was the judge in effect asking them to violate their oaths as jurors and return a false verdict if they believed that a death sentence was not warranted?[16]

Such questions are currently the subject of an appeal before the US Court of Appeals for the Fifth Circuit. The state continues to argue that the judge's instruction was adequate. This seems to ignore the fact that, by enacting the fourth "special issue", the state legislature had evidently concluded that instructions by a judge alone were not enough to guarantee clarity to Texas capital jurors.

When the jury returned shortly before 3pm on 17 July 1990 with their vote for death, the prosecutors celebrated. Johnny Penry hugged his defence lawyers. The lead attorney told reporters that his client had asked him what the jury's decision had been: "I think he did not understand", the defence lawyer said. Johnny Penry was taken back to death row.

A call for decency

[16] Texas jurors swear the following oath: "You and each of you do solemnly swear that in the case of the State of Texas against the defendant, you will a ***true*** verdict render according to the law and the evidence, so help you God." (emphasis added). It is argued that a Penry juror who believed that the answer to all three questions was "yes", and yet also believed that a death sentence was inappropriate, could either answer the questions truthfully, or disregard the questions on the form and violate their oath.

"*Johnny Paul Penry is a member of that minority of less than 3 per cent of the individuals found guilty of capital murder who were sentenced to death. We would expect that small minority to be composed of the most culpable, most despicable, of felons. Instead we find many among them like Penry, persons with mental retardation, additionally scarred by the burdens of lifelong rejection, neglect and abuse. Their failures are not theirs alone; they are the failures of society. Johnny Paul Penry is an exemplar of that minority, a man the system of human services, and the criminal justice system, tragically failed*."[17]

John Paul Penry's case goes to the heart of the USA's use of the death penalty. Here we see the ultimate punishment, supposedly reserved in the USA for the "worst of the worst", being used against a person of very limited mental capacity. It is another sign of the lottery of US capital sentencing, and another reason why the death penalty should be abandoned for good.[18]

Amnesty International opposes the death penalty in all cases. It believes that every death sentence is an affront to human dignity and that every execution serves to deepen a culture of violence in society and allows the murderer to set the moral tone. International standards, recognizing that a (rapidly diminishing) number of countries retain the death penalty, seek to restrict their use of the punishment with a view to abolition. One such restriction is the international agreement against the execution of people with mental retardation. It is now 10 years since the international community agreed this standard.

One does not have to be an abolitionist to oppose the execution of the mentally retarded. The American Association on Mental Retardation (AAMR), the USA's oldest and largest interdisciplinary organization of professionals in the field of mental retardation, holds that people with mental retardation should never be eligible for the death penalty. "*This is not to suggest that people with mental retardation should not be punished when they break the law, nor does it suggest that people with mental retardation are not responsible for their actions. It suggests that people with mental retardation cannot be held culpable for crimes to the extent that the death penalty would be considered an appropriate punishment*." The murder of Pamela Carpenter in 1979

[17] Amici Curiae (Friends of the Court) Brief filed on 12 November 1999 in the US Court of Appeals for the Fifth Circuit in support of John Paul Penry by organizations in the field of retardation: American Association on Mental Retardation; Advocacy, Inc.; The Arc of the United States; Arc-California; The Arc of Texas; The British Institute of Learning Disabilities; The International Association for the Scientific Study of Intellectual Disabilities; The Joseph P. Kennedy, Jr. Foundation; and TASH.

[18] For example, see: *The death penalty - arbitrary, unfair and racially biased.* Chapter 6 of *Rights for All*, Amnesty International Publications, AI Index: AMR 51/35/98, October 1998

was a dreadful crime, one which has caused immense suffering to her family and friends. However, justice cannot be served by executing John Paul Penry in retribution.

What the imminent execution of Johnny Penry suggests, to borrow US Supreme Court parlance, is that US "standards of decency" at the turn of the 20th century have not evolved beyond what they were in 1979. US and Texas society must act to prove this conclusion wrong by pressing Governor Bush to stop this human rights violation.