USA

‘HE COULD HAVE BEEN A GOOD KID’

TEXAS SET TO EXECUTE THIRD YOUNG OFFENDER IN TWO MONTHS

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The title: 'He could have been a good kid' is adapted from 'Robert could have been a good kid', from an affidavit signed by Shirley Green in October 2000 in the case of Robert Campbell.

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INTRODUCTION

The qualities that distinguish juveniles from adults do not disappear when an individual turns 18
Roper v. Simmons, US Supreme Court, 2005

The State of Texas accounts for nearly 40 per cent of all executions carried out in the USA since judicial killing resumed there in 1977 under revised capital laws. In that same period, dozens of countries have rid themselves of the death penalty,[1] and today 140 countries are abolitionist in law or practice. What is more, the world has agreed that even for the most serious crimes prosecuted in international tribunals – crimes against humanity, genocide and war crimes – the death penalty cannot be an option.

Against this backdrop, and a national picture in which since 2009 alone four US states have abolished the death penalty, the execution of young adult offenders should surely raise, even for those who support judicial killing, serious questions about proportionality and the state's obligations on rehabilitation.[2] Nearly one in five of the 276 prisoners executed during the current Texas Governor's term in office were 17, 18 or 19 years old at the time of the crime for which they were sentenced to death.

Between 1982 and 2003, in violation of international law, Texas executed 13 individuals who were under 18 at the time of the crime. This constituted 60 per cent of such executions in the USA until 2005 when its Supreme Court put a stop to this practice, finding that national "standards of decency" had evolved to render it unconstitutional. The ruling not only recognized attributes of youth such as immaturity, impulsivity, lack of foresight, and vulnerability to peer pressure, but also noted that such qualities "do not disappear" when an individual turns 18. Scientific research continues to show that brain development and psychological maturation continues far beyond the late teenaged years.

Today, Texas leads the USA in the execution of those who were 18 or 19 at the time of the crime. It has executed at least 71 such individuals since 1985, over half of them in the past decade. All told, since 1977 Texas has put more teenage offenders to death than 46 of the other 49 states have carried out executions of prisoners of any age in that entire 37 years.

Under US constitutional law, the death penalty is supposedly reserved not just for the worst crimes but also for the most culpable of offenders. If young people aged 18, 19 and beyond can possess the same qualities that led the Supreme Court to ban the death penalty for those under 18, does not its continuing use against the older teenagers raise constitutional law questions? And while the execution of someone who was over 18 years old at the time of the crime – unlike in the case of those under that age – does not violate an explicit international law provision, international human rights law and standards place an expectation upon governments that they will work towards abolition, as well as for the "reformation and social rehabilitation" of prisoners. Preventing the execution of young adult offenders and ensuring that efforts towards their rehabilitation are prioritized would be consistent with this.

Amnesty International believes that no-one – whatever the crime or the age of the offender – should ever face the death penalty, a cruel and irrevocable punishment. However, under the US constitutional assessment of whether a punishment is excessive, a question is supposed to be asked – namely, in relation to this issue, what measurable contribution to any acceptable goal of punishment does executing 18- and 19-year-old offenders make?[3]

This question has an urgency to it. Two more Texas prisoners were executed in March 2014 for murders committed when they were a few weeks past their 18th birthdays. Another is scheduled for execution on 13 May 2014, and 35 more condemned inmates await execution in Texas for crimes committed when they were aged 18 or 19.

WHY THIS REPORT?

International human rights law is unequivocal on the issue of youth and capital punishment – the death penalty must never be used against anyone for crimes committed when they were younger than 18 years old. Yet international law and standards do not expect governments to stop there. Rather, officials at all levels of government – whether federal, state, or local – are expected to work against the death penalty, narrowing its scope, ensuring enforcement of strict safeguards, and taking legislative or other steps towards abolition. Many countries have indeed moved in the right direction in recent decades, and today there is a clear global trend against judicial killing. Added to the fact that a majority of countries are now abolitionist in law or practice, the UN General Assembly has passed repeated resolutions calling for a global moratorium on executions as a first step in that direction.

Set against this backdrop, this report seeks to draw attention to three cases of young adult offenders in Texas, scheduled for execution in rapid succession, to generate a broader reflection on such offenders and the death penalty. Appeals for mercy from Amnesty International and others fell on deaf ears for two of those condemned prisoners and their executions were carried out in March 2014; the third is likely to face the same fate in mid-May unless his lawyer can persuade a court to issue a stay of execution.

In addition to pressing the Texas executive clemency authorities to stop this third execution, Amnesty International is also publishing this report as a part of its more general efforts to have capital decision-makers in the USA – whether jurors, judges, prosecutors, governors, parole boards or legislators – consider the specifically US constitutional law question of whether the system is really doing what it says it does, that is, selecting those offenders "most deserving" of execution based on a reliable assessment of their "extreme culpability".

Here are the cases of three individuals who were convicted of committing serious crimes. Putting aside for the moment those many cases of equally serious crimes that occurred in abolitionist states of the USA, or in local jurisdictions in retentionist states in which the prosecuting authorities decided not to pursue the death penalty, each of these three young defendants was found guilty of aggravated murder, thereby meeting the first prong for death penalty eligibility under US law. What about the second prong, however, that the individual possess "extreme culpability"? After all, what is difficult to ignore in these cases is that if the individuals in question had committed the crimes only a dozen weeks earlier they would have been exempted from execution, recognized as categorically lacking sufficient maturity to possess the culpability assumed by the death penalty. Even for a supporter of judicial killing, their cases must at most be borderline, not least when consideration is given to scientific evidence that brain development and psychological maturation continue well past the late teenage years.

When, as variously illustrated in these three cases, the ingredients of family dysfunction, childhood abuse, mental health problems, and failures of the state to provide rehabilitation when children come into conflict with the law, are added to the mix, the question of whether the system is selecting those "most deserving" of execution surely becomes even harder for a death penalty supporter to answer in the affirmative. What is more, what cannot be ignored are broader questions raised in these as in so many other cases – such as about the adequacy of legal representation provided to poor defendants, and about racial and geographic disparities in the use of the death penalty in the USA.

The matter of a young adult offender's maturity is not the only question about which this report seeks to encourage reflection. It also seeks to have people in Texas and the wider USA consider what the US Supreme Court calls the "evolving standards of decency that mark the progress of a maturing society". Should not 21st century society be demanding a standard of decency that rejects judicial killing as a wholly negative example for the state to set for young and less young alike to learn from?

'WORST OF THE WORST'?

Youth may be understood to mitigate by reducing a defendant's moral culpability for the crime, for which emotional and cognitive immaturity and inexperience with life render him less responsible, and youthfulness may also be seen as mitigating just because it is transitory, indicating that the defendant is less likely to be dangerous in the future

US Supreme Court Justice David Souter, 1993[4]

While even one death sentence is one too many as far as Amnesty International is concerned, it is important to point out that the death penalty in the USA is applied relatively rarely. Since 1977, there have been more than 600,000 murders in the USA, and approaching 1,400 executions, with another approximately 3,000 men and women currently on death row. The question, then, is how does the system select the relatively small number of individuals singled out for execution? It is now two decades since a US Supreme Court Justice concluded that this "basic question – does the system accurately and consistently determine which defendants 'deserve' to die? – cannot be answered in the affirmative". The system, he said, "fails to deliver the fair, consistent, and reliable sentences of death required by the Constitution".[5] The same can be said today; for inconsistency, discrimination and error remain hallmarks of the US capital justice system.

With this in mind, of the three prisoners whose cases are highlighted in this report, it is worth noting the following:

- **Anthony Doyle** was sentenced to death for a murder committed in 2003. This was one of 1,422 murders in Texas that year (16,528 in the USA). His death sentence was one of 23 handed down in Texas in 2004 (138 in the USA). He was executed on 27 March 2014.
- **Ray Jasper** was sentenced death for a murder committed in 1998. This murder was one of 1,346 murders in Texas that year (16,914 in the USA). His death sentence was one of 34 handed down in 2000 (224 in the USA). He was executed on 19 March 2014.
- **Robert Campbell** was sentenced to death for a murder committed in 1991. This was one of 2,652 murders in Texas that year (24,700 in the USA). His death sentence was one of 31 handed down in Texas in 1992 (286 in the USA). He is scheduled to be executed on 13 May 2014.

As illustrated in this report, these three cases display some of the troubling issues so often seen in the US capital justice system – for example, the use of questionable evidence to support a death sentence; jury selection processes resulting in an underrepresentation or even absence of black jurors; questions about the adequacy of legal representation provided to defendants who could not afford their own lawyers; and mental health issues.

An aspect common to these cases, however, apart from the fact that each involved an African American defendant, is that all three were 18 years and three

Age of nineteen? No, sir. That, also, I find to be a foolish age. That's a foolish age. They tend to want to be macho, built up, trying to step into manhood…

[A]ll I can say is I still think that a kid eighteen or nineteen years old has an undeveloped mind… he just don't evaluate what is worth – what's worth and what's isn't like he should like a thirty or thirty five year old man would. He would take under consideration a lot of things that a younger person that age wouldn't.

Father of 19-year-old capital defendant, Texas[6]

months old at the time of the murder for which they were sent to death row. In other words, if the crimes had been committed a dozen or so weeks earlier, the three would not ultimately have faced execution. Amnesty International does not question that the crimes of which they were found guilty were serious. But so, too, were many hundreds of murders committed in the same years, crimes which did not result in the death penalty. This begs a question, particularly when one considers that these three cases are borderline in the sense of being so close to a categorical exemption from capital punishment. The question is this: was the system's selection of these three young individuals for execution based on a valid and reliable assessment of "extreme culpability?

For the death penalty in the USA, according to its Supreme Court, "must be limited to those offenders who commit a narrow category of the most serious crimes and *whose extreme culpability makes them the most deserving of execution*" (emphasis added).[7] Young people – even children – clearly can commit very serious offences with consequences for victims that are just as serious as in the case of crimes committed by fully mature offenders. Youth has nevertheless long been recognized as a mitigating factor.

In March 2005, in *Roper v. Simmons*, the US Supreme Court finally took the step of imposing a categorical ban on the death penalty against defendants who were under 18 years old at the time of the crime. The *Roper* ruling, which belatedly brought the USA into line with a long-standing and almost universally respected international law prohibition, recognized the immaturity, impulsiveness, poor judgment, underdeveloped sense of responsibility and vulnerability to peer pressure often associated with youth. The Court said:

> "Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity. As for deterrence, it is unclear whether the death penalty has a significant or even measurable deterrent effect on juveniles…"

The Court noted that "the system is designed to consider both aggravating and mitigating circumstances, including youth, in every case", but despite this purported safeguard, there was a need for a categorical rule:

> "The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability. An unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death."

Here the Court noted that "in some cases a defendant's youth may even be counted against him". In the case before it, to rebut the defence plea for the trial jury to give mitigating effect to the defendant's young age at the time of the crime – 17 – the prosecutor had responded:

> "Age, he says. Think about age. Seventeen years old. Isn't that scary? Doesn't that scare you? Mitigating? Quite the contrary I submit. Quite the contrary."

If fear of youth could be put in the minds of jurors about a 17-year-old, what about an 18 or 19-year-old defendant? Could not their young age also be turned against them, as an aggravator? Perhaps this is especially true under a system like in Texas in which the jury is specifically asked to decide whether the defendant will likely commit acts of criminal violence, even in prison. If youth is associated with aggression in the minds of the juror – whether or not it is stoked by prosecutors portraying the defendant's capital crime or previous conflicts with the law as reason to vote yes to the "future dangerousness" question – may it not actually increase rather than lessen the likelihood of a death sentence?

This situation may also be exacerbated by a trial lawyer's failure to do a thorough job on investigating and presenting mitigation evidence related to the youthfulness of the defendant to set against the state's bid for execution. Bobby Hines was executed in Texas in October 2012 for a crime committed when he was 19 years old. His childhood was marked by severe abuse, poverty and neglect. The jury heard some information about this background, but no expert testimony was presented by the defence as to how it had affected his conduct. This facilitated the state's portrayal of him as a dangerous and "incorrigible" individual in order to persuade the jury that he would be a future risk to society if allowed to live.

The potential for young people to mature and change was another reason behind the *Roper* ruling (as well as behind the international legal ban on the death penalty against children). The *Roper* decision stated:

> "The character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed."

Even if there is ever any such "fixing" of personality traits, it would not occur all of a sudden when an individual turns 18. As the Supreme Court noted in a 1993 ruling involving a prisoner who was 19 years old at the time of the murder for which he was sentenced to death:

> "A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions... The relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside."[8]

After the *Roper* ruling, those on death row for crimes committed when they were under 18

Writing off young offenders

At least 84 prisoners have been put to death in Texas since executions resumed there in 1982 for crimes committed when they were teenagers (execution of offenders for crimes committed when under 18 was banned by the US Supreme Court in 2005).

13 executed for crimes committed at 17
Toronto Patterson (2002); T.J. Jones (2002); Napoleon Beazley (2002); Gerald Mitchell (2001); Gary Graham (2000); Glen McGinnis (2000); Robert Carter (1998); Joseph Cannon (1998); Ruben Cantu (1993); Curtis Harris (1993); Johnny Garrett (1992); Jay Pinkerton (1986); Charles Rumbaugh (1985)

28 executed for crimes committed at 18
Anthony Doyle (2014); Ray Jasper (2014); Richard Cobb (2013); Michael Hall (2011); Peter Cantu (2010); Reginald Blanton (2009); Derrick Johnson (2009); José Medellin (2008); Leon Dorsey (2008); John Amador (2007); Kenneth Parr (2007); Ryan Dickson (2007); Vincent Gutierrez (2007); Justin Fuller (2006); Robert Salazar (2006); Derrick O'Brien (2006); Jermaine Herron (2006); Clyde Smith (2006); Troy Kunkle (2005); Ronald Howard (2005); Dominique Green (2004); Edward Green (2004); Cedric Ransom (2003); Emerson Rudd (2001); Juan Soria (2000); Irineo Montoya (1997); Billy White (1992); Jesse de la Rosa (1985)

43 executed for crimes committed at 19
Bobby Hines (2012); Yokamon Hearn (2012); Beunka Adams (2012); Milton Mathis (2011); Michael Perry (2010); George Jones (2010); Willie Pondexter (2009); Joseph Ries (2008); Carlton Turner (2008); DaRoyce Mosley (2007); Joseph Nichols (2007); Donald Miller (2007); Lionell Rodriguez (2007); Willie Shannon (2006); Robert Shields (2005); Demarco McCullum (2004); Jasen Busby (2004); Anthony Fuentes (2004); Kenneth Bruce (2004); Henry Dunn (2003); Granville Riddle (2003); Javier Suárez Medina (2002); Reginald Reeves (2002); Monty Delk (2002); Jeffery Dillingham (2000); Jessy San Miguel (2000); James Richardson (2000); Ponchai Wilkerson (2000); Jose de la Cruz (1999); George Cordova (1999); David Castillo (1998); Davis Losada (1997); Dorsie Johnson (1997); Fletcher Mann (1995); Jeffery Motley (1995); Clifton Russell (1995); Warren Bridge (1994); Walter Williams (1994); Richard Wilkerson (1993); Danny Harris (1993); Jesus Romero (1992); Anthony Williams (1987)

had their death sentences commuted. In some cases, this left marginally older co-defendants on death row. This happened, for example, in the Texas case of José Medellín, who was barely 18 years old at the time of the crime. His two co-defendants who were 17 at the time of the crime subsequently had their death sentences commuted after *Roper*, while José Medellín was executed in 2008. In another case Randy Aroyo's death sentence was commuted to life imprisonment after *Roper*, leaving co-defendant Vincent Gutierrez on death row. At the 1998 trial, the jurors had found the two young defendants – Randy Aroyo was 17 at the time of the crime while Vincent Gutierrez was 18 – equally culpable and sentenced them both to death. As Vincent Gutierrez's execution approached, at least six of the jurors signed affidavits supporting the assertion in his clemency petition that it was unfair that he was facing execution while his co-defendant was not. The clemency authorities were unpersuaded and Vincent Gutierrez was executed in the Texas death chamber in March 2007.

The *Roper* decision suggested that, while the Court was enforcing a categorical rule, the age of 18 as a cut-off for death penalty eligibility could be viewed as a *minimum* standard. While making the age of 18 "the line for which death eligibility ought to rest", the Court noted that the "qualities that distinguish juveniles from adults do not disappear when an individual turns 18". In other words, there is not some dramatic and sudden end to immaturity on an individual's 18th birthday.

Scientific research has indeed continued to show that development of the brain and psychological and emotional maturation continues at least into a person's early 20s and even into their late 20s. The September-October 2008 issue of Harvard Magazine reported on the state of research in this area:

> "Research during the past 10 years, powered by technology such as functional magnetic resonance imaging, has revealed that young brains have both fast-growing synapses and sections that remain unconnected. This leaves teens easily influenced by their environment and more prone to impulsive behaviour, even without the impact of souped-up hormones and any genetic or family predispositions.... Human and animal studies have shown that the brain grows and changes continually in young people – and that it is only about 80 percent developed in adolescents. The largest part, the cortex, is divided into lobes that mature from back to front. The last section to connect is the frontal lobe, responsible for cognitive processes such as reasoning, planning, and judgment. Normally this mental merger is not completed until somewhere between ages 25 and 30..."[9]

While Texas continues to execute young adult offenders, it is worth noting that within its laws on other issues youth beyond the age of 18 is recognized as something requiring special attention.

For example, in Texas it is an offence for a minor to buy alcohol.[10] It is an offence for an adult to sell alcohol to a minor. A minor commits an offence if he or she consumes an alcoholic beverage, unless the latter was "consumed in the visible presence of the minor's adult parent, guardian, or spouse." Except under certain circumstances, the minor commits an offence if he or she possesses and alcoholic beverage.[11] Here, a "minor" is anyone under 21 years old.[12]

In 2007, the US Surgeon General issued a "call to action" to address the problem in the USA of underage drinking. A review describes the Surgeon General's initiative thus:

> "The impetus for this *Call to Action* is the body of research demonstrating the potential negative consequences of underage alcohol use on human maturation, particularly on the brain, which recent studies show continues to develop into a person's twenties. Although considerable attention has been focused on the serious consequences of underage drinking and driving, accumulating evidence indicates that the range of adverse consequences is much more extensive than that and should also be

> comprehensively addressed. For example, the highest prevalence of alcohol dependence in the US population is among 18 to 20 year olds who typically began drinking years earlier. This finding underscores the need to consider problem drinking within a developmental framework."[13]

Between 1973 and 2005, Texas accounted for a quarter of all the death sentences passed in the USA against defendants who were under 18 at the time of the crime, far more than any other state, and carried out 60 per cent of the country's executions of offenders from this age group.[14] In other words, Texas was leading those states which were on the wrong side of the emerging "national consensus" against such use of the death penalty, a consensus that was one vote short of being recognized by the US Supreme Court in 1989 and eventually found by the Court in *Roper* in 2005 when it banned the practice.

Texas remains an outlier today. In 2014, there were more individuals on death row in Texas for crimes committed when they were 18 or 19 than there were death row prisoners in any age category in 32 of the USA's 50 states.[15]

Texas has carried out more executions of teenage offenders than the *total* number of executions carried out in any other state, bar three, since 1977.[16] Of the 515 people executed in Texas since 1982, at least 84 were teenagers (17, 18 or 19) at the time of the crime.

The geographic bias runs even deeper. Thirty-two of the 84 individuals (38 per cent) were prosecuted in just two counties in Texas – Harris County (20) and Dallas County (12). Only 10 states (not counting Texas) have put to death more prisoners in total since 1977 than Texas has executed individuals prosecuted in these two counties for crimes committed as teenagers. Twenty-one of these 32 individuals were African-American, six were Hispanic, and four were white.

Half of the 36 prisoners still on Texas death row in April 2014 for crimes committed when they were 18 or 19 years old were prosecuted in Harris County or Dallas County (see box).

The *Roper* ruling was based on the US Supreme Court's notion of "evolving standards of decency that mark the progress of a maturing society". Under this concept, the US Constitution's Eighth Amendment ban on "cruel and unusual punishments" is not static but changes as society evolves. Clearly, this method of assessing which punishments are so disproportionate as to be "cruel and unusual" is not one that can be relied upon to keep the USA up with international standards – for example, led by Texas, it was still executing offenders for crimes committed when they were under 18 years old long after most countries had ceased the practice.

Even if the evolution is slow in the USA, hopefully it did not grind to a halt with the *Roper* ruling. As we approach a decade since that landmark decision, the proportionality of executing offenders who fall just outside of its protection should be seriously questioned by those who continue to support judicial killing as part of criminal justice.

For its part, Amnesty International considers that evolving international standards against the death penalty, as well as the abolitionist spirit of the International Covenant on Civil and Political Rights (ICCPR), ratified by the USA in 1992, place an obligation on authorities at local, state and federal level in that country to work against the death penalty with a view to ever limiting its reach in law and practice until final abolition.

ANTHONY DOYLE – A JURY MISINFORMED ABOUT REHABILITATION ISSUE

Anthony Doyle – an African American prosecuted in Dallas County – was executed in Texas on 27 March 2014 for a murder committed when he was 18 years and three months old. If he had been 93 days younger at the time of the crime, he would not have been executed, because of the *Roper* ruling in 2005.

On 16 January 2003, 37-year-old Hyun Mi Cho was beaten to death with a baseball bat when she delivered an order of doughnuts and burritos to Anthony Doyle's family home in Rowlett, Dallas County, Texas. Her phone, credit cards, and car were stolen. Anthony Doyle was arrested the following day in Dallas and gave the police a confession, saying that he had placed the delivery order, pretending to be a woman, and that he had intended to rob the delivery person because he needed money in order to help take care of his then three-week-old daughter. The case came to trial in 2004 and Anthony Doyle was convicted of capital murder and sentenced to death.

In February 2014 the US Supreme Court refused to take Anthony Doyle's case. The petition before it had argued that when he committed the crime, he was developmentally comparable to those offenders exempted from the death penalty by the *Roper* ruling. At the trial, a psychologist testified that Anthony Doyle had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and depressive disorder as a child, and that the impaired decision-making capacity and impulse control of an 18-year-old would be exacerbated in the case of such an individual with ADHD and depression. In 2005, a neuropsychologist concluded that Anthony Doyle displayed "mild organic impairment" and possible frontal lobe dysfunction, reflected in inflexible thinking, impulsivity, immaturity, and a "pattern of cognitive disarray". In her opinion, at the time of the crime, Doyle "was not physiologically or neurologically mature enough to inhibit emotions, restrain impulsive acts or consider options". In the petition to the US Supreme Court, Anthony Doyle's lawyer wrote:

> "At least as young as age 8, the school records of Anthony Doyle reflect that he suffered from severe to extreme emotional disturbance… Deprived of medical intervention, and helpless to control his severe behaviour disorder, Anthony acted out even more. Punishment for a child like Anthony Doyle was not effective…
>
> His family was aware that Anthony's trouble in elementary and middle school just continued to get worse, but Anthony's family itself was in disarray and unable to attend to Anthony's needs. Drunken uncles engaged in fighting and creating havoc and chaos in the household… Anthony's sister and her mother fought over food that [the sister] had bought with food stamps. That fight landed [the sister] in jail. In another incident, [the older sister] had pulled a weapon on her sister [and] was placed on deferred adjudication for aggravated assault with a deadly weapon. Anthony's parents had fights that were stormy and physical.
>
> Anthony's parents did not seek medical help for him. The schools did not suggest psychiatric and psychological treatment for him and his family…
>
> When Anthony was in the Sixth Grade (age 12)…, Anthony's grandfather died in Anthony's presence while in the same room that both of them slept in. Anthony and his grandfather had been close…"

At the age of 14, Anthony Doyle committed several offences that were considered misdemeanours (delinquency for evading arrest; and harassment), and was given probation and placed in the custody of his parents. However, according to his older sister, because there was "just so much that my mom could handle, and after she couldn't handle any more, that's when he went to boot camp". Anthony Doyle was placed in boot camp by court order.

It was this period of Anthony Doyle's childhood that became the focus of a new claim in the courts as his execution approached in 2014. In this claim, his lawyer argued that the state had (unknowingly) presented false evidence at Anthony Doyle's trial relating to his potential for rehabilitation.

As already noted, in order to obtain a death sentence in Texas the prosecution has to persuade the jury that the defendant will be a future danger to society, even in prison. The defendant's potential for rehabilitation is relevant to this assessment. At Anthony Doyle's

trial, the prosecutor painted a picture of a teenage defendant who had been offered help and opportunities, but who had rejected this through his consistent bad behaviour. Included in the prosecution's case was the assertion that Anthony Doyle had been sent to a Texas Youth Commission (TYC) boot camp called Victory Field Correctional Academy from 1999 to 2001 when he was 15 to 16 years old, and that this facility had "provided treatment, training, and rehabilitation". Yet "nothing has been able to change him", the prosecutor asserted of Anthony Doyle, and "going to TYC couldn't stop him". The jury voted yes to the "future dangerousness" question and Anthony Doyle was sentenced to death.

An expert who served as TYC Ombudsman from 2007 to 2009, William Harrell, signed a declaration on 12 March 2014 saying that not only was Victory Field "absolutely not an institution of rehabilitation when I was Ombudsman", but neither was it such an institution "at the time that Anthony Doyle had been incarcerated there in [the] 1999-2001 timeframe because at the time, TYC was not capable of delivering adequate rehabilitation at any facility". Moreover, he said,

> "Victory Field was far out of reach of adequate central office oversight and it actually was one of two TYC facilities at the time that were allowed to operate a separate and distinct program that did not even attempt to provide treatment consistent with what we know to be best practices. [They] were allowed to operate as boot camps – an approach that has been wholly discredited and abandoned across the nation, including TYC."[17]

William Harrell was the first appointed Ombudsman for TYC after an abuse scandal broke in the Texas media in 2006/7. As Ombudsman, his role was to evaluate services provided to youth in TYC custody, including rehabilitation and treatment services.

According to information put before the courts, Victory Field was a "violent campus, in which physical and sexual abuse abounded." When held there, Anthony Doyle had been "placed with youth adjudicated of serious and violent felonies, when Anthony's prior offenses were no more serious than misdemeanours". In addition, Victory Field was "so remote, his family could not visit him"; family visits can be "critical" for rehabilitation of the individual "as well as oversight", according to William Harrell. In his March 2014 declaration, he said that

> "One of my earliest recommendations to TYC administrators and Texas legislators was to close Victory Field. For doing so, I actually received threats of violence from staff at that facility. With the exception of a privately run facility in Cooke County, Victory Field was by far the worst facility I saw in Texas. Staff were unprofessional and not concerned for the welfare of the youth in their custody. Some staff were brutal, as were many of the youth I encountered. There was no effort to rehabilitate those youth. They were merely warehoused and intimidated and punished. There was a dramatic overreliance on isolation of youth."

On the status of Victory Field as a "boot camp", William Harrell said:

> "There is a plethora of research that demonstrates that boot camps are not just ineffective – they are counterproductive. Studies demonstrate that boot camps actually increase recidivism. As such, most if not all states have abandoned that philosophy."

He noted that Victory Field facility has since been "shuttered and the boot camp model is no longer utilized in the Texas system".

Another expert on juvenile justice in Texas, Associate Professor William Bush, signed a declaration on 13 March 2014 asserting that facilities such as Victory Field were "designed to punish rather than rehabilitate juvenile offenders". Such an approach stemmed from a highly politicized and punitive response to juvenile crime, as recalled in this declaration:

> "Public statements to that effect abounded during and after the 1994 gubernatorial campaign between Ann Richards and George W. Bush, where juvenile justice became a

> significant campaign issue. In January 1994, candidate Bush released a 17-point plan to 'attack' juvenile crime, declaring that 'our kids must be punished for criminal behaviour'. That same month, Bush stated that 'the word punishment needs to become part of the juvenile justice vocabulary'. In advocating for the repurposing of an adult substance abuse facility for use as a juvenile lock-up, Bush declared the following: 'So long as we've got an epidemic of crime', he stated, 'I think we ought to forget about rehabilitation and worry about incarceration'. Not to be outdone, candidate Richards announced her own plan calling for 'real punishments for real crimes'."

Over the following decade and a half, including the period that Anthony Doyle was held at Victory Field boot camp, "Texas adopted policies that emphasized punishment and incarceration as the means for dealing with troubled youth". Professor Bush further noted that "boot camps, later found to increase recidivism in many circumstances, were a part of the punitive, non-rehabilitative Victory Field regime during the time of Mr Doyle's incarceration there".[18]

On 21 March 2014, the Texas Court of Criminal Appeals (TCCA) dismissed Anthony Doyle's attempt to get back into court to raise for judicial review the claim that the state had presented false evidence to the trial jury about the defendant's failure to be rehabilitated while in this boot camp. The TCCA refused to consider the merits of the claim as the petition did not meet the requirements under Texas law for a second application for habeas corpus.

About two hours before the execution was due to go ahead, the US Supreme Court refused to grant a stay. The state Board of Pardons and Paroles had already denied clemency, and Governor Perry did not intervene. Anthony Doyle made no final statement before being killed by lethal injection on 27 March 2014. The following month, Associate Professor William Hill suggested to Amnesty International that:

> "The tragic case of Anthony Doyle should force all Texans to confront failures that have occurred all too frequently since the state adopted a separate juvenile justice system over a century ago. In particular, the inadequacy of children's mental health services in local communities; the warehousing of nonviolent misdemeanor offenders in facilities meant for violent offenders; and, the misrepresentation of those same prison-like facilities as 'rehabilitative,' each punctuate the state's unwillingness to view juveniles such as Mr. Doyle *as juveniles* – a habit of thought with long historical roots. It is long past time that Texas reject these bad habits and move toward a more humane treatment of troubled children and youth."[19]

Was Anthony Doyle failed by the state when it put him in Victory Field boot camp? Certainly, such a regime ran counter to the international law principle that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".[20] Such a boot camp model would also run counter to the principle that the right of "every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into accounts the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society".[21]

In 1989, the year that the UN Convention on the Rights of the Child opened for signature, four US Supreme Court Justices dissented against the Court's refusal to end the use of the death penalty against 16 and 17-year-old offenders:

> "The very paternalism that our society shows toward youths and the dependency it forces upon them mean that society bears a responsibility for the actions of juveniles that it does not for the actions of adults who are, at least theoretically, free to make their own choices"

The Justices quoted from the 1978 publication, Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, Confronting Youth Crime:

> "youth crime is not exclusively the offender's fault; offenses by the young represent a failure of family, school, and the social system, which share responsibility for the development of America's youth."

Was the execution of Anthony Doyle really what the US Supreme Court has in mind when it speaks of the death penalty in the USA being reserved for the worst of crimes and the most culpable of offenders? His crime and its consequences were undoubtedly serious, regardless of the fact that he was only just past 18 when he committed it. But the fact was that when he committed that crime, he was barely out of a childhood marked by mental health issues and family dysfunction and one during which he had been failed by the state when it put him in a boot camp incapable of offering him even the semblance of rehabilitation programs that might have contributed to different life outcomes. Yet the prosecution told the jury that it was the defendant who had rejected all the opportunities for rehabilitation given him, including at that boot camp. The jury voted for death. Is this justice?

RACE AND YOUNG OFFENDERS

A third significant concern is the risk of discriminatory application of the death penalty... [T]he Court has allowed it to continue to play an unacceptable role in capital cases

US Supreme Court Justice John Paul Stevens, 2008[22]

In its most recent findings on the USA, the UN Human Rights Committee expressed particular concern about racial disparities in the imposition of the death penalty "that affects disproportionately African Americans".[23] This expert body established under the International Covenant on Civil and Political Rights to oversee implementation of that treaty (which the USA ratified in 1992), noted that this situation is "exacerbated by the rule that discrimination has to be proved on a case-by-case basis", a reference to the 1987 *McCleskey v. Kemp* opinion of the US Supreme Court which effectively blocked claims of systemic discrimination in the absence of legislative routes to remedy.[24]

Blacks and whites are the victims of murder in the USA in almost equal numbers, yet 78 per cent of the people executed since judicial killing resumed in 1977 under revised capital statutes were convicted of crimes involving white victims. Most murders in the USA are intra-racial, that is, the alleged perpetrator and the victim were of the same race. Of the prisoners executed in the USA since 1977, 52 per cent were whites convicted of killing whites, and 12 per cent were blacks convicted of killing blacks. Twenty-one per cent were blacks convicted of killing whites, while two per cent were whites convicted of killing blacks. While these bare statistics do not necessarily show direct discrimination by the decision makers in the capital cases, study after study has shown that race, particularly race of the murder victim, continues to be a factor in the death penalty in the USA.

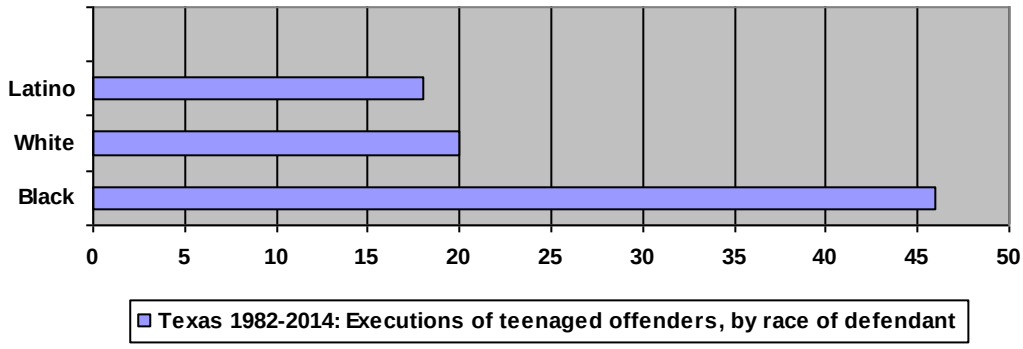
In addition to this, of course, there is the question of just how detectable racial prejudice may or may not be. In 1986, the US Supreme Court recognized this in the context of jury sentencing in a capital case out of Virginia involving a black defendant accused of killing a white man. It outlined the problem thus:

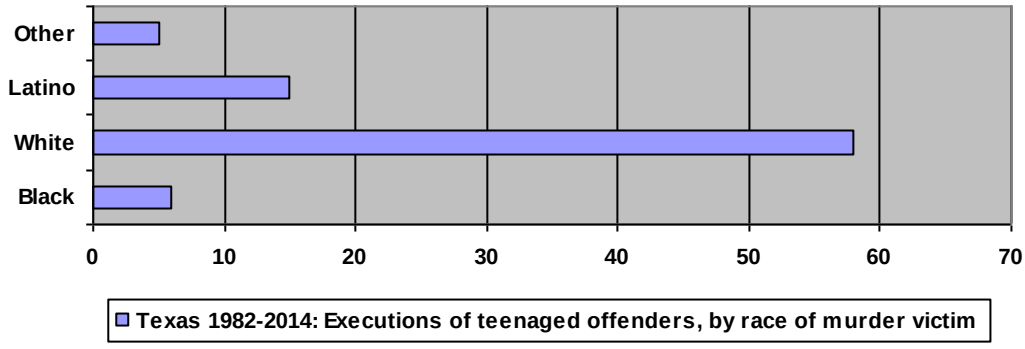
> "Because of the range of discretion entrusted to a jury in a capital sentencing hearing, there is a unique opportunity for racial prejudice to operate but remain undetected. On the facts of this case, a juror who believes that blacks are violence prone or morally

> inferior might well be influenced by that belief in deciding whether petitioner's crime involved the aggravating factors specified under Virginia law. Such a juror might also be less favorably inclined toward petitioner's evidence of mental disturbance as a mitigating circumstance. More subtle, less consciously held racial attitudes could also influence a juror's decision in this case. Fear of blacks, which could easily be stirred up by the violent facts of petitioner's crime, might incline a juror to favor the death penalty. The risk of racial prejudice infecting a capital sentencing proceeding is especially serious in light of the complete finality of the death sentence."[25]

Of the 13 prisoners executed in Texas for crimes committed when they were 17 years old (before the *Roper* ruling raised the minimum age to 18), eight were African American, six of whom were executed for killing whites. Of the 71 individuals who have been put to death in Texas since 1985 for crimes committed when they were 18 or 19 years old, 46 were African Americans, 33 of whom were executed for crimes involving white victims.

In other words, some 16 per cent of the 515 prisoners put to death in Texas since 1982 were teenagers (17, 18 or 19 years old) at the time of the crimes for which they were sentenced to death. Of these individuals, 54 were African American (64 per cent). And of these 54 African American teenage offenders, 39 (72 per cent) were executed for crimes involving white victims. There are at least 36 prisoners on death row in Texas for crimes committed when they were 18 or 19 years old. Nineteen of these 36 prisoners (53 per cent) are black.





A study published in 2008 concluded that race of defendant and race of victim were both "pivotal" in capital justice in Harris County, the Texas jurisdiction that is the main supplier for the state's death row. According to this study, "death is more likely to be imposed against black defendants than white defendants, and death is more likely to be imposed on behalf of white victims than black victims".[26]

Nearly a quarter of the 84 prisoners executed in Texas since 1985 for crimes committed when they were 17, 18 or 19 years old were sentenced to death in Harris County. Fourteen of these 20 condemned prisoners were black, four were Hispanic and two were white.

Sixteen of the 36 prisoners currently on death row in Texas for crimes committed when they were 18 or 19 years old were prosecuted in Harris County. Ten of the 16 are black, two are foreign nationals (Mexican and Cambodian), three are Hispanic, and one is white.

In its concluding observations on the USA in March 2014, the UN Human Rights Committee called on authorities in the USA to "take measures to ensure that the death penalty is not imposed as a result of racial bias", as well as considering a moratorium on executions.

The next Harris County defendant scheduled to be executed is Robert Campbell, who is African American, and was tried before an all-white jury. At the time of writing, he was due to be executed on 13 May 2014. As described below, his execution date was preceded by that of Ray Jasper, whose death sentence was passed by a jury on which no African Americans sat.

RAY JASPER: 'I WAS THE ONLY BLACK PERSON IN THE COURTROOM'

In a state capital trial in the USA, 12 citizens from the county in which the trial is held (the county where the crime is committed unless a change of venue is granted) are selected to sit as a "death qualified" jury. At jury selection, the defence and prosecution will question the prospective jurors and have the right to exclude certain people, either for a stated reason (for cause) or without giving a reason (a peremptory challenge). Those citizens who would be "irrevocably committed" to vote against the death penalty can be excluded for cause by the prosecution, under the 1968 US Supreme Court ruling in *Witherspoon v. Illinois*.[27] In 1985, in *Wainwright v. Witt*, the Supreme Court relaxed the *Witherspoon* standard, thereby expanding the class of potential jurors who could be dismissed for cause during jury selection.[28] Under the *Witt* standard, a juror can be dismissed for cause if his or her feelings about the death penalty would "prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath".

Over a decade and a half ago, the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions expressed concern that in the USA, "while the jury system was intended to represent the community as a whole, the community can hardly be represented when those who oppose the death penalty or have reservations about it seem to be systematically excluded from sitting as jurors".[29] The problem goes beyond this, however. There is evidence that a "death-qualified" jury is more distrustful of defence attorneys, more pro-prosecution, than its non-death-qualified counterpart.[30] In 1987, the US Supreme Court ruled that a death sentence must be reversed even if only one juror has been improperly excluded from serving on the jury.[31]

Meanwhile, under the 1986 US Supreme Court decision *Batson v Kentucky*, prospective jurors can only be removed for "race neutral" reasons. If the defence makes a *prima facie* case of discrimination by the prosecution, the burden shifts to the state to provide race neutral explanations. In 1989, two Supreme Court Justices argued that:

> "*Batson*'s greatest flaw is its implicit assumption that courts are capable of detecting race-based challenges to Afro-American jurors… This flaw has rendered *Batson* ineffective against all but the most obvious examples of racial prejudice – the cases in which a proffered 'neutral explanation' plainly betrays an underlying impermissible purpose."[32]

The defendant in that particular case, Richard Wilkerson, was executed in Texas in 1993 for a crime committed at the age of 19. He was black, the victim white. Richard Wilkerson was

tried by an all-white Harris County jury after the prosecution used four of its "peremptory challenges" to get rid of all four prospective black jurors during jury selection.

Ray Jasper was executed in Texas on 19 March 2014 for a murder committed when he was 18 years old. Questions about the jury selection at his Bexar County trial in 2000 remained a bone of contention until the end.

Ray Jasper was African American. The murder victim was white. David Alejandro was stabbed to death on 29 November 1998 during a robbery of the recording studio he owned in San Antonio. Two teenagers who had been recording music in the studio immediately prior to the crime – 18-year-old Ray Jasper and 19-year-old Douglas Williams – were arrested, as was another friend who had been with them in the studio, 19-year-old Steven Russell. [33] Ray Jasper signed a statement saying that he had planned and participated in the crime. He was brought to trial and convicted of capital murder on 18 January 2000. On 20 January, after deliberating for less than three hours, the jury voted for the death penalty.

There were no African Americans on Ray Jasper's jury; two black prospective jurors – one woman and one man – who had been in the initial jury pool were peremptorily dismissed by the prosecutor during jury selection.

One these two African Americans was Natacha H. During questioning, she said that she had a number of teenage friends who had been murdered when she lived in Virginia and said that she felt the police had not properly investigated the crimes to bring those responsible to justice. She said that, in her experience, police officers were intimidating. She said she had a brother who was in jail for violating parole and writing bad cheques, and that her daughter's father had served prison time for drug dealing. She expressed the belief that a person convicted of murder should be sentenced to life in prison. The prosecutor used a peremptory challenge to dismiss her and the defence lawyer raised a *Batson* challenge.

36 people are on Texas death row for crimes committed when they were aged 18 or 19. Nineteen (53%) are black; six are white (trial venue noted if Harris or Dallas counties)

25 for crimes at the age of 18
Cortne Robinson, black
Blaine Milam, white
Dexter Johnson, black (Harris County)
Juan Ramirez, Hispanic
Damon Matthews, black (Harris County)
Charles Derrick, black (Harris County)
Clinton Young, white
Irving Davis, black
Miguel Paredes, Hispanic
Obie Weathers, black
Larry Estrada, Hispanic (Harris County)
Alvin Braziel, black (Dallas County)
Juan Garcia, Hispanic (Harris County)
Richard Vasquez, Hispanic
Felix Rocha, Mexican national (Harris County)
Julius Murphy, black
Howard Guidry, black (Harris County)
Jose Martinez, Hispanic
Pablo Melendez, Hispanic
Billy Wardlow, white
Tony Ford, black
Randolph Greer, black (Harris County)
Robert Campbell, black (Harris County)
Gustavo Garcia, Hispanic
Harvey Earvin, black

11 for crimes at the age of 19
Juan Balderas, Hispanic (Harris County)
James Brodnax, black (Dallas County)
Christian Olsen, white
LeJames Norman, black
Perry Williams, black (Harris County)
Robert Woodard, black (Harris County)
Anthony Haynes, black (Harris County)
Erica Sheppard, black (Harris County)
Kim Ly Lim, Cambodian national (Harris County)
Brent Brewer, white
Marlin Nelson, white (Harris County)

The prosecutor was asked for his reasons for the peremptory challenge. He pointed to Natasha H.'s hostility towards the police, her relationship with a person who was a drug

dealer, her belief that her brother should get a second chance, and her stated support for life imprisonment for convicted murderers. In her written questionnaire, she had said that she supported the death penalty for murderers. The trial judge accepted the prosecutor's reasons as race-neutral, and on federal appeal in 2011, the US District Court concluded that this prospective juror's "potential bias against the prosecution was open and obvious".[34]

At this point, it is worth pausing to consider research into the behaviour of capital juries in the USA, and how stereotypes about race and crime, conscious or unconscious, can infect a capital sentencing. Research published in the year after Ray Jasper's trial, for example, came from the Capital Jury Project which had interviewed 1,155 capital jurors from 340 trials in 14 states. It supported the contention that the divergent experiences and perspectives of blacks and whites in the USA have an impact when they are called to serve as jurors. Awareness or experience of discrimination at the hands of police or other authorities, for example, may leave an African American juror better able than his or her white counterpart to identify or empathize with the black defendant when presented with mitigating evidence.[35]

The researchers gleaned that "whites more often than blacks see the [black] defendant as likely to be dangerous to society in the future and as likely to get back on the streets if not sentenced to death. Blacks in these cases more often see the defendant as remorseful and therefore deserving of mercy, and even wonder whether the defendant was the actual killer or at least whether the killing was a capital murder." Furthermore, the interviews revealed "a lack of receptivity to mitigating evidence among white jurors when the defendant is black. White jurors often appear unable or unwilling to consider the defendant's background and upbringing in context." One of the black jurors described how the white jurors "were not considering what background this kid came out of. They were looking at him from a white middle-class point of view". The study concluded that the system's reliance on the questioning of jurors during jury selection in order to detect deeply ingrained and often unconscious racist attitudes was "wishful thinking".

At the Ray Jasper trial in 2000, the second prospective black juror, Vernon G., had indicated in his written questionnaire some disquiet about the death penalty. Asked about this at oral questioning (voir dire) by the prosecutor, Vernon G. responded that "It's just that I can't play the role of God. I can't send nobody, you know, to death." However, questioned further, he said that he had not fully understood the questionnaire, had felt somewhat rushed when answering it, and that if he had to, he could answer the sentencing questions in such a way that the death penalty would result. Questioned yet further by the defence lawyer, Vernon G. again stated that he could vote for the death penalty and agreed with the assertion that "sometimes capital punishment gives the criminal what he deserves".

The prosecutor then used a peremptory challenge to dismiss this black would-be juror. The defence lawyer raised a *Batson* challenge and the prosecutor was required to provide race-neutral rationale for the dismissal. The prosecutor explained that he had dismissed the juror because of his questionnaire answers indicating that he had concerns about the death penalty. He indicated that he gave greater weight to these answers than the answers he gave upon live questioning, saying that "I put a great deal of weight on a person's first impression", even though Vernon G. had subsequently indicated that he had not answered the questionnaire in a way that reflected his real position. The prosecutor acknowledged that Vernon G. had said that he had felt in a hurry filling out the questionnaire form, but that:

> "the time constraint was artificial and he imposed it upon himself. And if he did not take the time to fully consider and give thoughtful reflectful [sic] answers to these questions. That's just one more thing that enters into my mind".

The prosecutor added:

> "I took note of his gold-hoop earring... He's a fifty-two year old aged male, and wearing a gold-hoop earring... It's not the norm. I'm not interested in having jurors that are outliers of the norm".

The judge accepted the prosecutor's reasons as "race-neutral" and the juror was excused.

On appeal, the federal judge on the US District Court said that his review of the oral questioning of the individuals in the jury pool (the venire) "reveals no instances in which Black venire members were questioned in a manner dramatically different from the questioning of venire members of other ethnic groups", or "anything else that was different about the way the prosecution chose to conduct voir dire of Black venire members, as opposed to non-Black venire members". However, Chief US District Judge Fred Biery also noted that his review of the *Batson* issue was limited by the fact that the written questionnaires had not been provided to him:

> "A legitimate comparison of the prosecution's allegedly disparate treatment of the venire members would necessarily include review of the entire juror questionnaires to ascertain if, in fact, the venire members allegedly treated differently by the prosecution were, in fact, similarly situated. Such a review is not possible in this case because neither party has furnished this Court with the juror questionnaires. Likewise, none of the state appellate courts which reviewed petitioner's *Batson* claim were furnished with copies of the questionnaires".

The US Court of Appeals for the Fifth Circuit upheld the death sentence in 2012, while also noting that "the failure to preserve the questionnaires in the record makes the comparative analysis [Jasper] seeks difficult to conduct".

In early 2014, Ray Jasper's new lawyer initiated another search for the questionnaires, which resulted in the Bexar County District Attorney's Office locating them on 6 February 2014, although they were not sent to Jasper's lawyer until 21 February, less than a month before the scheduled execution.

After receiving the questionnaires, Ray Jasper's lawyer filed a new petition seeking a stay of execution from the courts in order to pursue the claim – this time with the newly located juror questionnaire evidence not yet reviewed on appeal – that the prosecutor's dismissal of Vernon G. was indeed motived by race.[36] The lawyer argued that the previously missing questionnaires were not the only reason that the TCCA had not undertaken a comparative review of how the various individuals in the jury pool were questioned by the prosecutor when Ray Jasper's initial appeal was lodged in 2001. The other reason was that it was not until 2005 that the US Supreme Court handed down a ruling articulating the importance of such comparisons. In *Miller-el v. Dretke* (a death penalty case of out of Dallas County, Texas), the Court had said:

> "More powerful than these bare statistics [of how many black prospective jurors were dismissed by the prosecution], however, are side-by-side comparisons of some black venire panelists who were struck and white panelists allowed to serve. If a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve, that is evidence tending to prove purposeful discrimination to be considered at *Batson's* third step."

The March 2014 brief in Ray Jasper's case gave some examples of inconsistency in the prosecutor's approach at jury selection. For example, while he said that he "put a great deal of weight on a person's first impression" as recorded in written questionnaires when explaining his reason for peremptorily dismissing Vernon G., he had apparently not applied this same stance in the cases of a number of other non-black individuals who then sat on the jury. Debra U. and Laura M. for example, like Vernon G., had indicated opposition to the death penalty in their questionnaires, only to change this position during direct questioning.

On 10 March 2014, the TCCA dismissed Ray Jasper's petition as an abuse of the habeas corpus process, that is, that it did not overcome the stringent criteria under Texas law for allowing the prisoner back into court on a successor petition.

On 19 March 2014, the US Court of Appeals for the Fifth Circuit denied permission for Ray Jasper to file a successive petition on this race issue on the basis of the previously missing questionnaires, ruling that he had not met the requirements under US law to file such a petition. The Fifth Circuit refused to issue a stay of execution, and the US Supreme Court declined to intervene.

Ray Jasper was put to death by lethal injection soon after 6pm on 19 March 2014. If he had been three months and three days younger at the time of the crime, he would not have been executed, because of the *Roper* ruling.

A few weeks before his execution, Ray Jasper had written a long letter, in what he said "could be my final statement on earth". In it, he wrote the following:

> *"I think 'empathy' is one of the most powerful words in this world that is expressed in all cultures. This is my underlining theme. I do not own a dictionary, so I can't give you the Oxford or Webster definition of the word, but in my own words, empathy means 'putting the shoe on the other foot.'*
>
> *Empathy. A rich man would look at a poor man, not with sympathy, feeling sorrow for the unfortunate poverty, but also not with contempt, feeling disdain for the man's poverish [sic] state, but with empathy, which means the rich man would put himself in the poor man's shoes, feel what the poor man is feeling, and understand what it is to be the poor man...*
>
> *Empathy gives you an inside view. It doesn't say 'If that was me...', empathy says, 'That is me.'*
>
> ....
>
> *Imagine you're a young white guy facing capital murder charges where you can receive the death penalty... the victim in the case is a black man... when you go to trial and step into the courtroom... the judge is a black man... the two State prosecutors seeking the death penalty on you... are also black men... you couldn't afford an attorney, so the Judge appointed you two defense lawyers who are also black men... you look in the jury box... there's 8 more black people and 4 hispanics... the only white person in the courtroom is you... How would you feel facing the death penalty? Do you believe you'll receive justice?*
>
> *As outside of the box as that scene is, those were the exact circumstances of my trial. I was the only black person in the courtroom.*
>
> *Again, I'm not playing the race card, but empathy is putting the shoe on the other foot."*[37]

Ray Jasper's discussion of empathy may bring to mind the words of four US Supreme Court Justices when, 16 years before the Court finally ended the use of the death penalty against under-18-year-old offenders in the USA, they had argued that it should be ended there and then, in 1989:

> "To be sure, the development of cognitive and reasoning abilities and of empathy, the acquisition of experience upon which these abilities operate and upon which the capacity to make sound value judgments depends, and in general the process of maturation into a self-directed individual fully responsible for his or her actions, occur by degrees… Insofar as age 18 is a necessarily arbitrary social choice as a point at which to acknowledge a person's maturity and responsibility, given the different developmental

> rates of individuals, it is, in fact, a conservative estimate of the dividing line between adolescence and adulthood. Many of the psychological and emotional changes that an adolescent experiences in maturing do not actually occur until the early 20s." [38]

At Ray Jasper's trial in 2000, the jury had been presented with evidence that the defendant was immature at the time of the crime, that he had already demonstrated his potential to mature and change, and that he had been a model inmate in pre-trial custody. A doctor testified that Jasper had reported suicidal thoughts since the age of 14, which the doctor attributed to an inability to handle stress, and that Ray Jasper had not displayed aggressive conduct since being arrested. He also testified that young adults become less impulsive and aggressive by their mid-20s and later.

Seeking to persuade the jury that Ray Jasper would be a "future danger", a prerequisite for a death sentence in Texas, the prosecution presented evidence of his alleged prior misconduct from the age of 15, including stealing a bicycle, drug possession and an attempted burglary.

In his letter written a few weeks before he was killed, Ray Jasper wrote the following:

> *"A doctor can't look at a person and see cancer, they have to look beyond the surface. When you look at the Justice system, the Death Penalty, or anything else, it takes one to go beyond the surface. Proper diagnosis is half the cure.*
>
> *I'm a father. My daughter was six weeks old when I got locked up and now she's 15 in high school. Despite the circumstances, I've tryed* [sic] *to be the best father in the world. But I knew that her course in life is largely determined by what I teach her. It's the same with any young person, their course is determined by what we are teaching them. In the words of Aristotle, 'All improvement in society begins with the education of the young'."*

Now another Texas prisoner, Robert Campbell, is due to be executed for a crime committed when he was 18. A woman who took him in when he was living on the streets of Houston as a 16-year-old recalled in 2000 that Robert Campbell had left home when he was 13 or 14 years old to escape the physical and emotional abuse that was present in his family environment, principally at the hands of his father. She said:

> "Robert could have been a good kid if his family was good. I think Robert doesn't know right from wrong because he was never taught. Robert basically raised himself. He learned everything he knew on the streets".

The area of Houston where he grew up – Sunnyside – was recently ranked as the sixth most dangerousness neighbourhood in the USA in a study using FBI crime data.[39]

MORE THAN A CHRONOLOGICAL FACT

> *Youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and psychological damage*
>
> US Supreme Court

The USA would have banned the death penalty against under 18-year-old offenders a decade and a half before the *Roper* ruling if a single one of its Justices had switched their vote. For in 1989, four Justices argued for such a ban even then, finding that there were already "strong indications that the execution of juvenile offenders violates contemporary standards of decency" in the USA.[40] Dissenting against the Court's refusal to ban the use of the death penalty against 16- and 17-year old offenders, the four not only pointed out that 18 was a conservative cut-off, but also to research showing that:

> "Adolescents on death row appear typically to have a battery of psychological, emotional, and other problems going to their likely capacity for judgment and level of blameworthiness."

The research in question had found that, in addition to various mental impairments, 12 of 14 of the offenders who had been the subject of the study had been physically abused, and five sexually abused. The Justices noted that "within the families of these children, violence, alcoholism, drug abuse, and psychiatric disorders were commonplace".

Among those executed in Texas for murders committed at the age of 17, before the US Supreme Court banned such executions in 2005, were the following individuals:

- Johnny Garrett. He 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". Johnny Garrett was frequently beaten by his father and stepfathers. On one occasion, when he would not stop crying, he was put on the burner of a hot stove, and retained the burn scars until his death. He was raped by a stepfather who then hired him to another man for sex. Introduced to alcohol by his family when he was 10, he subsequently indulged in serious substance abuse involving substances such as paint, thinner and amphetamines. He was executed in 1992.
- Curtis Harris. He was one of nine children brought up by an alcoholic father who beat the children regularly with electric cords, belts, a bullwhip and fists. On one occasion, Curtis Harris was hit over the head by his father with a wooden board and his cranium was permanently indented by the blow. He was executed in 1993.
- Joseph Cannon. One psychologist considered Joseph Cannon's case history "exceptional" in the extent of the brutality and abuse he had suffered as a child. He drank and sniffed gasoline and at the age of 10 was diagnosed as suffering from organic brain damage as a result of the solvent abuse. He was sexually abused by his stepfather when he was seven and eight; and was regularly sexually assaulted by his grandfather between the ages of 10 and 17. He was executed in 1998.

Among those who have been executed in recent years in Texas for crimes committed when they were 18 or 19 years old are the following:

- Troy Kunkle. At the time of the crime, he was just over 18 years old, with no criminal record, and emerging from a childhood of deprivation and abuse. When he was 12, his father's mental condition deteriorated, resulting in severe mood swings. His mother said that "a lot of times he'd slam Troy into a wall or onto the floor." She recalled "coming home once and there was a big hole in the wall. I found out later that Troy's father had slammed him so hard into the wall that he had smashed right through it." At other times, she said, he "would get Troy into a chokehold. He choked Troy so hard sometimes that it looked like Troy couldn't even breathe". Troy Kunkle was executed in 2005.
- José Medellín. Barely 18 years old at the time of the crime, a post-conviction investigation funded by the Mexican Consulate (he was a Mexican national) found that he grew up in an environment of abject poverty in Mexico and was exposed to gang violence after he came to Houston to join his parents when he was nine. It established that he suffered from depression, suicidal tendencies and alcohol dependency. José Medellín was executed in 2008.
- Bobby Hines. The jury heard no expert testimony about his abusive childhood and its effects on him. A mitigation expert later described Bobby Hines's childhood as "a nightmarish hell, full of fear, pain and despair", particularly due to the violence

> inflicted by the alcoholic father. The mother took the brunt of the violence, witnessed by the children, with Bobby "a close second" due to the father's apparent belief that the boy was not his biological son. The children experienced frequent hunger and homelessness as the father used much of the family's money on alcohol. From about the age of 13, Bobby Hines began using marijuana, amphetamines, alcohol and inhalants. He was executed in 2012, for a crime committed at 19.

In 1993, in another case involving a Texas death row prisoner who was 19 years old at the time of the crime, the US Supreme Court wrote:

> "Our cases recognize that youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and psychological damage."[41]

It reiterated this long-standing position in the *Roper* ruling. But just as the attributes of youth do not vanish on a person's 18th birthday, neither do the effects of childhood abuse and deprivations. While such effects may forever scar a person's psyche, the wounds will still presumably be relatively raw if the individual concerned is barely into adulthood.

ROBERT CAMPBELL: 'ROBERT COULD HAVE BEEN A GOOD KID'

At the time of writing, Robert James Campbell was scheduled for execution in Texas on 13 May 2014. Like Anthony Doyle and Ray Jasper, he was sentenced to death for a murder committed when he was 18 years and three months old. By April 2014, he was 41 years old and had been on death row for almost 22 years, well over half of his life.

Alexandra Rendon, a Hispanic woman, went missing after leaving her job at a bank in Houston on the evening of 3 January 1991. Her body was found 12 days later, with the cause of death found to be a gunshot wound to her back. Eighteen-year-old Robert Campbell was arrested the next day, 16 January 1991, charged with murder during sexual assault or abduction, and sentenced to death in a Harris County court in 1992. Leroy Lewis, also 18 at the time of the crime, pleaded guilty and was sentenced to 35 years in prison.

Like Anthony Doyle and Ray Jasper, Robert Campbell is African American. As in Ray Jasper's case, his jury had no African Americans on it. The record indicates that Robert Campbell was tried and sentenced to death by an all-white jury.

Defending the death sentence in federal court in 2004, the Texas authorities argued that Robert Campbell was "properly convicted and sentence to die in Texas state court for the senseless murder of Alexandra Rendon".[42] That the murder was senseless is beyond argument, but the planned killing by the state in response surely also qualifies as the "pointless and needless extinction of life". This was how the then most senior judge on the US Supreme Court described executions in 2008. With only "marginal contributions to any discernible social or public purposes", executions, he wrote, are "patently excessive and cruel."[43]

At Robert Campbell's trial, his lawyer did not call any witnesses at the guilt/innocence stage. The jury convicted Campbell of capital murder, and the trial moved into the sentencing phase. To make its case for "future dangerousness", the state presented evidence of Robert Campbell's conviction for two robberies committed in 1990 at the age of 17, and his alleged involvement in two other incidents similar in certain respects to the crime against Alexandra Rendon, where persons were abducted in their cars, taken to a remote location, and had possessions stolen. In one of these incidents, the victim had been shot at.

In his attempt to defend Robert Campbell from execution, the defence lawyer presented three members of the Campbell family and a friend, who testified that the defendant was remorseful, needed rehabilitation, was loved by his family, and would not be a future danger to society. The trial lawyer presented some evidence and argument that Robert Campbell's

criminal conduct could be attributed to his troubled childhood and absence of parental support. A question on appeal has been whether he did enough to investigate and present a mitigation case. However, that question has itself never been fully answered because of the actions of his initial appeal lawyer.

In his state habeas corpus proceeding – which is the first opportunity for the condemned prisoner to present new evidence outside of the bare trial record in support of claims that he or she was denied their constitutional rights – Robert Campbell's appeal lawyer alleged that the trial attorneys had failed to conduct a proper investigation into his background, but then himself failed to demonstrate what such an investigation would have revealed. This effectively forfeited the claim of ineffective assistance of trial counsel.

On federal appeal, the next lawyer presented a number of affidavits signed by relatives and family friends in 2000 attesting to Robert Campbell's childhood of deprivation and abuse, saying that they had either not been contacted by the trial lawyer or if they had that they had not been asked for the details they later shared in these post-trial affidavits. One of these sworn statements, for example, recalled that Robert Campbell's father

> "was always drunk and would beat up on their mom when he came home…also used to beat on the kids something terrible…He used to hit them on the head or wherever he felt like it. He would throw bricks, irons, and boards at them as well…Those kids had a terrible life…To this day Richard [Robert's brother] still cries about what his dad did, and tells me 'you just don't know, it's really bad.' Whatever he did to them made them all turn to alcohol and drugs".[44]

Robert Campbell's older brother Wilbert Jr. recalled that

> "when dad was home, it was a nightmare. He was always yelling or hitting someone. As we got older dad started whipping us."[45]

Their mother recalled how

> "a couple of times Wilbert [Sr.] cut me so bad I had to go [to] the hospital for stiches in my face and once in [the] back of my head. The kids wanted to break up the fights, but I would not let them because they would get hurt. This type of stuff went on for years.
>
> There was constant chaos around the home when Wilbert Sr. was there. Wilbert Sr. used to yell about every little thing. If the kids did not do exactly what he wanted, when he wanted, they were beaten bad… all the kids would get pretty good beatings. I tried to stop him but it ended up with him beating on me. Wilbert hit them with his hands or belt. He was a big guy – 6 feet and 200lbs. When he hit, it hurt".[46]

Robert's older sister recalls her father beating her with an "air-conditioning cord. I had whelps [sic] all over". She said that

> "when Robert was little, he used to pretend he was leaving for school but he didn't go. He would go hang out with kids from the apartment projects where we lived. Neither mom nor dad did anything to make sure Robert went to school."[47]

Robert Campbell left home when he was about 13 years old in order to escape the abuse. He lived on the streets until he was about 16 and taken in by a woman "who felt sorry for him".[48] In a sworn statement in 2000, this guardian figure recalled that "Robert finally left [his family] house for good because he saw his dad hit his mother in the face with a phone and knocked all her teeth out".[49] She said that "the entire time Robert lived with me, he was very disturbed", and that "almost every night he would lie in bed and cry for at least 30 minutes". She said that Robert Campbell's older brother Wilbert

> "cried to me many times about how bad their childhood was. He told me about the beatings they would get from dad. Wilbert has often said there is more to it than he can tell me. He would say you just don't know what he (dad) did."[50]

In 2003, the federal District Court ruled that because "the affidavits and their underlying allegations have not been exhausted in state court", and because there was no excuse for the failure to present the affidavits in state court, consideration of their contents by federal court was procedurally barred. The District Judge continued:

> "Without the inclusion of the affidavits, his ineffective-assistance-of-counsel claim lacks any material support. Even if Campbell's ineffective-assistance-of-counsel claim were properly before the Court, the unexhausted nature of the affidavits would foreclose federal relief. Campbell's failure to exhaust this claim and its factual support bars federal consideration of his counsel's efforts to present a case in mitigation of punishment. This claim is denied."[51]

The US Court of Appeals for the Fifth Circuit upheld this in December 2004. The failure of Robert Campbell's court-appointed state habeas lawyer to raise in state court the claim of inadequate legal representation at trial meant that it was "procedurally defaulted", that is barred, from federal judicial review.

In 2012 the US Supreme Court issued a ruling in an Arizona case – *Martinez v. Ryan* – that opened the door to prisoners possibly overcoming this procedural default rule in certain cases where they had been denied effective representation during the state-level appeals. The Fifth Circuit held that the *Martinez* ruling did not apply to Texas cases. In *Trevino v. Texas* in 2013, the Supreme Court then ruled that where, as in Texas, "a State's procedural framework, by reason of its design and operation, makes it highly unlikely in a typical case that a defendant will have a meaningful opportunity to raise an ineffectiveness-assistance-of-trial-counsel claim on direct appeal, the exception recognized in Martinez applies".

But despite this, because Robert Campbell's case proceeded through the federal stage of his appeals before the *Martinez* and *Trevino* rulings, he may yet be denied federal review of his claim that his legal representation at the sentencing phase of his trial was inadequate.

Contemporaneous media reports of Robert Campbell's trial indicate that his jury deliberated for nine hours, over the course of two days, on the question of his sentence. This lengthy deliberation indicates that, despite the undoubtedly serious nature of the crime in this case, the jury was having some difficulty in deciding on the sentence for which it eventually voted. If the jurors had known about the full extent of Robert Campbell's tormented background, could it have tipped the balance in favour of life?

CONCLUSION

Tonight, we tell our children that in some instances, in some cases, killing is right

Napoleon Beazley, final statement, Texas execution chamber, 28 May 2002

In his first State of the State address in January 2001, current Texas Governor Rick Perry suggested that executing people was a good way to affirm the value of life.[52] This view of life-affirming killing contrasts with, for example, the final words of Napoleon Beazley, one of the more than 270 people who have gone to their deaths in the Texas execution chamber during the Perry governorship:

> "I'm saddened by what is happening here tonight. I'm not only saddened, but disappointed that a system that is supposed to protect and uphold what is just and right can be so much like me when I made the same shameful mistake... And I'm sorry that it

> was something in me that caused all of this to happen to begin with. Tonight we tell the world that there are no second chances in the eyes of justice...Tonight, we tell our children that in some instances, in some cases, killing is right."[53]

Napoleon Beazley was one of four prisoners executed during Governor Perry's term in office who were 17 years old at the time of the crime, in violation of international law. Forty-eight others have been executed during this governorship who were either 18 or 19 years old at the time of the crime.

Amnesty International opposes the death penalty in all cases, unconditionally, regardless of the crime or the method chosen by the state to kill the prisoner. A majority of countries have abolished the death penalty in law or practice. In an increasingly abolitionist world, the sentencing to death and execution of defendants who were teenagers at the time of the crime seems ever more excessive.

In 1989, arguing that anyone who was under 18 at the time of the crime should be exempted from the death penalty, four Supreme Court Justices noted that "many of the psychological and emotional changes that an adolescent experiences in maturing do not actually occur until the early 20s". Sixteen years later, in *Roper v. Simmons*, the Supreme Court, banned the execution of under-18-year-old offenders while at the same time noting that "the qualities that distinguish juveniles from adults do not disappear when an individual turns 18." Scientific research continues to show that brain development and psychological maturation continues far beyond the late teenage years.

"Categorical rules tend to be imperfect", the US Supreme Court noted in 2010.[54] While its *Roper* categorical rule belatedly brought the USA into line with the international ban on the use of the death penalty against people who were under 18 years old at the time of the crime, Texas and other US states should not stop there. If the evolution was late coming, there is no reason for the USA not to make up for lost time now.

Over a century ago, the US Supreme Court said that the Constitution's Eighth Amendment ban on "cruel and unusual punishments" was not a static concept but could "acquire meaning as public opinion becomes enlightened by a humane justice."[55] Fifty-six years ago, it said that the Eighth Amendment draws its meaning from the "evolving standards of decency that mark the progress of a maturing society".[56]

In *Gregg v. Georgia* in 1976, using this test, the Court asserted that "the most marked indication of society's endorsement of the death penalty for murder is the legislative response to *Furman*". It found that Texas and 34 other states had enacted new death penalty statutes in the wake of the *Furman v. Georgia* ruling in 1972 which had overturned existing capital laws because of the arbitrary manner in which the death penalty was being handed out.[57] It gave states the go ahead to resume executions, and Texas has led the country in the use of a punishment that has at the same time dropped out of use in country after country.

Indeed, applying this evolving standards test to the international picture leads to the clear conclusion that the USA is out of step with a global human rights trend. More than 70 countries have abolished the death penalty for all crimes since 1976 and today 140 countries are abolitionist in law or practice. A small number account for the bulk of the global judicial death toll each year. One of them is the United States of America. Within the USA, a small number of states account for the vast majority of executions. The main culprit is Texas.[58]

Recognition under international human rights law of the existence of the death penalty should not be invoked "to delay or to prevent the abolition of capital punishment", in the words of article 6.6 of the ICCPR. According to the UN Human Rights Committee, Article 6 "refers generally to abolition in terms which strongly suggest that abolition is desirable… [A]ll measures of abolition should be considered as progress in the enjoyment of the right to

life".[59] The Inter-American Court of Human Rights has described this approach to abolition, which it found was consistent with the American Convention on Human Rights also, as "incremental in character."[60]

The US Supreme Court's prohibition during the past decade of the execution of offenders deemed to have "mental retardation" and those who were under 18 at the time of the crime were further positive incremental steps. Those decisions brought US conduct closer to *minimum* internationals standards which had long since been recognized by much of the rest of the world. While those rulings were of course welcome, officials in the USA should be somewhat embarrassed that it took so long before US "standards of decency" were deemed to have evolved to require an end to such executions in their country as well. Texas, it should be said, was on the wrong side of the national consensus found by the Court on both issues. It should not now be considered on the right side of anything when it continues to execute offenders who were young adults at the time of the crime, any more than it should when it executes those with serious mental illness,[61] or those with compelling claims of intellectual disabilities,[62] or of rehabilitation,[63] or of racial discrimination,[64] or of disparate sentencing compared to co-defendants,[65] or of prosecutorial misconduct,[66] or those denied adequate legal representation,[67] or foreign nationals denied their consular rights,[68] and so on.

The Human Rights Committee noted in 1982 that progress towards "abolishing or limiting the application of the death penalty" was "quite inadequate". Dozens of countries have abolished the death penalty since then. By then, Texas had yet to execute a single inmate under its post-*Furman* law. It has executed more than 500 since then. Clearly, officials in the USA are failing to bring nationwide abolition closer within any reasonable timeframe. Officials in Texas could be said to be among the country's greatest failures in this regard.

The obligations under the ICCPR are binding on all levels of government, and officials at all levels of government, and in all jurisdictions in a federal system, must do all they can to ensure that their jurisdiction operates in compliance with the treaty's provisions. As the Human Rights Committee has said in explaining a state's obligations under the ICCPR:

> "All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local – are in a position to engage the responsibility of the State Party… Although article 2, paragraph 2, allows States Parties to give effect to Covenant rights in accordance with domestic constitutional processes, the same principle operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty. In this respect, the Committee reminds States Parties with a federal structure of the terms of article 50, according to which the Covenant's provisions 'shall extend to all parts of federal states without any limitations or exceptions'."[69]

As well as calling for effective measures to ensure that there is no racial discrimination in capital cases, the Human Rights Committee in March 2014 called on the federal authorities to "engage with retentionist states with a view to achieving a nationwide moratorium" on executions. While it works at that, the federal government should seek to intervene in individual cases to encourage executive clemency. As good a place to start as any would be for federal authorities to join those pressing Governor Perry and the Texas Board of Pardons and Paroles to stop the execution of Robert Campbell and to commute his death sentence.[70]

While the execution of Anthony Doyle and Ray Jasper in March 2014 of course does not inspire confidence that the Texas clemency authorities will change their approach in the case of Robert Campbell, Amnesty International will continue to press for the Board of Pardons and Paroles and Governor Perry to stop this latest killing. Between them, they have the authority to do so. They should use this authority, and begin to confront the injustices of the death penalty, with a view to the ultimate eradication of this cruel and brutalizing policy.

ENDNOTES

[1] 71 countries for all crimes, and six others for ordinary crimes.

[2] On rehabilitation, for example, see Article 10.3, International Covenant on Civil and Political Rights ("The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation").

[3] "Neither retribution nor deterrence provides adequate justification for imposing the death penalty on juvenile offenders", *Roper v. Simmons*, US Supreme Court, 2005. "Because imposition of the death penalty on persons for offenses committed under the age of 18 makes no measurable contribution to the goals of either retribution or deterrence, it is 'nothing more than the purposeless and needless imposition of pain and suffering,' and is thus excessive and unconstitutional." *Stanford v. Kentucky*, US Supreme Court, 1989, Justice Brennan dissenting (& Justices Marshall, Blackmun, Stevens).

[4] *Graham v. Collins* (1993), Justice Souter, dissenting. The prisoner in this case, Shaka Sankofa (formerly known as Gary Graham), was executed in Texas in June 2000 for a crime committed (possibly not by him) when he was 17 years old.

[5] *Callins v. Collins*, 22 February 1994, Justice Blackmum dissenting from denial of certiorari.

[6] Quoted in *Johnson v. Texas*, 509 U.S. 350 (1993). Dorsie Johnson was executed in 1997.

[7] For example, see *Atkins v Virginia* (2002) and *Roper v. Simmons* (2005).

[8] *Johnson v. Texas* (1993).

[9] Debra Bradley Ruder, The Teen Brain. Harvard Magazine, September-October 2008, http://harvardmag.com/pdf/2008/09-pdfs/0908-8.pdf

[10] TEX AL. CODE ANN. § 106, http://codes.lp.findlaw.com/txstatutes/AL/4/106/106.071 "A minor commits an offense if the minor purchases an alcoholic beverage. A minor does not commit an offense if the minor purchases an alcoholic beverage under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code."

[11] A minor may possess such a beverage "(1) while in the course and scope of the minor's employment if the minor is an employee of a licensee or permittee and the employment is not prohibited by this code; (2) if the minor is in the visible presence of his adult parent, guardian, or spouse, or other adult to whom the minor has been committed by a court; or (3) if the minor is under the immediate supervision of a commissioned peace officer engaged in enforcing the provisions of this code."

[12] Also, "A minor commits an offense if he falsely states that he is 21 years of age or older or presents any document that indicates he is 21 years of age or older to a person engaged in selling or serving alcoholic beverages." In 1984, US Congress passed the National Minimum Drinking Age Act, under which a percentage of annual funds for federal highways was withheld from those states where the purchase and public possession of alcoholic beverages by under-21-year-olds was lawful. 23 U.S.C. §158, see http://www.law.cornell.edu/uscode/text/23/158

[13] See http://www.ncbi.nlm.nih.gov/books/NBK44364/, review of The Surgeon General's Call to Action To Prevent and Reduce Underage Drinking. Office of the Surgeon General (US); National Institute on Alcohol Abuse and Alcoholism (US); Substance Abuse and Mental Health Services Administration, 2007.

[14] Victor Streib, The Juvenile Death Penalty Today: Death sentences and executions for juvenile crimes, January 1, 1973 to February 28, 2005. Issue No. 77 (final issue), http://www.deathpenaltyinfo.org/documents/StreibJuvDP2005.pdf

[15] 18 abolitionist states (Alaska, Connecticut, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, West

Virginia, Wisconsin (plus District of Columbia). Plus 14 retentionist (Kentucky, Delaware, Indiana, Idaho, Nebraska, Kansas, Virginia, Utah, Washington, Colorado, South Dakota, Montana, Wyoming, New Hampshire). Of the newly abolitionist states, Connecticut, New Mexico and Maryland still have individuals on death row). At the time of writing, another retentionist state, Oregon, has 36 individuals on its death row (the same as Texas has offenders on its death row for crimes committed at 18 or 19).

[16] Florida, Oklahoma, Virginia.

[17] Declaration of William Harrell, 12 March 2014.

[18] Declaration of William S. Bush, 13 March 2014.

[19] Email to Amnesty International from Associate Professor William Bush, 21 April 2014.

[20] UN Convention on the Rights of the Child, Article 3.1.

[21] UN Convention on the Rights of the Child, Article 40.1.

[22] *Baze v. Rees*, 16 April 2008, Justice Stevens concurring in the judgment.

[23] Concluding observations on the fourth report of the USA. Human Rights Committee, Advance Unedited Version. Adopted by the Committee at its 110th session (10-28 March 2014).

[24] See generally, USA: Death by discrimination – the continuing role of race in capital cases, April 2003, http://www.amnesty.org/en/library/info/AMR51/046/2003/en.

[25] *Turner v. Murray*, 476 U.S. 28 (1986).

[26] Scott Phillips, Racial disparities in the capital of capital punishment. 45 Houston Law Review, 807, 809 (Summer 2008).

[27] *Witherspoon v. Illinois*, 391 U.S. 510 (1968).

[28] *Wainwright v. Witt*, 469 U.S. 412 (1985). In 1992, in *Morgan v. Illinois*, the Court explicitly extended the *Witt* standard to include proponents of the death penalty. In other words, anyone whose support for the death penalty would "prevent or substantially impair" them from performing his or her duties as a juror can be dismissed for cause.

[29] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Addendum: Mission to the United States of America, UN Doc. E/CN.4/198/68/Add.3, para. 147. 22 January 1998.

[30] In 1986, the US Supreme Court acknowledged evidence from research that the "death qualification" of capital jurors "produces juries somewhat more 'conviction-prone' than 'non-death-qualified' juries". The Court had been presented with 15 published studies each finding that death-qualified jurors were more conviction-prone than excludable jurors. Three Justices referred to this "overwhelming evidence that death-qualified juries are substantially more likely to convict or to convict on more serious charges than juries on which unalterable opponents of capital punishment are permitted to serve", adding that "death-qualified jurors are, for example, more likely to believe that a defendant's failure to testify is indicative of his guilt, more hostile to the insanity defence, more mistrustful of defence attorneys, and less concerned about the danger of erroneous convictions". *Lockhart v. McCree*, 476 U.S. 162 (1986).

[31] *Gray v. Mississippi*, 481 U.S. 648 (1987)

[32] *Wilkerson v. Texas*, Justice Marshall dissenting from denial of certiorari, joined by Justice Brennan.

[33] Steven Russell (who, according to the evidence, inflicted the fatal wounds) and Douglas Williams, each also charged with capital murder, were later sentenced to life imprisonment. Both are African American.

[34] *Jasper v. Thaler*, Memorandum opinion and order denying relief. US District Court for the Western District of Texas, 19 January 2011.

[35] William J. Bowers et al., Sentencing in black and white: An empirical analysis of the role of jurors' race and jury racial composition. 3 U. Pa. J. Const. L. 171, February 2001.

[36] *Ex parte Ray Jasper*. Application for post-conviction writ of habeas corpus. In the Court of Criminal Appeals of Texas, 3 March 2014.

[37] The letter is available at http://gawker.com/a-letter-from-ray-jasper-who-is-about-to-be-executed-1536073598

[38] *Stanford v. Kentucky* (1989), Justice Brennan dissenting (& Justices Marshall, Blackmun, Stevens).

[39] Two Houston neighbourhoods called most dangerous in US. Houston Chronicle, 30 April 2013, http://www.chron.com/business/real-estate/article/Two-Houston-neighborhoods-called-most-dangerous-4476367.php

[40] *Stanford v. Kentucky*, dissent, *op. cit*.

[41] *Johnson v. Texas* (1993).

[42] *Campbell v. Dretke*, Respondent-Appellee's opposition to application for certificate of appealability, In the US Court of Appeals for the Fifth Circuit, 6 July 2004.

[43] *Baze v. Rees*, US Supreme Court, 16 April 2008, Justice Stevens concurring in the judgment.

[44] Affidavit of De De Richardson, 30 October 2000.

[45] Affidavit of Wilbert Campbell, Jr., 30 October 2000.

[46] Affidavit of Wilda Campbell, 30 October 2000.

[47] Affidavit of Sandra Campbell, 30 October 2000.

[48] Affidavit of Shirley Green, 30 October 2000.

[49] *Ibid*.

[50] *Ibid*.

[51] *Campbell v. Cockrell*. Memorandum and order granting respondent's motion for summary judgment, denying Campbell' motion for summary judgment, denying Campbell's motion for an evidentiary hearing, and denying writ of habeas corpus. In the US District Court, Southern District of Texas, 20 March 2003.

[52] "Texans know that the air that we breathe, the water that we drink, the land that we inhabit, they are all a reflection of the majesty and the beauty of our wonderful Creator. We must preserve His image. Like most Texans, I am a proponent of capital punishment because it affirms the high value we place on innocent life." Available at http://governor.state.tx.us/news/speech/67/

[53] Napoleon Beazley was executed on 28 May 2002. For details of the case, see USA: Too young to vote, old enough to be executed: Texas set to kill another child offender, 30 July 2001, http://www.amnesty.org/en/library/info/AMR51/105/2001/en and USA: Death in black and white, 8 August 2001, http://www.amnesty.org/en/library/info/AMR51/117/2001/en

[54] *Graham v. Florida*, US Supreme Court, 17 May 2010.

[55] *Weems v. United States* (1910).

[56] *Trop v. Dulles* (1958).

[57] In *Gregg*, the Court found that "the legislatures of at least 35 States have enacted new statutes that provide for the death penalty for at least some crimes that result in the death of another person". Six of the 35 are now abolitionist – Connecticut, Illinois, Maryland, New Mexico, New York and Rhode Island.

[58] Three quarters of the executions in the USA since 1976 have been carried out in just eight states –

Texas, Oklahoma, Virginia, Missouri, Ohio, Alabama, Georgia and Florida.

[59] CCPR General Comment No. 6, The right to life (Article 6), 1982.

[60] In an advisory opinion on the American Convention on Human Rights 30 years ago, the Court said that that treaty "adopts an approach that is clearly incremental in character. That is, without going so far as to abolish the death penalty, the Convention imposes restrictions designed to delimit strictly its application and scope, in order to reduce the application of the penalty to bring about its gradual disappearance." Inter-American Court of Human Rights Court, Restrictions To the Death Penalty (Arts. 4(2) And 4(4) American Convention On Human Rights). Advisory Opinion OC- 3/83 of 8 September 1983. Series A No. 3, para. 57.

[61] For example, see case of Jonathan Green http://www.amnesty.org/en/library/info/AMR51/038/2010/en; or James Colburn http://www.amnesty.org/en/library/info/AMR51/158/2002/en, or Kelsey Patterson http://www.amnesty.org/en/library/info/AMR51/047/2004/en

[62] For example, see case of Ramiro Hernandez Llanas, http://www.amnesty.org/en/library/info/AMR51/019/2014/en; or Marvin Wilson, http://www.amnesty.org/en/library/info/AMR51/071/2012/en

[63] For example, see case of David Powell, http://www.amnesty.org/en/library/info/AMR51/048/2010/en

[64] For example, see case of Kimberly McCarthy, http://www.amnesty.org/en/library/info/AMR51/039/2013/en

[65] For example, see case of Steven Woods, http://www.amnesty.org/en/library/info/AMR51/076/2011/en

[66] For example, see case of Joseph Nichols, http://www.amnesty.org/en/library/info/AMR51/033/2007/en

[67] For example, see case of Bobby Hines, http://www.amnesty.org/en/library/info/AMR51/088/2012/en

[68] For example, see case of Edgar Tamayo, http://www.amnesty.org/en/library/info/AMR51/085/2013/en

[69] UN Doc.: CCPR/C/21/Rev.1/Add. 13, 26 May 2004. UN Human Rights Committee, General Comment 31: The nature and general legal obligation imposed on States Parties to the Covenant, ¶4.

[70] Amnesty International Urgent Action on Robert Campbell's case is available at http://www.amnesty.org/en/library/info/AMR51/025/2014/en