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UNITED STATES OF AMERICA

Death penalty developments in 1991

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This document updates statistical and other information given in Amnesty International's earlier papers about the death penalty in the USA. Those requiring a general explanatory background about the application of the death penalty under state and federal law should consult Amnesty International's 1987 publication, *United States of America: The Death Penalty*.

This document provides information about the 14 prisoners executed in 1991 and other statistics on death sentencing and executions. At the end of 1991 an unprecedented 2,547 prisoners were under sentence of death in 34 states, under US federal military law and under US federal civilian law. Fourteen prisoners were executed in 1991, bringing to 157 the total number of executions in the USA since states revised their death penalty statutes in the mid-1970s. All but one of the 1991 executions were carried out by southern states: five in Texas; two each in Florida and Virginia; and one each in Georgia, Louisiana, Missouri, North Carolina and South Carolina.

It summarises state and federal legislative and judicial developments over the year. Amnesty International was concerned at the move to extend the scope of the death penalty under federal (civilian) law, contrary to international human rights standards and treaties which encourage governments to restrict progressively the number of offences punishable by death, with a view to the ultimate abolition of capital punishment. The legislation, proposed in March by President George Bush, would have expanded the number of offences for which the death penalty can be imposed to more than 50 federal crimes. A provision within President Bush's proposed legislation would also have limited federal *habeas corpus* review of death penalty cases.

In November 1991, President Bush threatened to veto the final version of the crime bill because it retained state prisoners' right to petition for *habeas corpus* relief in federal court. Mr Bush described these appeals as "frivolous," even though in recent

years some 40 per cent of state-imposed death sentences have been overturned by federal courts on appeal because of constitutional error.

State legislative changes during 1991 were mostly negative from the abolitionist perspective. Of the sixteen bills enacted up to November, only four contained developments that were in any way progressive. New Mexico prohibited the execution of mentally retarded prisoners, two states introduced a third sentencing option of life imprisonment without parole, and one made slightly better provision for legal representation at trial. The remainder extended the use of the death penalty to cover additional crimes and imposed time constraints for filing post-conviction appeals.

Two decisions announced by the US Supreme Court during 1991 severely restricted state prisoners' right to challenge the constitutionality of their convictions and death sentences in the federal courts. Under new rules announced in *McCleskey v Zant* and *Coleman v Thomson*, the Court erected almost insurmountable barriers to the filing of second federal *habeas corpus* petitions or, indeed, a first petition if a prisoner had failed to meet the state court system's procedural requirements.

Bills to prohibit the execution of mentally retarded defendants failed to pass in 15 states. Bills to prohibit the execution of under-18-year-old offenders failed to pass in six states. This document provides updated information about juvenile offenders under sentence of death. At the end of the year, thirty-three juvenile offenders were under sentence of death. Five juvenile offenders were sentenced to death during the year in Florida, Mississippi, Texas and Virginia.

Several clemencies were granted during 1991. Before leaving office in January, Governor Richard Celeste commuted the death sentences of eight death row prisoners in Ohio. However, at the end of the year challenges to the legality of the commutations by the state's new Attorney General and Governor were pending in court. In February, Governor Douglas Wilder commuted Joseph Giarratano's death sentence, three days before he was scheduled to be executed. In March the Georgia Board of Pardons and Paroles commuted Harold Williams' death sentence, the fourth time the Georgia Board had granted clemency since the mid-1970s.

This document also includes brief details of nine prisoners currently under sentence of death whose cases have come to Amnesty International's attention over the past year and raise particular concerns. Several of the prisoners are feared to be at risk of execution in 1992.[1]

Appended are Amnesty International's letters to US state and federal authorities in 1991, and replies received.

Amnesty International opposes the death penalty unconditionally, considering it to be an extreme form of cruel, inhuman and degrading punishment and a violation of the right to life as proclaimed in the Universal Declaration of Human Rights.

This report summarizes a 38-page document (14,490 words), *United States of America: Death Penalty Developments in 1991* (AI Index: AMR 51/01/92), issued by Amnesty International in February 1992. Anyone wanting further details or to take action on this issue should consult the full document.

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[1]At the time of going to press, one of these, Johnny Garrett, a juvenile offender, was executed by the state of Texas on 11 February 1992. According to three medical experts who examined him between 1986 and 1992, Johnny Garrett was mentally impaired, chronically psychotic and brain-damaged. (See case study page 30).

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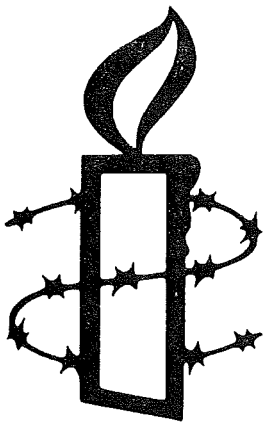

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INTRODUCTION

This document updates statistical and other information given in Amnesty International's earlier papers about the death penalty in the USA.[1] Those requiring a general explanatory background about the application of the death penalty under state and federal law should consult Amnesty International's 1987 publication, *United States of America: The Death Penalty*. This document provides information about the 14 prisoners executed in 1991 and other statistics on death sentencing and executions. It summarises state and federal legislative and judicial developments over the year and looks at the issue of clemency and why it is so rarely granted. This document provides updated information about juvenile offenders under sentence of death.[2] It includes brief details of nine prisoners currently under sentence of death whose cases have come to Amnesty International's attention over the past year. Several of the prisoners are feared to be at risk of execution in 1992.

At the end of 1991 an unprecedented 2,547 prisoners were under sentence of death in 34 states, under US federal military law and under US federal civilian law. Fourteen prisoners were executed in 1991, bringing to 157 the total number of executions in the USA since states revised their death penalty statutes in the mid-1970s. All but one of the 1991 executions were carried out by southern states: five in Texas; two each in Florida and Virginia; and one each in Georgia, Louisiana, Missouri, North Carolina and South Carolina.

Amnesty International was concerned at the move to extend the scope of the death penalty under federal (civilian) law, contrary to international human rights standards and treaties which encourage governments to restrict progressively the number of offences punishable by death, with a view to the ultimate abolition of capital punishment.

The legislation, proposed in March by President George Bush, would have expanded the number of offences for which the death penalty can be imposed to more than 50 federal crimes. These covered a broad range of offences, some not involving homicide. A provision within President Bush's proposed legislation would also have limited federal *habeas corpus* review of death penalty cases. Amnesty International was

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[1]In particular, *Developments in 1987* (AMR 51/01/88); *Developments in 1988* (AMR 51/01/89); *Developments from January to August 1989* (AMR 51/46/89); and *Developments from 1 September 1989 to 31 December 1990* (AMR 51/13/91).

[2]This should be read in conjunction with Amnesty International's October 1991 publication, *The Death Penalty and Juvenile Offenders* (AMR 51/23/91).

disturbed by any measure which would reduce the judicial scrutiny afforded to capital cases because of the risk of fundamental unfairness and actual miscarriage of justice going unredressed.

In November 1991, President Bush threatened to veto the final version of the crime bill because it retained state prisoners' right to petition for *habeas corpus* relief in federal court. Mr Bush described these appeals as "frivolous," even though in recent years some 40 per cent of state-imposed death sentences have been overturned by federal courts on appeal because of constitutional error.

Amnesty International called on Congress to recognize the human rights dimension of the question of the death penalty, and to look to the fundamental unfairness of its use in practice. The US federal government has the responsibility of ensuring that all laws within its territorial jurisdiction conform to minimum international standards, and the responsibility of promoting respect for human rights. It is also a federal responsibility to ensure that all citizens are afforded equal protection of the law, a guarantee which Amnesty International does not believe has been fulfilled in practice in the application of the death penalty.

State legislative changes during 1991 were mostly retrograde from the abolitionist perspective. Of the sixteen bills enacted up to November, only four contained developments that were in any way progressive. New Mexico prohibited the execution of mentally retarded prisoners, two states introduced a third sentencing option of life without parole, and one made slightly better provision for legal representation at trial. The remainder extended the use of the death penalty to cover additional crimes and imposed time constraints for filing post-conviction appeals. A new law in Delaware permits the trial judge to overrule the jury's sentencing recommendation in capital cases. Bills to prohibit the execution of under-18-year-old offenders failed to pass in six states. Bills to prohibit the execution of mentally retarded defendants failed to pass in 15 states.

Amnesty International was concerned at two decisions by the US Supreme Court during 1991 which severely restricted state prisoners' right to challenge the constitutionality of their convictions and death sentences in the federal courts. Under new rules announced in *McCleskey v Zant* and *Coleman v Thomson*, the Court erected almost insurmountable barriers to the filing of second or subsequent federal *habeas corpus* petitions and said almost any failure by a state prisoner to meet the state court system's procedural requirements will result in forfeiting the right to appeal to the federal courts. The rules apply even if the inmate, through the lawyer's mishandling of the state appeal, has not been able to bring any of his or her constitutional arguments before the state courts.

Amnesty International published a report, *The Death Penalty and Juvenile Offenders*, and launched a campaign in October 1991 to draw attention to the USA's use of the death penalty against persons who were aged under 18 at the time of the offence, in clear contravention of international standards on the death penalty. At the end of the year, thirty-three juvenile offenders were under sentence of death. Five juvenile

offenders were sentenced to death during the year in Florida, Mississippi, Texas and Virginia.

Several clemencies were granted during 1991. Before leaving office in January, Governor Richard Celeste commuted the death sentences of eight death row prisoners in Ohio. However, at the end of the year challenges to the legality of the commutations by the state's new Attorney General and Governor were pending in court. In February, Governor Douglas Wilder commuted Joseph Giarratano's death sentence, three days before he was scheduled to be executed. In March, the Georgia Board of Pardons and Paroles commuted Harold Williams' death sentence, the fourth time the Georgia Board had granted clemency since the mid-1970s. However, two clemency recommendations by the Louisiana Board of Pardons and Paroles had not been acted on by the Governor by the end of the year. Overall, clemency is nowadays very rarely granted, in part because the death penalty has become a highly charged political issue and elected state leaders seem to fear that granting clemency to death row prisoners may adversely affect theirown political careers.

Appended are Amnesty International's letters to US state and federal authorities in 1991, and replies received.

EXECUTIONS AND DEATH SENTENCES IN 1991

Fourteen prisoners were executed in eight US states during 1991. This compares with 23 executions carried out in 1990 and 16 in 1989. It brings the total number of prisoners executed under states' current death penalty legislation (enacted in the mid-1970s) to 157.[3]

DATE OF EXECUTION	No. SINCE 1977	NAME	STATE	RACE	RACE of Victim
26 February	144	Lawrence Buxton	Texas	Black	White
24 April	145	Roy Harich	Florida	White	White
23 May	146	Ignacio Cuevas	Texas	Hisp.[4]	White
18 June	147	Jerry Bird	Texas	White	White
25 June	148	Bobby Francis	Florida	Black	Black
22 July	149	Andrew L Jones	Louisiana	Black	Black
24 July	150	Albert Clozza	Virginia	White	White
22 August	151	Derick Peterson	Virginia	Black	White
23 August	152	Maurice Byrd	Missouri	Black	White
6 September	153	Donald Gaskins	South Carolina	White	Black
19 September	154	James Russell	Texas	Black	White
25 September	155	Warren McCleskey	Georgia	Black	White
18 October	156	Michael McDougall	North Carolina	White	White
12 November	157	GW Green	Texas	White	White

[3]Unless otherwise indicated, the statistics given in this paper were compiled by the NAACP Legal Defense and Education Fund, Inc., New York.

[4]"Hispanic" in the USA defines an individual belonging to the Spanish-speaking minority.

The table below indicates the number of executions carried out by US states under current death penalty laws up to the end of 1991. Over one-quarter of the total 157 executions were carried out by the state of Texas alone. Four other states (Florida, Louisiana, Georgia and Virginia) between them accounted for almost half the executions carried out.

No	STATE	Executions	No	STATE	Executions
1.	Texas	42 (27%)	9.	Mississippi	4 (2%)
2.	Florida	27 (17%)	10.	N Carolina	4 (2%)
3.	Louisiana	20 (13%)	11.	S Carolina	4 (2%)
4.	Georgia	15 (10%)	12.	Utah	3 (2%)
5.	Virginia	13 (8%)	13.	Indiana	3 (2%)
6.	Alabama	8 (5%)	14.	Arkansas	2 (1%)
7.	Missouri	6 (4%)	15.	Oklahoma	1 (1%)
8.	Nevada	5 (3%)	16.	Illinois	1 (1%)

Racial disparities

The racial breakdown of prisoners executed up to 1991 and their murder victims is given in the table below. It reaffirms a pattern in death sentencing already identified in many research studies and confirmed by the US government's own General Accounting Office in February 1990. Persons convicted of the murder of white victims are far more likely to be sentenced to death than those convicted of black-victim homicides. It is most unusual for a white defendant to be sentenced to death for the murder of a single black victim.

Donald Gaskins, executed in South Carolina in June 1991, was the first white man executed for the murder of one black victim since 1944 (see note below on his case). On the other hand, black defendants convicted of the murder of white victims have been shown to be between four and eleven times more likely than white defendants to receive the death penalty for the crime.

Statistics suggest that 90 percent of murders in the United States are intra-racial (white killing white; black killing black).

RACE OF DEFENDANT AND VICTIM	No. Executed	Percent
White defendant and white victim	116	57%
White defendant and black victim	1	.5%
Black defendant and white victim	49	24%
Black defendant and black victim	27	13%
Black defendant and Hispanic victim	1	.5%
Black defendant and Asian victim	1	.5%
Hispanic defendant and white victim	5	2%
Hispanic defendant and Hispanic victim	3	1%
Hispanic defendant and Asian victim	1	.5%

Notes on prisoners executed in 1991

Lawrence Buxton was executed in Texas on 26 February by lethal injection. He was convicted of the murder of a supermarket customer during a robbery in 1980. Buxton was black; the murder victim was a white man. Important mitigating evidence was not presented to the jury at the sentencing phase of the trial owing to the inadequacies of Buxton's court-appointed trial attorney who failed to investigate his background. Lawyers who took over the case in the final stages of Buxton's appeals discovered that he had grown up in circumstances of extreme poverty and was severely physically abused by his alcoholic father. Buxton was the youngest of 11 children. His mother died when he was one month old.

Roy Allen Harich was executed in Florida on 24 April by electrocution. He was executed for the 1981 murder of an 18 year-old white woman. According to his lawyers, Harich was under the influence of drugs and alcohol at the time of the crime.

Ignacio Cuevas was executed in Texas on 23 May by lethal injection. Cuevas, Hispanic, was sentenced to death for his role in the July 1974 murder of Julia Standley, white. Standley, a prison librarian, was one of several people taken hostage by Cuevas and two other prisoners during an 11-day prison seige at the Walls Unit in Huntsville. Two

prisoners and two hostages were killed in the ensuing shooting. Cuevas, an accomplice recruited by the two prisoner ringleaders, was the only one of the three to survive.

According to Cuevas' lawyers, the state of Texas did not contend that he personally had shot Julia Standley. He received the death penalty for having been a party to the conspiracy which resulted in her death. Cuevas' conviction was twice overturned and he was sentenced to death three times in all. One appeal issue argued that the trial jury should have been allowed to consider Cuevas' low IQ in deciding whether he should be sentenced to life imprisonment or death. Cuevas reportedly had an IQ of 61 giving him the mental age of a seven or eight-year-old child.

Jerry Bird was executed in Texas on 17 June by lethal injection. He was convicted of the 1974 burglary and murder of a white man in Harlingen. A co-defendant, Emmett Korges, received a life sentence for his part in the crime but, according to Bird's attorneys, it was uncertain which of them killed the victim.

Bird, aged 54, suffered a stroke on 9 June 1991, eight days before his execution date. He was treated in hospital for a week and returned to death row in time for his execution. According to reports he was still partially paralized at the time of his death. Appeals that Jerry Bird's death sentence be commuted on humanitarian grounds, or postponed because of his ill-health were rejected.

Prior to his trial, Jerry Bird was not examined by a mental health expert. Had medical and social histories been sought, they would have revealed that Bird had a long history of extensive medical problems diagnosed variously as epilepsy, personality disturbance, schzoid personality and psychosis. He also had a history of childhood abuse. The trial jury was not aware of this important mitigating evidence when it deliberated whether to sentence him to life imprisonment or death.

Bobby Francis was executed in Florida on 25 June by electrocution. He had been convicted of a murder committed in 1975. Francis and the victim, both black, were allegedly involved in drug-related activity. At his third trial in 1983 the jury recommended that he be sentenced to life imprisonment but the judge overruled their recommendation and sentenced him to death. Florida is one of four states which permit the trial judge to overrule the jury's sentencing recommendation.[5]

Bobby Francis was the third Florida prisoner since 1976 to be executed despite receiving a jury recommendation of life imprisonment at trial (the previous two prisoners were Ernest Dobbert in 1984 and Buford White in 1987). The Florida Supreme Court has reversed some 80 per cent of the death sentences imposed by Florida trial judges after the sentencing jury had recommended life imprisonment.

[5]The others are Alabama, Delaware and Indiana. Delaware passed its jury override law in November 1991.

Andrew Lee Jones was executed in Louisiana by electrocution on 22 July (this was Louisiana's last electrocution: the state changed its execution method to lethal injection in September 1991). Jones was convicted of the murder of an 11-year-old black girl in 1984. Jones had requested a postponement of his execution until 15 September when the state would begin to use lethal injection. His request was endorsed by the Louisiana Board of Pardons and Paroles but Governor Buddy Roemer refused a postponement on 21 July saying, "This man deserves what he is about to get."[6] Jones was executed on his tenth death warrant.

Although his trial took place in East Baton Rouge, which has a black population in excess of 30 percent, Jones, black, was convicted and sentenced to death by an all-white jury. The prosecution excluded two black potential jurors, one of whom was reportedly rejected because he was "not smart enough to serve on a jury." It later transpired that he was a junior college graduate. Lawyers for Andrew Jones argued that his jury was unconstitutional because qualified black jurors had been removed on account of their race, in violation of US Supreme Court rulings. However, the courts held that no violation had occurred in Andrew Jones' case because his lawyer had failed to object to the jury selection at the time of the trial.

Albert Clozza was executed in Virginia on 24 July by electrocution. Clozza, white, was convicted of killing a 13-year-old girl in 1983. Clozza's legal representation at his trial was seriously deficient: defence counsel expressed his own disgust at the crime, his reservations about representing Clozza and his personal distaste for his client. No mitigating evidence was presented at the sentencing phase of the trial; counsel instead led the jury in a recital of the Lord's Prayer (see letter to Governor Douglas Wilder, appended). Clozza declined to seek executive clemency from the Governor.

Derick Peterson was executed in Virginia on 22 August by electrocution. Peterson, black, was convicted of the 1982 robbery and murder of a white grocery store manager in Hampton. During his execution a second electric shock was administered after doctors detected a faint heartbeat following the first jolt of electricity.

Peterson was convicted and sentenced to death at a jury trial lasting just one day (on 30 August 1982). His court-appointed attorney did not present any mitigating evidence to the jury at the sentencing phase of the trial. The jury nevertheless asked the judge whether they could sentence Peterson to life imprisonment without parole. The judge instructed them to choose between death and life imprisonment, and gave them no other information about parole eligibility. At about 8pm, following a short recess, the jury sentenced Peterson to death. On appeal it was argued that the murder was no more aggravated than many others in Virginia which have been punished by a life sentence without possibility of parole.

[6]Quoted in The Angolite, August/September 1991.

Maurice Byrd was executed in Missouri on 23 August by lethal injection. He was convicted of the murders of four white cafeteria workers during a robbery on 23 October 1980. Byrd, black was tried before an all-white jury after the prosecutor used peremptory challenges to exclude all black potential jurors from the panel.

The evidence against Byrd was thin and he contended throughout his trial and appeals that he was innocent. He was convicted on the basis of testimony from two fellow jail-inmates and from a girlfriend who said he had confessed to the crime. Byrd reportedly had no prior convictions.

Donald Gaskins was executed in South Carolina on 6 September by electrocution. Gaskins was unusual in being the first white defendant executed for the murder of a single black victim since 1944. He was the first white person executed for the murder of a black victim in South Carolina since 1880.

Gaskins was convicted of the 1982 murder-for-hire of Rudolph Tyner, a fellow prisoner who had himself been convicted of murder. The son of Tyner's victims hired Gaskins to kill Tyner, which he did by giving him a bomb disguised as a radio. The man who had hired Gaskins to kill Tyner was sentenced to eight years in prison but was released after serving only six months.

Gaskins had already been convicted of nine other murders, all involving white victims, for which he was serving consecutive life sentences. "That's apparently the sort of criminal record a white man needs to be executed for the murder of a black," commented David Bruck, head of the South Carolina Office of Appellate Defense.

James Russell was executed in Texas by lethal injection on 19 September. Russell, black, was convicted of the March 1974 kidnap and murder of a white businessman. He was arrested in March 1974, but not brought to trial until November 1977. He was convicted and sentenced to death by an all-white jury after the prosecutor excluded several apparently well-qualified black potential jurors.

The legal representation given to James Russell at his trial was very poor. His elderly attorney appeared unprepared for the sentencing phase of the trial and presented no mitigation evidence whatsoever. He inexplicably failed to bring to the jury's attention the many reasons to disbelieve the testimony given by the prosecution witnesses (two of whom had given inconsistent accounts to the police during the three-year case investigation). Russell's lawyer was reportedly seen walking unsteadily and smelling of alcohol during the trial. However, the US District Court ruled in October 1987 that Russell was "not entitled to relief solely because [his lawyer] may have been intoxicated at times during the trial."

The evidence against Russell was apparently circumstantial. The main prosecution witness was an alleged accomplice to the crime who received a reduced sentence in return for his testimony against Russell and has now been released from prison. Lawyers

representing Russell in his final appeals expressed concern that his guilt had not been established beyond doubt.

Warren McCleskey was executed by electrocution in Georgia on 25 September despite international pleas for clemency. He was convicted of the murder of a white police officer during a robbery carried out by four armed men. McCleskey admitted being one of the robbers but always denied being the one who shot the police officer.[7]

Shortly before the execution two members of the original trial jury told the Georgia Board of Pardons and Paroles that they would not have sentenced Warren McCleskey to death had they known a key state witness was a police informer. The informer's testimony provided the only evidence that directly supported the State's identification of McCleskey as the triggerman.

McCleskey's 1987 appeal to the US Supreme Court argued that Georgia's death penalty, in its application, discriminated on the basis of race (see *Amnesty International Report 1988*). McCleskey contended that Georgia's capital punishment system was unconstitutional because those who killed white victims were four times more likely to receive the death penalty than other defendants in cases at similar levels of aggravation. Black defendants charged with killing white victims were more likely to receive the death penalty than any other category of offender. McCleskey's argument was supported by a detailed statistical study carried out by Professor David Baldus of Iowa State University.[8]

By five votes to four, the US Supreme Court rejected McCleskey's appeal.[9] The majority ruled that the racial disparities revealed in the Baldus study were insufficient to show that Georgia's capital sentencing system was operating "irrationally" or "arbitrarily." The Court did concede that "apparent disparities in sentencing are an inevitable part of our criminal justice process," and that any system for determining guilt or punishment "has its weaknesses and potential for misuse," but said that McCleskey had failed to prove that the decision-makers in his particular case had acted with discriminatory intent.

In three strongly-worded separate written opinions the four dissenting judges criticized the majority decision. The dissenting justices were persuaded that the Baldus study revealed a risk of racial discrimination in the operation of Georgia's death penalty statute that clearly violated the US Constitution. Justice William Brennan called the risk "intolerable by any imaginable standard."

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[7]For full details of this case, see Amnesty International's external paper The Case of Warren McCleskey, AI Index AMR 51/24/91, July 1991.

[8]See: Equal Justice and the Death Penalty: A Legal and Empirical Analysis, by David C Baldus, George G Woodsworth and Charles A Pulaski, Jr., published by Northeastern University Press, Boston, 1990.

[9]McCleskey v. Kemp, decided 22 April 1987.

McCleskey lost a subsequent appeal to the US Supreme Court in 1991.[10] McCleskey's lawyers learned nine years after the original trial that the state's key witness against McCleskey had been a police informer who was offered favourable treatment in exchange for his testimony. The US Supreme Court dismissed McCleskey's petition by six votes to three, saying the claim should have been raised earlier (see further commentary on this ruling below).

In an appeal for clemency in September, Nelson Mandela, President of the African National Congress of South Africa said, "To my mind there is far more than reasonable doubt in the case of Warren McCleskey, and I believe his execution would represent a tragic miscarriage of justice." The Georgia Board of Pardons and Paroles denied clemency without comment.

Michael McDougall was executed by lethal injection in North Carolina on 18 October - the first execution in the state for five years. McDougall, white, was convicted and sentenced to death in 1980 for the rape and murder of his next-door neighbour, a white woman.

McDougall had a very disturbed upbringing: he had been physically abused by his mother as a child, and at the age of eight had seen his grandfather commit suicide by shooting himself in the head. His father was murdered when McDougall was 13. The jury at his trial acknowledged that he was mentally or emotionally disturbed at the time of the murder and that this may have diminished his responsibility. It nevertheless sentenced him to death on a finding that the crime was particularly heinous.

McDougall's trial lawyer reportedly took both prescription and illegal drugs during the trial. He had twice been suspended from practicing law in North Carolina and was suspended from practicing law at the time of McDougall's trial itself. However, state and federal courts ruled that the lawyer had not been ineffective and his behaviour at trial had not affected the outcome.

G W Green was executed by lethal injection in Texas on 12 November. Green, white, was convicted of killing a probation officer in 1976 during a robbery. A co-defendant, Joseph Starvaggi (who had actually shot the victim) was executed in September 1987. Green was one of the longest-serving of the 350 inmates on Texas' death row (which is the largest in the country).

Prisoners under sentence of death

At the end of 1991, 2,547 prisoners were awaiting execution in 34 states and under federal law and US military law. It is estimated that some 250 new death sentences were passed during 1991.

[10] McCleskey v. Zant, decided 16 April 1991.

OTHER STATISTICS

During 1991 some 25,000 homicides were committed across the USA, an increase of at least 1,560 over the previous year. A report in January 1992 claimed that 1991 had been "the bloodiest year in US history."[11] A new homicide record was set in Dallas (501) and San Antonio recorded its second-highest homicide total ever (211). Both these cities are in Texas, which has the largest death row population and has carried out the greatest number of executions: 42 between 1982 and the end of 1991, five of them during 1991.

In September 1991 the US Department of Justice's Bureau of Justice Statistics (BJS) published its bulletin on capital punishment in 1990. In addition to the facts and figures already known to Amnesty International,[12] BJS provided the following data on prisoners under sentence of death and executed in 1990:

- Those executed during 1990 had spent an average of 7 years 11 months under sentence of death.
- During 1990, 244 people were sentenced to death by state courts. The state breakdown was as follows: California (33); Florida (31); Texas (24); Illinois (17); Alabama, Georgia and North Carolina (14 each); Arizona (11); Mississippi and Pennsylvania (10 each); Oklahoma (9); Ohio and Tennessee (8 each); Arkansas (7); Missouri and Virginia (6 each); Nevada (5); Maryland (4); Indiana, New Jersey, South Carolina and Washington (3 each); and Idaho (1).
- In 1990, 101 persons had their death sentences vacated or commuted and seven died in prison while under a death sentence.
- Between 1973 and the end of 1990, a total of 4,177 individuals were sentenced to death. There were 2,356 people under sentence of death at yearend 1990. The eight longest-serving inmates had been on death row since 1974. Three were in Florida, two each were in Georgia and Texas, and one was in Utah.
- The median age of people sentenced to death in 1990 was 34 years old.

FEDERAL DEATH PENALTY

The 1991 Crime Bill

A major crime bill, the Comprehensive Violent Crime Control Act of 1991, was considered by Congress during 1991 but had not completed its passage by the end of the year. On 11 March 1991, President George Bush called on Congress to approve his proposed crime bill within 100 days as a gesture to "honour" US troops returning from

[11]"Crime: the deadliest year yet," Time, 13 January 1992, page 25.

[12]Published in an earlier external document: The Death Penalty in the USA: Developments from 1 September 1989 to 31 December 1990, issued in April 1991 (AI Index: AMR 51/13/91).

the war in the Persian Gulf. He described the crime bill as one of the top priorities on his domestic agenda.

The legislation proposed, among other things, to expand the number of offenses for which the death penalty can be imposed to more than 50 federal crimes. These covered a broad range of offences, some not involving homicide. They included drug-related murders, the attempted murder of witnesses in drug cases, treason and political assassination. The legislation would also have restricted the rights of state prisoners to appeal their convictions and death sentences in Federal courts.

The US Senate approved its version of the crime bill in July; the House of Representatives approved a slightly different version in October. Neither version retained provisions to address racial discrimination in the application of the death penalty, despite evidence that this is a most serious problem.[13] Members of the Senate and the House then met in a joint conference committee to reconcile the differences between the two bills.

Whereas the Senate's version had sought virtually to eliminate appellate review of death sentences by the federal courts, the House version retained prisoners' right to a single federal *habeas corpus* petition. The House version prevailed in the final draft. It is clear that the US government placed considerable importance on limiting capital defendants' federal court appeals (with the effect of reducing the time period between conviction and execution). President Bush had lobbied Republican Senators personally on this point the day before the Senate voted in July. When the final version of the legislation retained the *habeas corpus* appeal provisions President Bush said he would veto the bill on the grounds that it did not meet the Administration's aim of "end[ing] frivolous post-appeal challenges brought by convicted criminals." "For too long," he said, "the scales of justice have been tipped in favor of criminals instead of law-abiding Americans."[14]

In recent years some 40 per cent of state-imposed death sentences have been overturned on appeal by federal courts because of constitutional error.

Amnesty International wrote to members of the House of Representatives in September and October 1991, pointing out that the proposals to expand the death penalty under federal law were contrary to international standards and would mark a significant retreat from international human rights standards on capital punishment. Concern was also expressed at the proposals in the Senate version of the crime bill to limit federal

[13]For more information regarding racial discrimination in the application of the death penalty in the USA, please consult: *USA:Government survey finds pattern of racial disparities in imposition of death penalty*, March 1990, AI Index: AMR 51/08/90; *USA: The death penalty: developments from 1 September 1980 to 31 December 1990*, April 1991, AI Index: AMR 51/13/91, pages 6 - 8, and *USA: Federal Death Penalty - 1991 Crime Bill*, August 1991, AI Index: AMR 51/26/91.

[14]From a letter President Bush sent to House Minority Leader Robert Michel, as quoted in the New York Times, 26 November 1991.

habeas corpus review of state death penalty cases. Amnesty International was disturbed by any measure which would reduce the judicial scrutiny afforded in capital cases.

First death sentence under current federal (civilian) law

In 1972 the US Supreme Court overturned all then-existing death sentences on the grounds that the death penalty was being imposed in an "arbitrary and capricious" manner. In 1976 and 1977 further Supreme court rulings permitted individual states to reinstate the death penalty for murder, in conformity with new guidelines. Federal death penalty statutes (similar in kind to the old state statutes) were not revised and, although they remain on the statute books, are considered unconstitutional.

At present the only death penalty provision under federal civilian law which also contains the procedural safeguards required to conform to US Supreme Court guidelines is an amendment to the 1988 Anti-Drug Abuse Act. This allows for the death penalty in cases involving murder committed by, or solicited by, major narcotics traffickers; also the drug-related murder of a law enforcement officer.

In May 1991, David Chandler became the first person to be sentenced to death under the death penalty provision of the Anti-Drug Abuse Act. A court in Birmingham, Alabama, convicted him of soliciting at least one murder in connection with a marijuana trafficking operation in Alabama and Georgia. His conviction and death sentence are being appealed.

The last person executed under federal (civilian) law was Victor Feuger, hanged in 1963 in Iowa for murder and kidnapping.

IN THE LEGISLATURES

According to the National Coalition to Abolish the Death Penalty (NCADP),[15] 183 legislative bills relating to the death penalty were introduced in state legislatures in 1991. Nineteen had passed by November 1991 and three of these were vetoed by the governor. The other 164 bills were defeated, carried over to 1992 or shelved indefinitely. The majority of bills passed were retrograde from an abolitionist perspective: they extended the use of the death penalty to cover additional crimes and imposed time constraints for filing post-conviction appeals. Six states[16] introduced bills to prohibit the execution of under-18-year-old offenders, but none passed.

[15] 1991 Survey of State Legislation, published by the National Coalition to Abolish the Death Penalty (NCADP), August 1991. At the time of publication twelve states were still in session so the final number of bills passed will differ slightly from the figures given. Amnesty International has updated NCADP's survey to November 1991.

[16] Georgia, Mississippi, Ohio, Pennsylvania, Texas and Virginia.

In September, the governor of Illinois signed a bill to allow the participation of physicians in executions by lethal injection. The legislation requires two physicians to be present as witnesses, with their identities kept confidential. The bill was signed over the objections of the American College of Physicians, the Institute of Medicine, American Public Health Association, American Association for the Advancement of Science, Illinois State Medical Society and several medical ethicists. The bill is in clear opposition to resolutions adopted by the American Medical Association which bar physician participation in executions.[17]

In November, Delaware enacted legislation removing the final sentencing decision in capital trials from juries. Judges will now be permitted to override jury's sentencing recommendations. Delaware becomes only the fourth state to permit jury override.

Only four of the bills enacted up to November 1991 brought any good news: New Mexico prohibited the execution of mentally retarded prisoners (the only one of 16 such bills to pass); Oregon and Texas introduced the third sentencing option of life imprisonment without parole for juries to consider (in addition to life imprisonment or death). And Virginia introduced a procedure for appointment of counsel at trial.

Eleven abolitionist states considered bills to reintroduce the death penalty. None became law in 1991. A bill in New York was passed by the legislature but was vetoed by the governor.

Some of the bills proposed in 1991 were, in the words of NCADP, "irresponsible lawmaking." HB 390 in Texas, for example, called for executions to be "carried out at noon on the courthouse steps in the county in which the offense occurred." Others challenged longstanding precedent or established procedure. SB 116 in South Carolina, for example, would have amended the state constitution so that in capital cases the jury's sentencing decision need no longer be unanimous. Many bills responded to specific crimes committed within a state such as highly publicized child abuse cases, school playground shootings or car "drive-by" shootings. Several such bills became law in 1991.

NCADP noted in its legislative survey that the country pays a high price for legislators' "posturing on the death penalty." Many of the new laws diminish constitutional protections and rights of all citizens. Challenges to the new laws require significant resources to litigate and overwhelm the courts. The expansion of capital statutes carries the risk that a broader, and more arbitrary, selection of prisoners will be sentenced to death. Ultimately, the new legislation does nothing to address the root causes of violent crime in US society.

NCADP concluded, "The lessons for citizens should be clear. Our elected state officials spend vast amounts of time and energy engaging in an ultimately self-indulgent

[17]For full details of this resolution see AI's paper *USA: Developments on the death penalty 1 September 1989 to 31 December 1990* (AMR 51/13/91), pp 11-13.

game of drafting and sponsoring death penalty legislation, not because it's good law, but because it's perceived as good politics."

Bills passed by US state legislatures up to November 1991 were as follows:

STATE AND BILL	DESCRIPTION	DATE, NAME
Arkansas, SB 452	Provides for death penalty where victim was under 14 and defendant was 18 or over	28 March 1991 Becomes Act 683
Delaware, SB 79	Causes judges to make the final sentencing decision in capital cases instead of jury	Signed by Governor 4 November 1991
Idaho, SB 1040	Adds murder by aggravated battery of person under 12 to first-degree murder definition	5 April 1991 Becomes Chapter 227
Illinois, SB 1209	Provides for death penalty for a murder committed while incarcerated	4 June 1991 (awaiting signature)
Illinois, HB 434	Requires that two physicians be present as witnesses to execution by lethal injection, their identities kept confidential	September 1991
Kentucky, HB 7	Provides that a person convicted of a capital offence but not sentenced to death or to LWOP,[18] or who has their death sentence overturned, shall serve 12 years minimum imprisonment before becoming eligible for parole	15 February 91
Louisiana, HB 942	Eliminates electrocution; introduces lethal injection as execution method	23 May 1991 Act 159
Louisiana, SB 307	When a change of trial venue is granted, jury selected from new venue will be transferred to the court where case is pending	23 May 1991 Act 82
Maryland, SB 497	Requires that post-conviction petitions in capital cases be filed and heard within five months	Signed by Governor as Chapter 499

[18]Life imprisonment without possibility of parole.

Nevada, AB 227	Revises procedure for filing habeas corpus petitions. Requires petition to be filed within 30 days of denial by district court	28 March 1991. Becomes law 1 January 1993, only if SJR 13 is ratified in 1992 ballot.[19]
New Mexico, SB 148	Prohibits the execution of mentally retarded person	Effective 14 June 1991. Chapter 30
Oregon, HB 2393	1) Post-conviction petitions to be made directly to State Supreme Court (by-passing trial court). 2) Jury sentencing alternatives: life imprisonment, LWOP or death 3) 60-day stay of execution following direct review; 90-day stay to allow for subsequent post-conviction petition	Signed by Governor. Act 885
Tennessee, SB 305	Provides for the death penalty for the murder of a child under 13 due to protracted incidents of child abuse	Chapter 377
Texas, SB 880	Allows life imprisonment without parole as an alternative sentence	Signed by Governor. Chapter 838
Virginia, SB 852	Requires appointment of counsel from attorney list provided by the Public Defender Commission	Signed by Governor
Virginia, SB 790	Amends existing capital crimes to include premeditated killing in the commission of forcible sodomy or attempted forcible sodomy	Signed by Governor. Chapter 232

Three bills passed by state legislatures were vetoed by state governors. They were:

- a Connecticut bill providing that a death sentence shall be imposed if the aggravating factor(s) outweigh the mitigating factor(s);
- a Louisiana bill requiring that the sentencing hearing in capital cases be held not sooner than 24 hours after the guilty verdict;
- a New York bill to reinstate the death penalty.

[19]SJR 13 expands district courts jurisdiction in matters of state habeas corpus.

IN THE US SUPREME COURT

Clarence Thomas was appointed to the US Supreme Court in October, replacing Justice Thurgood Marshall who retired from the bench after 24 years' service. Whereas Justice Marshall was an avowed opponent of capital punishment, Clarence Thomas endorses the death penalty. On 20 November he voted (with two other justices) to allow the execution of Justin Lee May in Texas to proceed, despite startling new evidence from an admitted accomplice who said he had lied at the trial, recanted his earlier testimony and said that May did not commit the offence. The execution was stayed by the court's 6-3 vote, but it was highly disturbing to note Justice Thomas' readiness to allow an execution to proceed in the face of doubts about a prisoner's guilt (see note on May's case, below).

At an address to students of the University of Washington Law School on 19 November, Justice Anthony Kennedy commented regarding the death penalty that he had "some questions" about whether it deters crime. He said each of the past 15 death penalty cases he had reviewed involved a defendant with a history of having been abused as a child. He called the legal establishment "a fraud" for pretending to be in charge of the criminal justice system. The legal profession does next to nothing for crime prevention, he said. "We're just reactive."[20]

Major death penalty rulings by the Court during 1991

Two US Supreme Court decisions issued during the year severely restricted the rights of appeal for state prisoners, including capital defendants. The new rule announced in *McCleskey v Zant* erected almost insurmountable barriers to the filing of second or subsequent *habeas corpus* petitions. And the new rule in *Coleman v Thompson* barred the filing of even an initial *habeas corpus* petition in federal court when, for almost any reason, a state court ruling has not been obtained. Almost any failure by a state prisoner to meet the state court system's procedural requirements, for almost any reason, will now result in forfeiting the right to bring a *habeas corpus* petition in federal court.

In *McCleskey v Zant*, announced on 16 April 1991, the Court held that prisoners may file only one federal *habeas corpus* petition, and new evidence will not normally be considered if raised in a second petition. An appellant must show "cause" for not having raised a new argument earlier, and that he or she suffered "actual prejudice" from the constitutional error in question. The ruling was expected to make it substantially easier for state prosecutors to attack as an "abuse of the writ" all habeas corpus petitions after a prisoner's initial one.

In *Coleman v Thompson* the Court said on 24 June that failure to file a timely appeal in a state court would bar all further review of criminal (including capital) cases in the federal courts. Roger Coleman's attorneys had accidentally filed a petition one day

[20]Reported in The Seattle Times, 20 November 1991.

late. The 6-3 opinion overturned a landmark 1963 ruling which had guaranteed the right of state prison inmates, under most circumstances, to challenge the constitutionality of a conviction or sentence in the federal courts, even if inmates had failed for some reason to appeal their case properly in the state courts.

The new rule takes an opposite approach: almost any failure by a state prisoner to meet the state court system's procedural requirements, for almost any reason, will result in forfeiting the right to appeal to the federal courts. The rule applies even if the inmate, through a lawyer's mishandling of the state appeal, has not been able to bring any of his constitutional arguments before the state courts.

In *Payne v Tennessee*, decided in June, the US Supreme Court reversed two of its recent rulings and said that juries at the sentencing phase of a capital trial may take into account the victim's character and the suffering of the victim's relatives in deciding whether or not to impose the death penalty. The 6-3 ruling permitting "victim-impact" evidence, as it is known, underscored the Court's willingness to overturn its own recent precedents. The state of Tennessee, supported by 22 other states and the federal government had argued that victim-impact evidence should be considered in capital trials. Richard Thornburgh, the US Attorney General, personally argued the case before the court.

The ruling was criticized on the grounds that victim-impact evidence is inflammatory and prejudicial to the defendant. It was argued that the jury's life or death decision should turn on the defendant's character, not whether the victim was a vagrant or a pillar of the community. It is feared that existing disparities in death sentencing will be further exacerbated by letting prosecutors urge juries to decide their sentencing verdict partly on the worth of the victim.

In *Arizona v Fulminante*, decided on 26 March 1991, the court held that the erroneous admission of coerced confessions may sometimes be harmless, but that in Fulminante's case, the error was not harmless.

JUVENILE OFFENDERS

In October, Amnesty International published a report, *The Death Penalty and Juvenile Offenders*,[21] and launched a campaign to draw attention to the USA's use of the death penalty against persons who were aged under 18 at the time of the offence, in clear contravention of international standards on the death penalty. Thirty-three juvenile offenders were under sentence of death at the end of 1991. Four were executed between 1985 and the end of 1991. Amnesty International said that, to its knowledge, there were more juvenile offenders under sentence of death in the USA than in any other country.

[21] AI Index: AMR 51/23/91.

Amnesty International's investigations suggested that safeguards in US capital punishment law, intended to ensure that the death penalty is fairly applied and imposed only for the worst crimes and most culpable offenders, had not been met in the cases of many juvenile offenders under sentence of death. The majority of the juvenile offenders came from acutely deprived backgrounds. Many had been seriously physically or sexually abused. Most were of below-average intelligence and many additionally suffered from mental illness or brain damage.

Most had been represented at trial by court-appointed attorneys or public defenders who sometimes spent little time preparing the case for trial. Amnesty International found cases in which important mitigating evidence (including the defendant's youth) was not presented at the trial, and in which trial attorneys had failed adequately to investigate the defendant's background or psychiatric history. One defence attorney spent less than four hours doing pre-trial investigation. In some cases lawyers were unable to obtain an independent psychiatric examination of the defendant owing to lack of funds.

Amnesty International found that several of the juvenile offenders under sentence of death had no significant history of prior criminal activity and others had a record of relatively minor offences not involving violence. Shortcomings were identified in the criteria used in state juvenile court hearings (at which the decision is taken whether or not to transfer the juvenile to the jurisdiction of the adult criminal court). The defendant's individual maturity appeared to play no part in the decisions taken. The most common ground for waiving juvenile court jurisdiction in the cases examined was the lack of facilities within the juvenile justice system to provide long-term custody, rather than a finding that the defendant could not be rehabilitated.

Amnesty International called on the 24 US states which permit the execution of 15- 16- and 17-year-old offenders to bring their legislation into line with international human rights standards which stipulate that no one may be executed for crimes committed below the age of 18 (see example of the letter sent to state authorities in states retaining the death penalty for juvenile offenders, and Amnesty International's letter to the federal government, both appended).

Juveniles' death sentences overturned

In **Alabama**, the Court of Criminal Appeals in July overturned the death sentence imposed on Clayton Joel Flowers, who was 15 at the time of the crime. By a unanimous 5-0 vote they ordered that he be sentenced to life imprisonment without possibility of parole. Citing the US Supreme Court's 1988 ruling, *Thompson v. Oklahoma*, the Court held that defendants in Alabama may not be executed for crimes committed when they were younger than 16.

Alabama's Attorney General was reported to be disappointed by the decision. He said "I think the death penalty is the only appropriate penalty for what he [Flowers] did.

I don't know how his age makes any difference."[22] Flowers was convicted for his role in the 1988 murder of a 19-year-old white woman in Bay Minette, Alabama.

Prosecutors in Whitfield County, **Georgia** decided in 1991 not to seek the death penalty again in the case of Janice Buttrum, whose conviction and sentence were reversed by the courts in 1989. She was convicted of the September 1980 murder of Demetra Parker; at the time of the crime Janice Buttrum was a 17-year-old mother of two young children. Her lawyers successfully argued that the death penalty should be rejected in this case, Georgia never having executed a female juvenile offender in its history. The state agreed to accept a guilty plea and a sentence of life imprisonment without possibility of parole. Amnesty International wrote to Whitfield County District Attorney Jack Partain, urging the state not to seek to reimpose the death penalty in this case (letter and reply appended). Janice Butrum's case was profiled in Amnesty International's October 1991 report, pp 14 - 17.

At a resentencing hearing in **Mississippi** in September 1991, David Tokman was sentenced to life imprisonment. David Tokman's case was profiled in Amnesty International's October 1991 report, pp 47 - 50.

During 1991 the death sentence imposed on Richard Joyner in **North Carolina** was reversed. He was sentenced to death in 1989, convicted of the murder of a white male when he was 17 years old.

Death sentences imposed on juvenile offenders during 1991

To Amnesty International's knowledge, five juvenile offenders were sentenced to death during 1991.

In **Florida**, Jerome Allen was sentenced to death on 25 October 1991 for a murder committed when he was 15-years-old. Allen, black, was convicted of the shooting murder of a petrol station attendant during a robbery. The jury recommended the death penalty by a vote of 7-5 in August. A black co-defendant aged 18, who reportedly admitted firing the fatal shot, also faced the death penalty (his trial was pending at the end of the year). However a third (white) accused, aged 16, allegedly confessed and implicated the other two and prosecutors said they would not seek the death penalty if he testified against Allen at the latter's trial.

Commenting on the case, the Florida prosecutor, Norm Wolfinger, said the death penalty was "the only just sentence Mr. Allen should face...He's a juvenile in age only. He's shown the experience of many adult criminals."[23]

James Patrick Bonifay, white, was sentenced to death on 20 September 1991 for the murder of a 36-year-old white man in Pensacola in January 1991. Bonifay was 17 at the time of the crime.

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[22]quoted in the Mobile Press Register, 27 July 1991.

[23]Quoted by The Gainesville Sun, 27 October 1991.

In **Mississippi,** Ron Chris Foster, black, was sentenced to death on 17 January 1991 for the robbery and murder of a white man in Lowndes County in June 1989. Foster was 17 at the time of the crime.

In **Texas**, Mauro Barraza, hispanic, was sentenced to death on 8 April 1991. He was convicted of the murder of an elderly white woman in Tarrant county. The crime was carried out in June 1989 when Barraza was 17 years old.

In **Virginia**, Dwayne Allen Wright was sentenced to death by a jury on 16 November 1991 for a murder committed when he was 17 (formal sentencing was scheduled for 24 January 1992). He becomes the first juvenile offender sentenced to death in Virginia under current death penalty laws. Wright was convicted of the murder of a woman in Annandale in October 1989.

At the end of 1991, 33 juvenile offenders were under sentence of death in thirteen states for crimes committed below the age of 18 (see table):[24]

STATE Prisoner's Name	Date of Birth	Date of Crime	Age at Crime	Race	Race of Victim
ALABAMA Timothy DAVIS	18 Mar 61	20 Jul 78	17	M/W	F/W
Gary HART		12 Aug 89	16	M/B	M/W
Frederick LYNN	06 Sep 64	05 Feb 81	16	M/B	F/W
John NEAL		16 Feb 90	16	M/B	F/W
Nathan SLATON	05 Oct 69	May 87	17	M/W	F/W
FLORIDA Jerome ALLEN		10 Dec 90	15	M/B	M/W
James BONIFAY		26 Jan 91	17	M/W	M/W
Ralph ELLIS		20 Mar 78	17	M/W	2 x M/B
Cleo LeCROY		04 Jan 81	17	M/W	M/W F/W
James MORGAN	28 Nov 60	06 Jun 77	16	M/W	F/W

[24]Based on information compiled by Professor Victor L Streib, Cleveland-Marshall College of Law, Cleveland State University, Ohio. Professor Streib's statistics dated 2 October, 1991, updated by Amnesty International.

GEORGIA Christopher BURGER	30 Dec 59	04 Sep 77	17	M/W	M/W
Alexander WILLIAMS		04 Mar 86	17	M/B	F/W
KENTUCKY Kevin STANFORD	23 Aug 63	07 Jan 81	17	M/B	F/W
LOUISIANA Troy DUGAR	01 May 71	26 Oct 86	15	M/B	M/W
MISSISSIPPI Ron FOSTER		10 Jun 89	17	M/B	M/W
MISSOURI Frederick Lashley	10 Mar 64	09 Apr 81	17	M/B	F/B
Heath WILKINS	07 Jan 69	27 Jul 85	16	M/W	F/W
North CAROLINA Thomas ADAMS		13 Dec 87	17	M/W	F/W
OKLAHOMA Scott HAIN	02 Jun 70	06 Oct 87	17	M/W	M/W F/W
Sean SELLERS	18 May 69	08 Sep 85 05 Mar 86	16	M/W	2 x M/W F/W
PENNSYLVANIA John BLOUNT	25 Oct 72	28 Sep 89	17	M/B	2 x M/B
Kevin HUGHES	07 Mar 62	01 Mar 79	16	M/B	F/B
Percy LEE		26 Feb 86	17	M/B	2 x F/B
TEXAS Mauro BARRAZA		14 Jun 89	17	H/W	F/W
Joseph CANNON	13 Jan 60	30 Sep 77	17	M/W	F/W
Ruben CANTU	05 Dec 66	08 Nov 84	17	M/H	M/W
Robert CARTER	10 Feb 64	24 Jun 81	17	M/B	F/H
Gary GRAHAM	05 Sep 63	13 May 81	17	M/B	M/B
Johnny GARRETT	24 Dec 63	31 Oct 81	17	M/W	F/W
Curtis HARRIS	31 Aug 61	12 Dec 78	17	M/B	M/W

Robert WILLIS	28 Jan 67	17 Jan 85	17	M/B	F/W
VIRGINIA Dwayne WRIGHT		Oct 89	17	M/W	F/W
WASHINGTON Michael FURMAN	22 Jun 71	27 Apr 89	17	M/W	F/W

Abbreviations:
M = male; F = female; B = black; H = Hispanic; W = white

CLEMENCY PRACTICE

Several clemencies were granted during 1991. Before leaving office in January, Governor Richard Celeste commuted the death sentences of eight of the 105 death row prisoners in **Ohio**. They included all four female death row inmates. Six of the eight were black, Noting that 54 of the 101 men, and all four of the women on death row were black, Governor Celeste criticized a strong racial bias which had resulted in such disproportionate death sentencing. He called on his successor, George Voinovich, on the legislature and on the Ohio Supreme Court to review death sentencing criteria in Ohio for racial discrimination. Amnesty International wrote to commend his action, calling it an important example to other governors.

However, at the end of 1991 the final disposition of seven of the eight Ohio commutations remained uncertain. The state's new Attorney General, Lee Fisher, filed a motion shortly after taking office in January 1991 to overturn seven of the commutations, claiming that Governor Celeste had failed to follow the necessary legal proceedings. The new Governor, George Voinovich, also became a party to the action in support of the Attorney General's motion. Court hearings were scheduled for late January 1992. Meanwhile the Ohio commutees remained in legal limbo.

In February 1991, Governor Douglas Wilder of **Virginia** commuted Joseph Giarratano's death sentence to life imprisonment, three days before he was scheduled to be executed. Doubts had been raised about the evidence used to convict Giarratano and about his mental competence during his trial in 1979.

Giarratano was convicted of the murders of two women in 1979. He was heavily addicted to drugs and alcohol at the time of the crime and gave himself up to police, apparently convinced of his own guilt. He waived his right to a jury trial, refused to cooperate with a court-appointed lawyer and was convicted at a trial lasting half a day.

New physical and forensic evidence later emerged to cast doubt on his guilt. However, under Virginia's strict procedural rules, none of the new evidence was

considered on its merits by any court. (See Amnesty International's letter to Governor Wilder, dated 5 February 1991, appended.)

On 22 March 1991, the **Georgia** Board of Pardons and Paroles commuted the death sentence imposed on Harold Glenn Williams. Williams was convicted in 1980 of the murder of his grandfather. The Board took this action because Williams' co-defendant had served only five years in prison, despite having been the ringleader in the murder. This was the fourth clemency granted by the Georgia Board since the death penalty was reinstated in the mid-1970s.

Background on clemency

Despite the US Supreme Court's assertion in *Gregg v. Georgia* (1976) that a system without executive clemency "would be totally alien to our notions of criminal justice," there is a noticeable reluctance on the part of the executive to concede that the criminal justice system is liable to human error. When the penalty to be imposed is death, the safeguards surrounding the process ought to be of the highest order. Yet some prisoners who might well have been granted commutations in an earlier era have been denied clemency in recent years. Some have been executed.

In recent years, clemency has been granted only in the most exceptional cases. State practice earlier in the century of commuting some twenty-five per cent of death sentences is long gone. The small handful of clemencies granted in the post-*Furman* years suggest that almost the only issue some clemency bodies will nowadays consider is the risk of executing an innocent person. Once a death warrant has been issued it is usual policy to defer to the courts' judgments in the case. It is deeply troubling to note that those empowered to commute death sentences do not always appear to understand why clemency powers exist, what clemency means or the criteria by which it should be used.

In Alabama, for example, the power to commute death sentences rests with the Governor. No clemencies have been granted in the post-*Furman* era and some clemency appeals apparently received only superficial review. Governor Hunt denied clemency to Horace Dunkins who was mentally retarded with an IQ of between 65 and 69; to Michael Lindsey, in whose case the jury had recommended life without parole; and to Wayne Ritter, an accomplice to murder, not the killer. Governor Hunt has stated that he will consider clemency only if there is "startling new evidence" that a condemned man was innocent: an exceedingly narrow interpretation of the prerogative of mercy.

In **Florida**, Governor Graham in his first term in office (1978-82), granted nearly as many commutations as his predecessors (6 out of 38 requests - 15.8%). When this practice met with criticism from Republicans he stopped, and spared no more inmates. Governor Graham denied clemency in 1983 to William Jent and Earnest Miller. No physical evidence linked the two half-brothers to the murder and three witnesses testified to their innocence. In 1988 they were freed after a federal judge said Florida had "lost sight of the ultimate goal of justice." Governor Graham's successor, Bob Martinez

granted no clemencies during his term in office (1986-90). In 1991 Florida's new Governor, Lawton Chiles, refused to intervene to prevent the execution of Bobby Francis, despite the fact that the jury at his trial had recommended in favour of life imprisonment (see notes on prisoners executed).

The reticence of elected politicians to grant clemency is also seen in **Louisiana**. A five-member board of pardons and paroles meets to consider each petition for clemency, usually in the last days before an execution is due to be carried out. The Louisiana Board takes its responsibilities extremely seriously and considers all aspects of cases, including factors that the courts cannot address. The Board cannot itself grant clemency, and the governor has full independent authority to follow or ignore the Board's clemency recommendations.

The Board recommended in 1989 that clemency be granted to Dalton Prejean, a juvenile offender with a long history of mental illness. Governor Roemer refused to follow the board's recommendation and Prejean was executed in May 1990. In February 1991, the Board voted 4-1 in favour of commuting Frederick Kirkpatrick's death sentence to life imprisonment without parole after hearing testimony regarding the seriously deficient legal representation Kirkpatrick had received at his trial in 1983 and the fact that a co-defendant whom prosecutors agreed was equally responsible for the crime had received a life sentence. A court granted Kirkpatrick a stay of execution thus preventing his execution. However, at the time of writing, the Governor had not acted on the Board's clemency recommendation and Kirkpatrick remained at risk of execution.

The same Board, on 11 November 1991, recommended by a vote of 3-2, to commute the death sentence of Robert Sawyer who was diagnosed as both mentally retarded and mentally ill. As in Kirkpatrick's case, a court-imposed stay meanwhile intervened to prevent his execution. But at the end of the year the Governor had not acted on the Board's recommendation.

Amnesty International was deeply concerned at remarks made by members of the **Oklahoma** Board of Pardons and Paroles in November 1991 about Robyn Leroy Parks, who was scheduled to be executed on 6 December. According to a report in an Oklahoma newspaper, two board-members indicated that they had voted to convene a clemency hearing largely in order to expedite Parks' execution. Board member Carl Hamm was reported as saying, "If you do not have that meeting, there's some judge somewhere that's going to give him a stay based on the pardon and parole board's failure to give a clemency hearing."[25] Another board-member told the newspaper he did not want to risk further litigation tying up Parks' case in the final days before an execution. Two of the five board members voted against holding a clemency hearing at all. The former chair of the Board, Farrell Hatch, was reported as saying that clemency hearings were not a right of death row inmates.

[25]Quoted in the Tulsa World of 8 November 1991.

In the event, the board convened (for the first time in a capital case in more than 25 years) on 2 December, and denied clemency by a vote of 4-1. Robyn Parks received a court-imposed stay of execution, but remained at grave risk of being executed. (See Amnesty International's letter to the Oklahoma Pardon and Parole Board, appended.)

Clemencies granted since 1973

The table below indicates how rarely clemency has been granted in recent years. The table does not include the death sentences overturned as a result of court decisions, or inmates who died or were executed.[26]

Year of sentence	No. sentenced to death	Sentence Commuted
1973	42	9
1974	151	22
1975	299	21
1976	234	15
1977	139	7
1978	187	8
1979	157	6
1980	184	4
1981	238	3
1982	274	4
1983	257	2
1984	291	4
1985	286	2
1986	314	3
1987	303	0
1988	310	1

[26]Based on statistics compiled by the US Justice Department, Bureau of Justice Statistics Bulletin, Capital Punishment, 1990. These have been amended by Amnesty International to include additional cases it knows of where clemency was granted by the Georgia Board of Pardons and Paroles once in 1988 and twice in 1990. According to Amnesty International's information, ten clemencies were granted in 1991, eight of them in Ohio. However, seven of the eight Ohio commutations remain under challenge.

1989	267	0
1990	244	2
Total, 1973 - 1990	4,177	113

DEATH ROW CONDITIONS

In December 1991, Amnesty International wrote to inquire about the recently opened Unit H Block of the Oklahoma State Penitentiary in McAlester, which is designated to house prisoners under sentence of death. Amnesty International expressed concern regarding the design of the unit and cells and at the prolonged cellular confinement to which inmates are subjected (see Amnesty International's letter, appended).

In his reply, James Saffle, Southeastern Regional Director of the Oklahoma Department of Corrections, assured Amnesty International of the Department's commitment to providing offenders with a "safe, humane, living environment." He clarified certain points regarding the unit and its regime, but confirmed that prisoners are confined in two-person, windowless cells for 23 hours per day (see James Saffle's letter of 24 December, appended).

Amnesty International remained concerned that certain aspects of Oklahoma's Unit H Block are in violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners which provide that prison cells shall have windows large enough to allow sufficient natural light for work or reading and that prisoners shall be allowed at least one hour's exercise in the open air daily.

SOME CASES OF CONCERN

Mumia Abu-Jamal (Pennsylvania)

In December, Amnesty International wrote to the Attorney General of Pennsylvania to express concern at aspects of the sentencing phase of Mumia Abu-Jamal's capital trial in December 1982. Mumia Abu-Jamal was convicted of the murder of a Philadelphia police officer.

At the sentencing phase of the trial, the prosecutor was permitted to cross-examine Mumia Abu-Jamal with respect to his membership in the Black Panther Party 12 years before, when he was 16, and certain political views he had expressed in an interview published at that time. Amnesty International was concerned that the jury may have drawn adverse inferences from the references made to Mumia Abu-Jamal's past views or affiliations. It found the risk that the jury may have been impermissibly influenced in favour of the death penalty by such comments deeply troubling (see letter appended).

Barry Lee Fairchild (Arkansas)

Barry Fairchild was convicted in August 1983 of the rape and murder of Marjorie Mason, a white Air Force nurse, in February 1983 (Fairchild is black). Warrants were signed for his execution in March 1989, May 1989 and September 1990 but his execution was stayed each time by the courts.

According to reports, Barry Fairchild is mentally retarded. Tests show him to have an IQ of between 60 and 63 (a person of average intelligence scores an IQ of 100). In 1989 a federal district court considered Fairchild's mental competency and ruled that his intelligence level was not an issue in the case. The Eighth Circuit Court of Appeals also found Fairchild to be mentally competent and upheld his death sentence in April 1990.

His lawyers contend that, because he is illiterate, submissive to authority and easily manipulated, the two confessions he made in police custody - before he was allowed to see a lawyer - may have been coerced. Fairchild says he was bitten in the head by a police dog at the time of his arrest and, while in custody, was beaten, kicked and threatened by police. Fairchild was one of thirteen men arrested by the sheriff's department for questioning following the murder. Each of them later testified that he was accused of involvement in the crime and subjected to some form of coercion (verbal threats, physical abuse, gun threats). Those arrested included Fairchild's brother, Robert, who testified that he was badly beaten, threatened by having a gun placed in his mouth, choked until he passed out, and was taken to the crime scene where he was again threatened with a gun.

In his videotaped confessions, Barry Fairchild (seen with a bandage around his head and swollen eyes) said he and another man abducted and raped the victim. He later withdrew his confessions. There was apparently no evidence to show that Fairchild was the actual killer; police and prosecutors have reportedly conceded this, but the person who carried out the murder has not been found to date.

In February 1991 the federal district court denied a new appeal, ruling that Fairchild's confession had not been coerced. The court did agree, however, that some irregularities had been practiced by the police.

Glenn Ford (Louisiana)

Glenn Ford, black, was convicted of the 1984 robbery and murder of Isadore Rozeman, a white watch repairman. Caddo Parish, where the crime and the trial took place, has a population which is is 30 to 40 percent black. But Ford was convicted and sentenced to death by an all-white jury after the prosecutor used six of eight peremptory challenges to exclude all black potential jurors from the panel. One apparent anomaly was the prosecutor's decision to reject a black computer operator, on the grounds that members of that profession are "concrete thinkers" while not excluding a white computer operator from the jury panel.

Four persons were initially indicted for the murder of Isadore Rozeman but only Ford stood trial. The state's theory was that Ford and the three others killed the victim

during the course of an armed robbery. Ford had worked for Rozeman and admitted pawning some of the jewelry taken from Rozeman's shop during the murder, but said he did it for one of the other men who was initially charged. Ford denied, and continues to deny, any participation in the homicide. In 1987 he rejected an offer from the Caddo District Attorney's office to plead guilty in exchange for a life sentence.

Ford was represented at his trial by two inexperienced court-appointed lawyers. One specialized in oil and gas law and this was his first ever jury trial. Lawyers now representing Ford in post-conviction appeals have argued that the legal representation he received at his trial was inadequate.

The state's case against Glenn Ford was entirely circumstantial, but his trial lawyer neglected to argue on appeal that the evidence was constitutionally insufficient to support the conviction. Even so, the Louisiana Supreme Court addressed the issue on its own initiative, noting that there were "serious questions" about the quality of the case against him and that the evidence was "not overwhelming." The Louisiana Supreme Court, despite its reservations, upheld Ford's conviction and death sentence in 1986. Justice Calogero (now the Chief Justice) dissented and would have ordered the indictment dismissed due to insufficient evidence.

In a petition for post-conviction relief, Ford's lawyers argued that the state withheld evidence which, if disclosed, would have resulted in his acquittal. The evidence, much of which was contained in police reports, included statements by two witnesses who saw a white man running away from the crime scene. The evidence also included information about other suspects believed to be the principals in the homicide. According to the supressed police reports, authorities believed Glenn Ford was too frightened of the other suspects to implicate them. One report states specifically, "It was evident that Ford is truly in fear of the people who committed this offense." Ford's appeal for post-conviction relief remained pending at the end of 1991.

Johnny Frank Garrett (Texas)

Johnny Garrett, white, aged 27 in 1991, was convicted and sentenced to death for the rape and murder of Sister Tadea Benz, an elderly Roman Catholic nun. He was 17 years old at the time of the crime. The Roman Catholic church in Texas has publicly opposed his execution. A statement by the Bishops of Texas, issued in early January 1992, called on the courts to consider important new medical evidence in the case, and called on the Board of Pardons and Paroles to commute Johnny Garrett's death sentence to life imprisonment without parole. They said: "We, as religious leaders, are gravely concerned about the increase of violence in our State. Violence seems to be begetting more violence. At the same time, there is no compelling evidence that the death penalty is deterring murder in Texas or elsewhere."

Calls for clemency have also come from the Franciscan Sisters of Mary Immaculate in Amarillo, the convent to which Sister Tadea Benz belonged. In a statement on 2 January 1992 they said: "The impending execution of Johnny Frank

Garrett on Tuesday January 7, recalls the shock and sadness we felt at the murder of Sister Tadea Benz on October 31, 1981...Even so, we are still convinced, ten years later, that faithfulness to Jesus Christ and to our founder, St. Francis, requires of us that we forgive Johnny Frank Garrett...As the family of Sister Tadea Benz we respectfully suggest that justice would not be served by executing Johnny Frank Garrett...We ask that the State Board of Pardons and Paroles, with the support of Governor Ann Richards, grant a commutation of the death penalty in his case to life imprisonment."

Johnny Garrett, was scheduled to be executed by the state of Texas on 7 January 1992 but received a 30-day reprieve from the Governor, Ann Richards. This was, she said, to allow more time for defence counsel to develop and present mitigation evidence. This was the first time Governor Richards had intervened to stop an execution since she took office in 1990. Governor Richards does not have the power to grant clemency: she may act only on a recommendation from the Board of Pardons and Paroles. At the time of writing, Johnny Garrett's execution had been rescheduled to take place on 11 February 1992.

Johnny Garrett has a long history of mental illness and childhood abuse, but this information was not made available to the jury at his trial in 1982. Three medical experts who examined him between 1986 and 1992 found Johnny Garrett to be extremely mentally impaired, chronically psychotic and brain-damaged as the result of several severe head injuries he sustained as a child. He reportedly suffers from paranoid delusions, including a belief that the lethal injection used to execute prisoners in Texas cannot kill him.

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

According to the medical reports, Johnny Garrett was raped by a step-father who then hired him to another man for sex. It is also reported that from the age of 14 he was forced to perform bizarre sexual acts and participate in homosexual pornographic films. He was first introduced to alcohol and other drugs by members of his family when he was ten-years-old and subsequently indulged in serious substance abuse involving brain-damaging substances such as paint, thinner and amphetamines. In light of the medical evidence in this case, Amnesty International is concerned that Johnny Garrett's execution would be in violation of United Nations Economic and Social Council (EcoSoc) resolution 1989/64, adopted in May 1989, which recommends "eliminating the death

penalty for persons suffering from mental retardation or extremely limited mental competence."[27]

Justin Lee May (Texas)

Justin Lee May was scheduled to be executed in Texas on 26 November 1991. The federal district court denied May's petition without a hearing but the US Court of Appeals for the Fifth Circuit granted a stay of execution. The night before May's scheduled execution, the US Supreme Court denied Texas's request to vacate the stay. The vote was 6-3, with newly appointed Justice Thomas one of the three dissenting Justices who would have allowed the execution to proceed.

May is white and aged 44. He was convicted of the murder of Jeanetta Murdaugh, a white woman, who was shot dead during a shop robbery in Freeport, Texas, in 1978. The crime went unsolved for more than five years. In 1983 Justin May and Richard Miles were arrested for the murder. Richard Miles, accepted a "plea bargain" from the state whereby he plead guilty to nonaggravated noncapital murder after he testified that May had committed the murder.

In their petition for executive clemency, Justin May's lawyers presented new evidence which cast doubt on his guilt. They contended that the prosecution's case rested on "fabricated corroboration" and was fundamentally unsafe. The only two witnesses who claimed to identify May as the killer have since admitted that they lied at his trial. One was co-accused Richard Miles, the owner of the murder weapon. In exchange for his testimony that May had shot the victim, Miles' own capital indictment was dismissed. The other witness was in prison with May and Miles following their arrest. He testified that they talked about the crime and that May was identified as the killer. He has recanted his testimony in a lengthy affidavit. No fingerprints or other physical evidence found at the crime scene linked May to the murder.

Justin May suffers from brain damage and mental impairments stemming from the physical abuse he suffered as a child. A majority of the federal judges who heard his case on appeal considered his death sentence to be unconstitutional and unjust on the grounds of his mental impairment. His conviction and death sentence were, nevertheless, upheld on appeal. At his trial the jury did not learn that May suffered multiple illnesses as a child and endured regular, severe beatings from his father. On at least one occasion he was beaten to unconsciousness. May suffered numerous head injuries in early adulthood. In 1986 a medical examination revealed significant neurological brain damage and psychological abnormalities.

At the time of May's trial the sentencing instructions to juries in Texas capital trials did not allow them to consider whether to spare the defendant's life on the basis of mental impairment. But in the case of *Penry v Lynaugh* (1989), the US Supreme

[27]At the time of going to press Amnesty International learned that Johnny Garrett was executed as scheduled by the state of Texas on 11 February 1992.

Court held that "evidence about a defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." In *Penry* the Court recognized the need for a special instruction to enable juries in Texas to express the view that death is too severe a penalty for a crime committed as a result of mental impairment. This instruction was not available at the time of Justin May's trial.

Justin May has a good behavioural record in prison. Prison officials as well as family and friends urge that he not be executed. His supervisors in the prison factory describe him as cooperative, respectful and productive. In an affidavit to the clemency petition they state, "we do not believe he would be a threat to the prison society if he were given a life sentence instead of being executed."

Harold "Wili" Otey (Nebraska)

Wili Otey was sentenced to death in June 1978 for the 1977 rape and murder of Jane McManus in Omaha. Otey is black and the victim was white. He was scheduled to be executed in June 1991; the date was postponed to July, then August, and he then received an indefinite stay of execution. His execution would have been the first in the Nebraska since 1959 and this provoked intense debate within the state around the subject of the death penalty.

Many appeals for clemency were sent, including one from the PEN American Center, the international writers' and editors' society. In letters to Governor Benjamin Nelson they argued that Otey should receive clemency because he had no prior convictions. On death row he had studied and had published three books of poetry.

The state Board of Pardons and Paroles denied clemency in June. In August, the trial court judge ruled that the clemency hearing had been invalid because the state Attorney General is a member of the three-person board. The other two members are the Governor and the Secretary of State. The Attorney General, unlike his colleagues on the board, had an interest in the outcome of the case in that members of his own office were arguing that clemency should not be granted. Nebraska's system for considering clemency in death penalty cases is thought to be very unusual among US states.[28]

Amidst great unease at the prospect of resuming executions, Nebraska Senator Ernie Chambers of Omaha, a longtime opponent of the death penalty, gained 25 co-sponsors for a bill to repeal the death penalty in Nebraska: potentially enough votes to pass in the 49-member one-house legislature. The bill was carried over to the 1992 session.

According to information presented by Otey's attorneys, Nebraska's racial minority groups make up only about seven percent of the total state population. But 33

[28]Amnesty International understands that only two other states, Florida and Nevada, permit their attorneys general to vote in the clemency decision-making process.

percent of those under sentence of death in Nebraska (four out of twelve prisoners) are black or American Indian. All but one of Nebraska's 12 death row inmates were convicted of murdering white victims.[29]

Robyn Leroy Parks (Oklahoma)

Robyn Parks was scheduled to be executed in Oklahoma on 6 December 1991. He received a stay of execution. On 2 December the Oklahoma Board of Pardons and Paroles denied clemency by four votes to one (see commentary in section above on clemency, and Amnesty International's letter to the Board, appended). At the time of writing, Robyn Parks had a new execution date: 10 March 1992.

Parks, who is black and now aged 37, was convicted of the 1977 murder of Abdullah Ibrahim, of Bangladeshi origin. The victim was a petrol station attendant in Oklahoma City who was found dead on 17 August 1977. He had been shot once in the chest. No money, petrol or other property was missing. There were no eye-witnesses to the crime.

The state's evidence against Parks was scant. They used an incriminating statement by Parks which he later retracted. The prosecution's theory was that Parks had used a stolen credit card to buy petrol and had killed the victim to avoid being identified. But no physical evidence that a stolen credit card had been used, or even existed, was introduced by the state at trial. Parks was represented at trial by a single defence attorney who was terminally ill with cancer. He presented alibi evidence that Parks was elsewhere at the time of the crime. The jury disbelieved the defence and convicted Parks of the murder.

At the sentencing phase of the trial the prosecution invited the jury to consider three statutory aggravating circumstances to support a sentence of death. The jury refused to find two of them. They did not find the killing to be "heinous, atrocious or cruel;" they did not find Parks to pose a continuing threat to society (he had only a very minor prior criminal record). The jury did find that the victim was killed to avoid lawful arrest or prosecution (despite no physical evidence of robbery or other illegal act).

During his closing arguments the prosecutor encouraged the jury to deliberate "cold-bloodedly," telling them: "You're not yourself putting Robyn Parks to death. You just have become a part of the criminal justice system that says when anyone does this, that he must suffer death. So all you are doing is you're just following the law... God's law is the very same. God's law says that the murderer shall suffer death. So don't let it bother your conscience, you know."

Following this, the judge instructed the jury to "avoid all influence of sympathy" when deciding whether the penalty should be life imprisonment or death. The jury returned a sentence of death. Parks' death sentence is unusual in that he is one of only

[29]Source: Legal Defense and Education Fund, Inc., New York.

two of Oklahoma's 123 death row inmates to be sentenced to death on the basis of the single aggravating circumstance described above.

In 1988, the federal Court of Appeals reversed Parks' death sentence on the grounds that the judge's instruction had created an impermissible danger that the jury may have thought they were being told to disregard the mitigating evidence Parks had presented.

The state of Oklahoma appealed and the US Supreme Court agreed to hear the case. The ruling, *Saffle v. Parks* (1990), reinstated Parks' death sentence on a five-to-four vote. The majority held that Parks was not entitled to relief for procedural reasons. The minority said that he was. The minority opinion noted: "Until today, the Court consistently has vacated a death sentence and remanded for resentencing when there was any ambiguity about whether the sentencer actually considered mitigating evidence...The Court's failure to adhere to this fundamental Eighth Amendment principle is inexcusable."

Parks has been on death row since December 1978. His behaviour in prison is described as exemplary. He is reported to have earned a reputation as a mediator in race-related problems on death row, and to have won the respect of prison guards and other inmates.

Earl Washington (Virginia)

Earl Washington, a black former farm labourer, was convicted of the June 1982 rape and murder of Rebecca Lynn Williams, a 19-year-old white woman, in Culpeper, Virginia. The crime remained unsolved for almost a year and aroused considerable media publicity in the small community.

Washington, who is mentally retarded with an IQ of 57 to 69, was arrested on unrelated charges in May 1983. He was interrogated at length and eventually confessed to Williams' murder. At his trial the state contended that he had knowingly waived his right to have a lawyer present during his interrogation by the police. Earl Washington was apparently unable to provide accurate details of the crime on his own. When asked non-leading questions he first said the victim was black; described her as short (she was 5 foot 8 inches tall); said he stabbed her two or three times (she was stabbed 38 times), and said she had been alone in her apartment (two of her three children were present). When taken to the crime scene he could not identify the house.

Earl Washington's legal representation at trial was inadequate in several respects. His lawyer failed to appreciate the significance of forensic reports which indicated that someone other than Washington had raped the victim. Aside from the fact that the rapist was believed also to have been the murderer, proof of rape was the element making this a capital offence. The lawyer failed to properly investigate Washington's mental retardation and mental health issues. At the sentencing phase of the trial, the defence argument to the jury covered just 27 lines in the trial record. Defence counsel offered

no reason why the jury should not impose the death penalty. Earl Washington was sentenced to death in March 1984.

On federal *habeas corpus* appeal to the Fourth Circuit Court of Appeals in 1990, Earl Washington's lawyers argued that no physical evidence linked him to the murder and that his conviction was based "solely on insistent and leading police interrogation."

Dr. John N Follensbee, a psychiatrist who examined Earl Washington after his conviction found him to be mentally retarded and very probably suffering from organic brain damage. In an affidavit, Dr. Follensbee cast doubt on the reliability of the confession Washington gave after a sleepless night and long interrogation. He stated: "This man is easily led. Out of his need to please and his relative incapacity to determine the socially and personally appropriate behaviour, he relies on cues given by others and a reflexive affability. These are his only apparent adaptive skills. It was my impression that if on the evening of his execution the electric chair were to fail to function, he would agree to assist in its repair."

Earl Washington's attorneys further argued that substantial forensic evidence excluded Washington as the assailant and pointed to another suspect. This included seminal fluid and human hair found at the victim's home which did not match Earl Washington but did match another suspect.

Virginia is one of the states in which it is most difficult for cases such as Washington's to get a new hearing. Virginia's rules of procedure in criminal cases strictly limit the introduction of new evidence. Earl Washington is close to exhausting his legal appeals and it is feared that a date for his execution may be set in 1992.

Ray Copeland (Missouri)

In April, Amnesty International appealed to the Attorney General of Missouri not to impose the death penalty on Ray Copeland, who was convicted of a crime committed when he was 71. No reply was received and Copeland was sentenced to death, in contravention of Article 4(5) of the American Convention on Human Rights (ACHR) which prohibits the execution of persons aged over 70 at the time of the offence. The US government has signed but not ratified the ACHR (see Amnesty International's letter, appended).

APPENDIX: LETTERS TO AND FROM US AUTHORITIES IN 1991

5 February 1991	To Governor Douglas Wilder, Virginia, re: Joseph Giarratano
27 February 1991	From US Embassy, Stockholm, Sweden, re: death penalty
9 April 1991	To Jack Partain, Georgia District Attorney re: Janice Buttrum
18 April 1991	From Jack Partain, Georgia District Attorney re: Janice Buttrum
19 April 1991	To William Webster, Missouri Attorney General re: Ray Copeland
13 June 1991	To Governor Ann Richards, Texas, regarding Jerry Bird
20 June 1991	To Governor Lawton Chiles, Florida, regarding Bobby Francis
17 July 1991	To Governor Douglas Wilder, Virginia, regarding Albert Clozza
30 September 1991	To Governor Guy Hunt of Alabama, regardng juvenile offenders
30 September 1991	To President George Bush regarding juvenile offenders
14 November 1991	To Oklahoma Pardon and Parole Board regarding Robyn Parks
6 December 1991	To Attorney General of Pennsylvania regarding Mumia Abu-Jamal
4 December 1991	To Gary Maynard, Oklahoma Dept of Corrections, re: Unit H Block
24 December 1991	From James Saffle, Oklahoma Dept of Corrections, re: Unit H Block
20 December 1991	To Texas Board of Pardons and Paroles, regarding Johnny Garrett
24 December 1991	To Governor Fife Symington, Arizona, regarding Donald Harding

amnesty international

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

AMR 51/03/91

The Hon. Douglas Wilder
3rd Floor
State Capitol
Richmond, VA 23219 USA

5 February 1991

Dear Governor

I am writing to you about Joe Giarratano who is scheduled to be executed on 22 February 1991 for the 1979 murder of Barbara Kline and the rape and murder of her daughter, Michelle. Amnesty International is deeply disturbed that his execution has been scheduled despite the many doubts expressed about the evidence used to convict him. In such circumstances Amnesty International believes that the death penalty is a particularly inappropriate punishment on account of its final and irrevocable nature.

Joe Giarratano, who was heavily addicted to drugs and alcohol at the time of the crime, claims he discovered the bodies of the victims after awaking from a blackout in their appartment where he had also been living. After fleeing to his home state of Florida, he gave himself up to the police and, apparently convinced of his guilt, confessed to the crimes. He waived his right to a jury trial, refused to cooperate with his court-appointed lawyer and was convicted and sentenced to death after a trial lasting half a day.

Since his conviction, Giarratano's appeal lawyers have uncovered new evidence and omissions and inconsistencies in the trial evidence raising serious questions about his guilt and about his mental competence at the time of trial. Concerns about the case, based on these post-conviction investigations, include the following:

- Giarratano made five confessions to the police, the first four of which were confused and bore no relation to the known facts about the crime. He was convicted on the basis of the fifth confession made after police had allegedly fed him details about the murders. The only physical evidence connecting Giarratano to the crime scene - a hair and some fingerprints - was consistent with his having lived in the apartment where the women were murdered.

- Pubic hairs, fingerprints and a driving license were recovered from the crime scene, none of which belonged to Giarratano or the victims. This was not made known to Giarratano's lawyer at the time of trial.

- Photographs of the crime scene shown by the prosecution at the trial showed bloody footprints leading from the bathroom where Barbara Kline had been stabbed to death. A forensic specialist who examined Giarratano's boots in 1979 later said that they could not have made the footprints and that, had she known about the photographs at the time, she would have recommended that the police obtain the shoes of other possible suspects for examination. Giarratano himself had given his boots to the police after discovering two spots of blood on them. The prosecution argued that the blood type from the boots matched that of Barbara's daughter, Michelle, even though Michelle had no blood on her. There is no record of any blood tests having been carried out on Barbara

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Kline, who had bled extensively. Later evidence has also suggested that the small amount of blood on Giarratano's boots came from an unrelated source.

- Re-examination of autopsy and other evidence has indicated that Michelle was strangled by a ligature and not manually as stated in Giarratano's confession. Barbara Kline's stab wounds were found to be typical of a right-handed assailant. Giarratano is left-handed and suffers from a slight paralysis of the right hand.

- Giarratano has a history of childhood abuse, was taking drugs and alcohol from the age of 11, is reported to have suffered from hallucinations and had attempted suicide five times during his teens and again after his arrest. He was given large doses of thorazine before and during his trial. His appeal lawyers contend that these circumstances in themselves cast serious doubt about his mental competency at the time of trial and about the reliability of the confession evidence, without which the case against him would have been extremely weak and a conviction could probably not have been sustained.

Although Giarratano's case has been through many avenues of appeal, none of the new evidence has been considered on its merits by any court. While these matters remain unresolved, the possibility cannot be excluded that an innocent person may be executed.

Safeguards guaranteeing the protection of the rights of those facing the death penalty adopted by the United Nations Economic and Social Council in 1984 (Ecosoc Resolution 1984/50) provide at (4) that "capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts". The circumstances strongly suggest that this standard has not been met in Giarratano's case.

As you are aware, Amnesty International opposes the death penalty unconditionally in all cases, irrespective of the nature of the crimes committed, as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment as proclaimed in the Universal Declaration of Human Rights and other international human rights instruments. In view of all the doubts raised in this communication, we urge that Joe Giarratano's case be the subject of a thorough review and we appeal to you, at the very least, to prevent his execution.

Yours sincerely,

Ian Martin
Secretary General

26 MAR 1991

EMBASSY OF THE
UNITED STATES OF AMERICA

U.S. INFORMATION SERVICE
STRANDVÄGEN 101
S-115 27 STOCKHOLM, SWEDEN
TEL 08-783 53 00 FAX 08-665 33 08

February 27, 1991

Dear Mr.

Your letter of February 15 to the American Embassy has been referred to my office for reply. In your letter you stated that you had written an appeal to the governor of Louisiana to grant clemency to Andrew Lee Jones by commuting his death sentence. Several copies of appeals to Governor Charles Roemer concerning this case were received with your letter.

In the United States, the decision to use the death penalty is accompanied by serious and searching debate. Those who believe society has no right to use this punishment and that it can never be fairly - or with certainty - applied, confront others who believe that in cases of the most heinous crimes, society may owe it to victims to enact the death penalty and by so doing prevent other such crimes.

A majority of Americans, however, support capital punishment. A 1976 Supreme Court decision reinstating the death penalty as constitutional under existing American law, after a decade's Court-mandated suspension, reflected this view. The large minority in the United States who oppose the death penalty cite moral and philosophical reasons, its disproportionate application to poor people and minorities, and research indicating that it fails as a deterrent and that peaks in violent crime seem to follow executions. These are views similar to those expressed by Amnesty International and other organizations and would appear to motivate their members to write letters to Governor Roemer and officials of other states where the death penalty is used. Your concerns are shared by many Americans.

In the United States, each of the fifty state governments decides for itself whether or not the death penalty is an appropriate punishment for certain crimes committed within its borders. Thus, it is entirely appropriate for you address questions related to capital punishment in Louisiana to the authorities in that state, for example the governor and the state legislature.

We believe that the legal system of the United States, based on fundamental rights guaranteed by our Constitution, provides the fairest possible justice under laws enacted by the representatives of the American people. In each case, the death penalty is imposed only under the most exceptional circumstances and only following an exhaustive process, including rights of appeal and clemency review by competent authority in the state concerned.

I hope the information in this letter is useful to you.

Sincerely,

George F. Beasley
Counselor for Press
and Cultural Affairs

amnesty international

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

Ref.: TG/AMR/51/04/91

The Honorable Jack Partain
District Attorney
Conasauga Judicial Circuit
PO Box 953
Dalton
Georgia 38722
USA

9 April 1991

Dear District Attorney Partain,

I am writing regarding the case of Janice Buttrum who was sentenced to death for a crime she was convicted of committing, with her husband, when she was 17 years old. Her sentence of death was overturned in 1989 and she is now awaiting a new sentencing hearing.

Amnesty International is a worldwide, independent movement which works for the release of men and women detained or imprisoned anywhere by reason of their political, religious or other conscientiously held beliefs, or on account of their ethnic origin, sex, colour, language or religion provided they have neither used nor advocated violence. Such prisoners are known to the organization as 'prisoners of conscience.' It also works for fair trials for political prisoners and opposes the death penalty, torture or other cruel, inhuman or degrading treatment or punishment of all prisoners.

Amnesty International is particularly concerned in this case about the possible re-imposition of the death penalty on Janice Buttrum, noting particularly that she was under 18 at the time of the offence. We are aware that in Stanford v Kentucky and Wilkins v Missouri the United States Supreme Court held in 1989 that defendants who were aged 17 and 16 at the commission of the offence may be executed because society has not formed a consensus that such executions constitute "cruel and unusual punishment." However, international standards exempting under-18-year-old offenders from the death penalty have been developed in recognition of the fact that the death penalty - with its unique and irreversible character - is a wholly inappropriate punishment for persons who have not attained

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full physical or emotional maturity at the time of their actions. However heinous the crime, the imposition on a young person of a sentence which denies any possibility of eventual rehabilitation or reform is contrary to contemporary standards of justice and humane treatment.

Article 6(5) of the International Covenant on Civil and Political Rights states:

> "Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age ..."

Article 4(5) of the American Convention on Human Rights states:

> "Capital punishment shall not be imposed upon persons who, at the time the crime was committed were under 18 years of age ...

Although the US government signed both these instruments in 1977 it has not yet ratified them. However, as a signatory nation the US has an obligation under the Vienna Convention on the Law of Treaties to do nothing that would defeat the object of signed treaties. Amnesty International believes that all jurisdictions within the USA have a similar obligation to comply with recognized international standards. Indeed, a growing number of states within the US prohibit the execution of offenders who were under the age of 18 at the time of the commission of the crime.

The Safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC Resolution 1984/50) in Safeguard No. 3 states:

> "Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death..."

The execution of offenders who were under the age of 18 at the time of the commission of the crime is extremely rare. More than 70 countries which retain the death penalty by law have abolished it for people under 18 at the time the crime was committed. The USA is one of only 7 countries known to have executed offenders who were juveniles at the time of the crime in the past decade (the other countries are Iran, Iraq, Bangladesh, Nigeria, Pakistan and Barbados, with Barbados having raised the minimum age for which a person can be executed to 18 in 1989).

Although we note that public opinion in the USA may be generally said to be in favour of the retention of capital punishment, an opinion poll conducted in Georgia in December 1985 by Georgia State University showed that more than two to one of those polled expressed opposition to the execution of offenders aged under 18 at the time the crime was

committed.

Amnesty International is aware of the very serious nature of the crime for which Janice Buttrum and her husband were convicted. However, for the reasons given above, we strongly urge you not to seek the re-imposition of a sentence of death on Janice Buttrum when her case comes to you for further proceedings.

Yours sincerely,

Ian Martin
Secretary General

JACK PARTAIN

DISTRICT ATTORNEY
CONASAUGA JUDICIAL CIRCUIT

P. O. BOX 953
DALTON, GEORGIA 30722-0953

WHITFIELD COUNTY
(404) 272-2121
MURRAY COUNTY
(404) 695-4811

April 18, 1991

23 APR 1991

Ian Martin
Secretary General
Amnesty International
1 Easton Street
London WC1X 8DJ
United Kingdom

Dear Mr. Secretary General:

Thank you for writing concerning the case of State of Georgia vs. Janice Buttrum. Your input will be considered, along with numerous other factors, in the decision making process. As of this writing, no decision has been made. If I can be of further service please do not hesitate to write.

Sincerely,

Jack Partain

FC: Amr 51/91.04

JP:mb

amnesty international

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

Ref.: AMR 51/07/91

William L Webster
Attorney General of Missouri
Supreme Court Building
Jefferson City, MO 65101
U S A

19 April 1991

Dear Attorney General Webster

I am writing regarding the case of Ray Copeland who is awaiting sentencing in the Circuit Court of Missouri, Livingston County, after being convicted for a crime he committed when he was aged 71.

Amnesty International is a worldwide, independent movement which works for the release of men and women detained anywhere by reason of their beliefs, religion, sex, colour, language or ethnic origin provided they have neither used nor advocated violence. Such prisoners are known to the organization as "prisoners of conscience". It also works for fair trials for political prisoners and opposes the death penalty, torture or other cruel, inhuman or degrading treatment or punishment of all prisoners.

Amnesty International is concerned about the possible imposition of a sentence of death on Ray Copeland, noting that he was over the age of 70 at the time of the crime. This would contravene Article 4(5) of the American Convention on Human Rights which states:

"Capital punishment shall not be imposed upon persons who, at the time the crime was committed were ... over 70 years of age ..."

The US government signed the American Convention on Human Rights in 1977 but has not yet ratified it. However, as a signatory nation the US has an obligation under the Vienna Convention on the Law of Treaties to do nothing that would defeat the object of signed treaties. Amnesty International believes that all jurisdictions within the USA have a similar obligation to comply with recognized international standards.

../

☎ (44)(71) 413 5500 Telegrams: Amnesty London WC1 Telex: 28502 FAX: 956 1157

The organization is aware of the very serious nature of the crime for which Ray Copeland has been convicted. However, it requests that the above be considered when the case comes for sentencing and strongly urges that a sentence of death is not imposed on Ray Copeland. We would also request, on humanitarian grounds, that a sentence of death is not imposed on Mrs Copeland, a co-defendant in the case.

I am sending a copy of this letter to the Honourable Justice E Richard Webber of Livingston County Circuit Court, who tried the case.

Yours sincerely,

Ian Martin
Secretary General

amnesty international

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

Ref.: AMR/51/91/11

The Honourable Ann Richards
Governor of Texas
State Capitol
PO Box 12428
Capitol Station
Austin, TX 78711
USA

13 June 1991

Dear Governor Richards,

I am writing about Jerry Bird, a prisoner under sentence of death in Texas, who is scheduled to be executed on 17 June 1991. I understand that Mr Bird has suffered a stroke and is, at the time of writing, in hospital.

As you may know, Amnesty International opposes the death penalty in all cases, believing it to be a violation of the right to life and the right not to be subjected to cruel, inhuman and degrading treatment or punishment, as proclaimed in the Universal Declaration of Human Rights.

Information received by Amnesty International from lawyers currently representing Mr Bird alleges that important mitigating evidence was not presented to the jury at his trial . This included evidence that he had a history of childhood abuse and mental health problems and may suffer from brain damage. A co-defendant in the crime received a life sentence and, according to Mr Bird's attorneys, it is uncertain which of them killed the victim. Amnesty International takes no position on the question of guilt or innocence in cases of prisoners sentenced to death. However, we urge you to consider the above details and the present state of health of Mr Bird, and respectfully appeal to you to grant him clemency by commuting his sentence of death.

Yours sincerely,

Ian Martin
Secretary General

☎ (44)(71) 413 5500 Telegrams: Amnesty London WC1 Telex: 28502 FAX: 956 1157

amnesty international

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

Ref.: AMR/51/13/91

The Honourable Lawton Chiles
Governor of Florida
State Capitol - PL 01
Tallahassee, FL 32399 - 0001
USA

20 June 1991

Dear Governor Chiles,

I am writing about Bobby Francis, a prisoner under sentence of death i n Florida, who is scheduled to be executed in Florida today.

Amnesty International is concerned that, although the jury voted in favour of a life sentence, the judge at Bobby Francis' trial overruled their recommendation and sentenced him to death. Amnesty International takes no position on whether sentencing decisions should rest with judges or juries. However, the overriding of a recommendation of life imprisonment by a consensus of jurors, reached after their consideration of the facts, undermines the principle that death should not be imposed as a penalty where there is any doubt as to its appropriateness in a particular case.

Amnesty International welcomes your initiative to set up a task force to examine the jury override issue in Florida. Since this issue was involved in Mr Francis' case, we consider it to be an additional reason to grant clemency to Bobby Francis and we strongly urge you to commute his sentence of death.

Yours sincerely,

Ian Martin
Secretary General

☎ (44)(71) 413 5500 Telegrams: Amnesty London WC1 Telex: 28502 FAX: 956 1157

amnesty international

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

Ref.: AMR 51//91/14

The Hon L Douglas Wilder
Governor of Virginia
The State Capitol
Richmond, VA 23219
USA

17 July 1991

Dear Governor Wilder

I am writing to you regarding Albert Clozza, a prisoner under sentence of death who has now exhausted all his legal appeals and, for the moment, has chosen not to approach you to request executive clemency. His execution has been scheduled to take place on 24 July 1991.

A matter of special concern in this case is the quite shockingly deficient legal representation afforded to Mr. Clozza at his trial. The crime of which he was accused (the abduction, rape and murder of a 13-year-old girl) understandably provoked enormous public outrage. Yet, far from seeking to defuse any potential jury prejudice, Mr. Clozza's defence lawyer contributed to it further by telling the jury of his own disgust at the crime, his reservations about representing Mr. Clozza and his personal distaste for his client. He commented at one point, "I would probably want to kill him."

In his closing argument at the guilt-phase of the trial, defence counsel conceded that it was likely the death penalty would be imposed, saying he hoped he had not led the jury "to the inevitable conclusion that death is the preferred alternative in this case." After admitting that he was not prepared for the sentencing phase of the trial he presented no character witnesses or mitigation evidence. Counsel instead led the jury in a recital of the Lord's Prayer.

As a lawyer yourself you will appreciate how fundamental it is to the adversarial system of justice for an accused person to be given adequate legal representation at trial. And when the penalty being sought by the state is death the safeguards must be all the more stringent. I would draw your attention to Safeguard No 5 of the "Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty," adopted by the United Nations Economic and Social Council in resolution 1984/50 in March 1984. This reads in part:

> "Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair

trial...including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings."

It would seem from the record that Mr. Clozza did not enjoy the highest standards of United States' justice at his trial, and it is indeed disturbing that the courts saw fit to uphold the constitutionality of this death sentence. I would respectfully urge you to review the case, taking this factor into account. Despite the fact that Mr. Clozza chooses not to petition you for mercy at present, I should, nevertheless, like to take this opportunity to appeal to you to use your powers of executive clemency to commute his death sentence.

I should also like to raise with you, as a separate matter, the very restricted visiting rights we understand Mr. Clozza now has at the Greensville Correctional Center (where he was moved on 8 July in preparation for his execution). As you know, when executions were carried out in the Richmond penitentiary prisoners were allowed almost unlimited access to their lawyers, paralegals and clergy in the days before their execution.

Of particular concern is a regulation which, we understand, denies lawyers, paralegals and clergy <u>all</u> access to the prisoner on the day of the execution itself. It is difficult to see the rationale for such a drastic departure from Virginia's previous practice. To insist that a prisoner face the last hours before his execution entirely alone seems an extreme and unnecessary cruelty.

I should be grateful if you would look into this matter.

Yours sincerely

Ian Martin
Secretary General

amnesty international

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

Ref.: TG AMR 51/91/28

The Honorable Guy Hunt
Governor of Alabama
State House
Montgomery, AL 36130
USA

30 September 1991

Dear Governor Hunt

Under separate cover I am sending a copy of an Amnesty International report entitled United States of America: The Death Penalty and Juvenile Offenders, which will be published on 9 October 1991. The report describes the application of the death penalty in the cases of juveniles aged under 18 at the time of the offence, US state law and practice and relevant international standards. It gives information on 23 cases which Amnesty International has reviewed in some detail. Individual case profiles on 14 cases are included.

The USA stands almost alone in the world in permitting the execution of juvenile offenders. More than 72 countries that retain the death penalty in law have abolished it for people under 18 at the time of the crime and executions of minors are extremely rare. The USA is one of only seven countries known to have carried out such executions in the last decade: there was one such execution in Barbados (which has since raised its minimum age to 18), one in Nigeria, three in Pakistan, four in the USA and one reported in Bangladesh. An unknown number of juveniles have also been executed in Iran and Iraq. These statistics indicate that, with the exception of Iran and Iraq, the USA has executed more juvenile offenders in recent years than any other country. As of 1 July 1991 there were 31 juvenile offenders on death row in the USA - more than in any other country known to Amnesty International.

There is a well established internationally recognized legal standard prohibiting the execution of offenders aged under 18 at the time of their offence. Indeed, the international consensus on this issue is overwhelming. Treaties and instruments containing such a prohibition include the International Covenant on Civil and Political Rights and the American Convention on Human Rights (both of which the US government signed in 1977 but has not yet ratified); the United Nations Convention on the Rights of the Child; and the United Nations Economic and Social Council (ECOSOC) Safeguards guaranteeing the rights of those facing the death penalty, which were adopted by the UN General Assembly by consensus in December 1984. Three-quarters of the world may now be presumed to adhere to these safeguards through ratification of, or accession to, one or more of these treaties.

Such standards continue to be reaffirmed in the international arena. On 24 May 1989, ECOSOC adopted resolution 1989/64 inviting Member States which had not yet done so to review the extent to which their legislation provides for the above Safeguards. On 1 September 1989, the United Nations

Sub-commission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/33, urgently appealing to Member States which still applied the death penalty to juvenile offenders "to take the necessary legislative and administrative measures with a view to stopping forthwith this practice".

Amnesty International is aware of the very serious crimes of which juveniles sentenced to death in the USA have been convicted. However, international standards were developed in recognition of the fact that the death penalty - with its unique and irreversible character - is a wholly inappropriate punishment for persons who have not attained full physical or emotional maturity at the time of their actions. However heinous the crime, the imposition on a young person of a sentence of the utmost cruelty which denies any possiblity of eventual rehabilitation or reform is contrary to contemporary standards of justice and humane treatment.

Amnesty International's report describes its findings based on a review of the cases of 23 juvenile offenders sentenced to death or executed in the USA in recent years. The large majority came from acutely deprived backgrounds: at least 12 had been seriously physically or sexually abused; more than half suffered from mental illness or brain damage and most were of below-average intelligence or were mentally retarded. However, in a disturbing number of cases, trial juries had no opportunity to consider these factors in mitigation against a possible death sentence. Often this was because trial attorneys had failed to conduct an adequate investigation into the defendant's background and did not present relevant information at the trial or sentencing hearing. In some cases, the defendant's youth itself was not mentioned, or fully considered, as a mitigating circumstance.

US capital punishment laws contain guidelines intended to ensure that the death penalty is fairly applied and reserved only for the most culpable offenders. However, the evidence suggests that these safeguards have not been met in practice.

Amnesty International finds it deeply discouraging that the United States is so at odds with international standards and practice in permitting the execution of juvenile offenders. All states, we believe, have the responsibility of ensuring that their laws conform to minimum international standards and promote respect for human rights standards.

In light of the findings of its enclosed report Amnesty International respectfully urges you, as an elected leader in a state which retains the death penalty for juvenile offenders, to take all possible steps to exempt them from this form of punishment. We should welcome your comments on this matter.

Yours sincerely

Herve Berger
Deputy Secretary General

amnesty international

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

Ref.: TG AMR 51/91/27

The President
The White House
1600 Pennsylvania Avenue
Washington, DC 20500
USA

30 September 1991

Dear Mr President

Under separate cover I am sending a copy of an Amnesty International report entitled United States of America: The Death Penalty and Juvenile Offenders, which will be published on 9 October 1991. The report describes the application of the death penalty in the cases of juveniles aged under 18 at the time of the offence, US state law and practice and relevant international standards. It gives information on 23 cases which Amnesty International has reviewed in some detail. Individual case profiles on 14 cases are included.

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There is a well established internationally recognized legal standard prohibiting the execution of offenders aged under 18 at the time of their offence. Indeed, the international consensus on this issue is overwhelming. Treaties and instruments containing such a prohibition include the International Covenant on Civil and Political Rights and the American Convention on Human Rights (both of which the US government signed in 1977 but has not yet ratified); the United Nations Convention on the Rights of the Child; and the United Nations Economic and Social Council (ECOSOC) Safeguards guaranteeing the rights of those facing the death penalty, which were adopted by the UN General Assembly by consensus in December 1984. Three-quarters of the world may now be presumed to adhere to these safeguards through ratification of, or accession to, one or more of these treaties.

Such standards continue to be reaffirmed in the international arena. On 24 May 1989, ECOSOC adopted resolution 1989/64 inviting Member

States which had not yet done so to review the extent to which their legislation provides for the above Safeguards. On 1 September 1989, the United Nations Sub-commission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1989/33, urgently appealing to Member States which still applied the death penalty to juvenile offenders "to take the necessary legislative and administrative measures with a view to stopping forthwith this practice".

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Amnesty International's report describes its findings based on a review of the cases of 23 juvenile offenders sentenced to death or executed in the USA in recent years. The large majority came from acutely deprived backgrounds: at least 12 had been seriously physically or sexually abused; more than half suffered from mental illness or brain damage and most were of below-average intelligence or were mentally retarded. However, in a disturbing number of cases, trial juries had no opportunity to consider these factors in mitigation against a possible death sentence. Often this was because trial attorneys had failed to conduct an adequate investigation into the defendant's background and did not present relevant information at the trial or sentencing hearing. In some cases, the defendant's youth itself was not mentioned, or fully considered, as a mitigating circumstance.

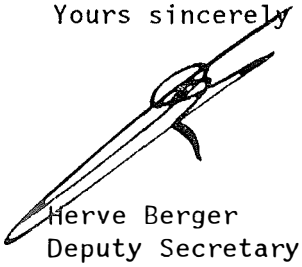
US capital punishment laws contain guidelines intended to ensure that the death penalty is fairly applied and reserved only for the most culpable offenders. However, the evidence suggests that these safeguards have not been met in practice.

Amnesty International finds it deeply discouraging that the United States is so at odds with international standards and practice in permitting the execution of juvenile offenders. Although the federal government does not have a direct role in state law enforcement, we believe that it retains a responsibility to ensure that all laws within its territorial jurisdiction conform to minimum international standards and to promote respect for human rights standards.

In light of the findings of its report Amnesty International respectfully urges the US federal government to use its influence with a view to eliminating this form of punishment in the United States.

We should welcome your comments on this matter.

Yours sincerely



Herve Berger
Deputy Secretary General

amnesty international

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

Ref.: TG AMR 51/91/32

Ms Jari Askins
Chair
Oklahoma Pardon and Parole Board
4040 N Lincoln Blvd, Suite 219
Oklahoma City, OK 73105
USA

14 November 1991

Dear Ms Askins

I am writing to you regarding the decision by the Oklahoma Pardon and Parole Board to convene a clemency hearing on 2 December 1991 to decide whether Robyn Parks is to be executed by the State of Oklahoma on 6 December as scheduled. Amnesty International welcomes the board's decision to convene a clemency hearing (the first for more than 25 years). However, we are deeply concerned at certain disturbing comments reportedly made by three members of the board about this decision, published in the Tulsa World on 8 November 1991.

According to that article, board-members Carl Hamm and Marzee Douglass indicated that they had voted to convene the hearing largely in order to expedite Parks' execution. Mr. Hamm was reported as saying, "If you do not have that meeting, there's some judge somewhere that's going to give him a stay based on the pardon and parole board's failure to give a clemency hearing." And Mr Douglass apparently told the reporter he did not want to risk further litigation tying up the Parks case in the final days before an execution.

Also of concern is the fact that two of the five members of the board voted not to hold a clemency hearing, despite the fact that this is a capital case and only the second scheduled execution under Oklahoma's current death penalty laws. Mr Farrell, the former chair of the Pardon and Parole Board, was reported as saying that clemency hearings are not a right of death row inmates.

Since this is the first occasion in more than 25 years in which the Oklahoma Pardon and Parole Board has convened a clemency hearing in a capital case, I should like to take this opportunity to make the following observations regarding the traditional role, purpose and the unique importance of the executive clemency power to commute death sentences.

- The power to commute death sentences to life imprisonment has long been regarded as an important function of the executive prerogative of mercy. Executive clemency has a role in mitigating sentences which have been legally imposed by the courts but are unduly harsh. In Gregg v. Georgia (1976) the US Supreme Court noted that a system without

executive clemency "would be totally alien to our notions of criminal justice." Any criminal justice system is liable to human error, and when the penalty to be imposed is death, the safeguards surrounding the process must be of the highest order.

- Reliance on the decisions of the courts cannot always ensure that the highest standards of fairness prevail. Appellate courts are bound by procedural rules which may prevent them from considering all relevant information or new evidence which was not presented at an earlier stage in the proceedings. Clemency authorities should not lose sight of their important role to provide a final safeguard against the unfair imposition of death sentences.

- Clemency authorities have the advantage of being able to consider all the circumstances of a case. Factors which may properly be considered grounds for exercising compassion include the prisoner's behaviour in prison; his or her background, family history and medical history; or the proportionality of a death sentence by comparison with other death sentences imposed in the state.

- It is critically important that clemency authorities conduct their review of an individual prisoner's petition with all due objectivity and fairness. The National Governors Association, in its publication, Guide to Executive Clemency Among the American States, notes in this regard: "Clemency decisions...can become a major political and media event. However, the petitioner for a pardon or commutation should receive all reasonable and fair consideration that an objective and thorough investigation can ensure. Each case requires an investigative response that will fairly represent the facts and provide a framework for an equitable evaluation and decision."

- I should also like to draw the board's attention to Resolution 1984/50 on safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the United Nations Economic and Social Council. Safeguard 7 states that: "Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment."

In Mr Parks' case a number of important factors worthy of your consideration will be presented to you in detail by the attorneys representing Mr Parks. They include the following:

- the very thin evidence forming the basis of his conviction;

- the jury's rejection of two possible aggravating circumstances to support a death sentence;

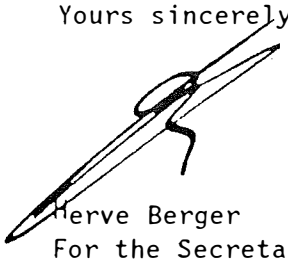
- the fact that Mr Parks is one of only three of Oklahoma's 123 death row inmates to have been sentenced to death on the basis of the single aggravating circumstance of murder to avoid arrest or prosecution;

- Mr Parks' exemplary behavioural record while on death row;

- racial and economic factors which may have played a role in securing his death sentence.

In light of the very disturbing nature of the comments reportedly made by members of the Oklahoma Pardon and Parole Board, and the fact that two board-members saw fit to vote against holding a clemency hearing at all, I seek your reassurance that the board's recommendation to the Governor will be based objectively on the facts of Mr Parks' case, not on political expediency. I should be grateful if you would forward us copies of the guidelines and criteria for executive clemency employed by the board in its deliberations in capital cases.

Yours sincerely



Herve Berger
For the Secretary General

cc The Hon David Walters, Governor of Oklahoma

cc Members of the Oklahoma Pardon and Parole Board:
Mr Carl Hamm
Mr Marzee Douglass
Mr Farrell Hatch
Ms Carolyn Crump

amnesty international

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

Ref.: TG AMR 51/91/35

The Honorable Ernest D Preate, Jr
Attorney General of Pennsylvania
Office of the Attorney General
Strawberry Square
Harrisburg, PA 17120
USA

6 December 1991

Dear Attorney General

I am writing to you regarding Mumia Abu-Jamal who was convicted in December 1982 of the murder of a Philadelphia police officer and sentenced to death. In March 1989 the Pennsylvania Supreme Court affirmed the conviction and death sentence.

Amnesty International in no way wishes to minimize the serious nature of the crime for which Mumia Abu-Jamal was convicted and the organization takes no position regarding the conviction per se. We are concerned, however, by the sentencing phase of Mumia Abu-Jamal's trial, during which details of his former political activities and associations were raised by the prosecutor in arguments to the jury, who then had to choose between a life or death sentence.

During the sentencing phase the trial judge permitted the prosecution to cross-examine Mumia Abu-Jamal with respect to a 12 year-old Philadelphia Inquirer article about the Philadelphia Chapter of the Black Panther Party. This identified him (he was then known as Wesley Cook) as the 16-year-old communications secretary for the chapter. The prosecutor cross-examined him about his membership in the Black Panther Party and certain views he expressed in an interview included in the article.

Later, in closing arguments to the jury, the prosecutor again made reference to quotations from the newspaper article, suggesting that Mumia Abu-Jamal had demonstrated a rebellious attitude towards law and order. This was misleading in view of the fact that he had no previous criminal convictions. The prosecutor seems to have used Mumia Abu-Jamal's past political beliefs and affiliations overtly in his successful efforts to persuade the jury to impose the death penalty.

On appeal, Mumia Abu-Jamal argued that the prosecutor's cross-examination had been inflammatory, prejudicial and lacking in relevance, and had distracted the jury from its proper role by presenting the views of an unpopular, radical organization, with which Mumia Abu-Jamal had been associated 12 years previously when he was 16.

In an accompanying brief as amici curiae, the National Conference of Black Lawyers (Philadelphia Chapter) and the American Civil Liberties Union (Greater Philadelphia branch) argued that a criminal sentence based to any degree on activities or beliefs protected by the First Amendment is constitutionally invalid. Evidence of Mumia Abu-Jamal's past group association and political beliefs ought to have been ruled inadmissible, they said. The subject matter of the newspaper article concerned constitutionally protected beliefs and activities and was wholly irrelevant to the charges for which he stood trial in 1982.

However, the Pennsylvania Supreme Court held in March 1989 that the prosecutor's line of questioning had not violated Mumia Abu-Jamal's First Amendment rights of free speech and association. It further ruled that the evidence was not prejudicial because the jury had not been specifically instructed to consider Mumia Abu-Jamal's views or Black Panther Party membership as aggravating factors.

Amnesty International is nevertheless gravely concerned that the jury in this case may have drawn adverse inferences from the references to the nature of Mumia Abu-Jamal's views or affiliations in the past. Any risk that the jury may have been impermissibly influenced in favour of the death penalty in this way is unacceptable and renders Mumia Abu-Jamal's death sentence deeply troubling.

I urge you to review Mumia Abu-Jamal's case as a matter of urgency, given the advanced stage of his legal appeals. I should welcome your response to the matters raised. I am sending a copy of this letter to Governor Casey and will urge that he grant clemency to Mumia Abu-Jamal.

Yours sincerely

Ian Martin
Secretary General

amnesty international

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

Ref.: TG AMR 51/91/34

Mr Gary D Maynard
Director
Oklahoma Department of Corrections
PO Box 11400
Oklahoma City, OK 73136
USA

4 December 1991

Dear Mr Maynard

I am writing to inquire about the recently opened Unit H Block of the Oklahoma State Penitentiary in McAlester. I understand that this newly constructed prison is designated to house Oklahoma's death sentenced prisoners and that inmates currently under sentence of death were transferred there earlier this month.

According to reports Amnesty International has received, the Unit is virtually underground, surrounded on all sides by high banks of earth. The two-person cells are small, windowless and constructed entirely of concrete. The bed bases, too, are slabs of concrete. Solid steel doors isolate the cell residents from speaking contact with any other inmates, and also form a barrier against the entry of natural light and ventilation. The prison warden, James Saffle, has himself described the accommodation as "sparse." In an interview in The Sunday Oklahoman of 24 February 1991, the Deputy Warden seemed proud that the new prison will "limit the convicts' contact with one another and with correctional officers."

I understand that prisoners will be confined to their cells for 23 hours a day, with food delivered to them through a slot in the door. They will be permitted one hour's recreation per day in groups of six in a small indoor quad which presently contains no facilities for exercise or sports. In addition, although there are some provisions for installing a prison library, it remains unclear whether prisoners will be permitted to make meaningful use of it.

Security arrangements for visits in Unit H also apprear to be punitively harsh. All visitors, including attorneys, are separated from the prisoner by a plexiglass screen and the conversation is conducted by telephone. Prisoners complain that, despite the non-contact nature of all visits, they have remained handcuffed in the visiting booth and have had to hold the telephone awkwardly and uncomfortably with two hands. The absence of facilities for confidential attorney-client visits seems most unusual.

Lawyers and prison reform groups in Oklahoma fear that the deprivation of natural light and ventilation, the prolonged isolation and the very limited opportunities for social contact may have a detrimental effect on the physical and mental health of the prisoners,

and may amount to "cruel, inhuman or degrading" treatment in contravention of Article 5 of the Universal Declaration of Human Rights.

According to a report in the Tulsa World of 26 November 1991, the Oklahoma Department of Corrections described this new unit as a "state of the art" prison. The architectural design and the conditions under which the prisoners are housed primarily reflect general security considerations. Amnesty International is not in a position to comment on the security measures required to accommodate Oklahoma's death sentenced prisoners. However, the need for security should never conflict with the requirements of humane treatment.

I should like to draw to your attention three provisions cited in the United Nations Standard Minimum Rules for the Treatment of Prisoners and request your assurance that they are being, or will be met:

> Article 11 states in part, "In all places where prisoners are required to live or work, the windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;"
>
> Article 21 states, "Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits."
>
> Article 40 states, "Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it."

Elsewhere, the UN Standard Minimum Rules emphasize the importance of treating prisoners in ways designed to encourage their self-respect and develop their sense of responsibility. It is deeply disturbing that the new Unit H has no provision for work, social, recreational or educational programmes for its prisoners. Prisoners sentenced to death spend many years awaiting the outcome of appeals and a significant number eventually have their death sentences vacated. The right to self-improvement should be available to every prisoner regardless of their current status.

I should be most grateful for your comments on the conditions under which prisoners are being held in the Unit H Block. If the conditions are as punitive as Amnesty International has been led to believe, we respectfully urge that they be reviewed with a view to eliminating such aspects as may constitute cruel, inhuman or degrading treatment.

Yours sincerely

Ian Martin
Secretary General

David Walters
Governor

Gary D. Maynard
Director

Oklahoma Department of Corrections

"Protecting You Is Our Mission"

December 24, 1991

Ian Martin, Secretary General
Amnesty International
International Secretariat
1 Easton Street, London WC1X 8DJ
United Kingdom

Dear Mr. Martin,

In response to your recent enquiry about living conditions on Unit H at Oklahoma State Penitentiary, please be advised that providing offenders with a safe, humane, living environment is a primary focus for the staff at Oklahoma State Penitentiary. The American Correctional Association has established standards relating to lighting, ventilation and exercise for offenders, all of which were incorporated into the design of this unit.

The construction of Unit H is an earth berm design that allows for an efficient utilization of energy, and maximizes the entrance of natural light through sky lights. The primary material used in construction of the unit is cement, which again enhances the efficiency of the unit, while limiting the availability of materials that can be utilized by offenders in the manufacture of homemade weapons. The cells measure 7' x 6" x 15" x 6", which meets the American Correctional Association standard for living space. The cell doors are constructed of the lower half being steel with the upper half being steel bars with plexiglass, to allow for visual observation by staff. This door design also allows for the entrance of natural light into the cell. Ventilation is provided by a thermostatically controlled system that ensures the comfort level of all offenders is continually maintained. The plexiglass doors limit the communication between offenders while on the housing unit, but during exercise periods, the offenders may freely interact. As part of the mission of the Department of Corrections is to protect the employees and the offenders, such limitations on physical contact are imperative.

All non-working maximum security offenders at O.S.P. are confined to cells 23 hours per day and have been so since December 1985. Recreation on Unit H is provided in an exercise area that is outside, but does have a security screen over the top to ensure the security of the exercise area.

All offenders have access to both a leisure library and a law library. The staff librarian visits each unit weekly to exchange books and fill special requests. The law library staff visits each unit daily to respond to offender's legal issues and

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provide requested legal materials. Reading materials of a religious nature are also provided to offenders who wish to enhance their spiritual life while incarcerated.

Visitation with family and friends is conducted in a non-contact, secure area where restraints are not required. Attorney visits are conducted in a manner that insures that the confidentiality of the Attorney-client relationship is not breeched. This is made possible through the utilization of a specially constructed enclosure for the attorney to meet with his/her client.

In addressing the issues cited in the United Nations Standards Minimum Rules for the treatment of prisoners, please be advised that through accreditation by the American Correctional Association it has been determined that Oklahoma State Penitentiary meets or exceeds the standards for lighting and ventilation in a correctional facility. As stated earlier, this facility also provides the opportunity for all offenders to exercise outside at least one (1) hour per day. Leisure library and law library services are also provided to all offenders.

As a maximum security facility, the program offerings are limited, however it should be noted that individual educational plans are available to Death Row offenders who desire to continue their education. Recently 2 Death Row offenders completed the requirements for their GED certificates. Another area that offers offenders the opportunity for self-fullfillment involves participants in the leisure craft program. This affords offenders the potential to earn money from the sale of art work and craft items. Offenders are encouraged to enter such items in local art shows that are held several times during the year.

I invite you to visit the Oklahoma State Penitentiary so that you can see first hand that the staff maintain a very safe, secure environment for the offender, while ensuring that the quality of life is not compromised.

If I can be of further assistance, do not hesitate to contact me.

Sincerely,

James L. Saffle, Regional Director
Southeastern Region
Oklahoma Department of Corrections

JLS:LM:vlb

cc: File
Gary Maynard, Director

amnesty international

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

Chair
Texas Board of Pardons and Paroles
8610 Shoal Creek Blvd
PO Box 13401, Capitol Station
Austin, TX 78711
USA

Ref.: AMR51/91/38

20 December 1991

Dear Chair and members of the Board

I am writing to you to express Amnesty International's concern that Johnny Garrett is scheduled to be executed by the state of Texas on 7 January 1992. Mr Garrett was convicted of murder and sentenced to death in September 1982. He was 17 years-old at the time of the commission of the crime.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment, as proclaimed in the Universal Declaration of Human Rights.

If this execution is carried out, Johnny Garrett will become the fifth juvenile offender executed in the USA since the death penalty was reintroduced in the 1970s and the third in Texas under its present death penalty law. The execution of juvenile offenders is extremely rare. More than 70 countries which retain the death penalty in law have abolished it for people aged under 18 at the time of the crime. The USA is one of only seven countries known to have carried out such executions in the last decade (the other countries are Barbados, which has since raised the minimum age to 18, Iran, Iraq, Nigeria and Pakistan; one such execution was also reported in Bangladesh).

The imposition of the death penalty on juvenile offenders is in clear contravention of international human rights standards on the death penalty, including the International Covenant on Civil and Political Rights and the American Convention on Human Rights, both of which the US government signed in 1977 but has not yet ratified. Amnesty International believes that all jurisdictions within the USA have an obligation to adhere to recognized international standards.

Treaties and standards exempting under-18-year-old offenders from the death penalty were developed in recognition of the fact that the death penalty is a wholly inappropriate penalty for individuals who have not attained full physical or emotional maturity at the time of their actions. However heinous the crime, the imposition on a young person of a sentence which denies any possibility of eventual rehabilitation or reform is contrary to contemporary standards of justice and humane treatment. This is especially relevant in Johnny Garrett's case given

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his mental problems and background.

According to reports, Johnny Garrett has a history of drug and alcohol abuse, has been diagnosed as chronically psychotic and suffered several head injuries. Amnesty International is deeply concerned to learn that the jury at Mr Garrett's trial was not given the opportunity to consider this important mitigating evidence in deciding whether to impose the death penalty or life imprisonment.

Amnesty International is aware of the very serious nature of the crime for which Johnny Garrett was convicted. However, it believes that there are compelling reasons for sparing his life. Consequently, I urge you to recommend that Governor Richards grant clemency to Johnny Garrett by commuting his sentence of death.

I am sending a copy of this letter to Governor Richards.

Yours sincerely

Ian Martin
Secretary General

amnesty international

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

BY FACSIMILE

TG AMR 51/91/39

The Honorable Fife Symington
Governor of Arizona
1700 West Washington
Phoenix, AZ 85007
USA

24 December 1991

Dear Governor Symington

Amnesty International is deeply concerned to learn that a warrant has been issued for the execution of Donald Harding on 3 January 1992. This would be the first execution in Arizona for nearly 29 years.

I should like to draw your attention to world progress toward abolition of capital punishment. Nearly half the countries of the world have now abolished the death penalty in law or practice; the trend is particularly marked in both Western and Eastern Europe. Countries which have abolished the death penalty for all offences since 1989 include the Czech and Slovak Federative Republic, Romania, Hungary, New Zealand, Cambodia, Ireland, Mozambique and Namibia. In 1990 Nepal abolished the death penalty for murder and Bulgaria announced a moratorium on executions pending consideration of the country's capital punishment laws. In July 1991 the then Soviet Union reduced the number of crimes punishable by death from 18 to five. South Africa has suspended all executions since February 1990.

International treaties and standards encourage governments to restrict the use of the death penalty with a view to its ultimate abolition. Many of the countries which have abolished the death penalty have done so in explicit recognition that it is incompatible with fundamental human rights. Amnesty International opposes the death penalty unconditionally as a violation of the right to life as enshrined in the Universal Declaration of Human Rights and other international human rights instruments.

Amnesty International is deeply concerned that the state of Arizona proposes to resume executions after more than a quarter of a century of not carrying out the death penalty. This, we believe, would be a retrograde step for human rights. I accordingly urge you to take this opportunity to lead the USA forward in the field of human rights by rejecting capital punishment, as an example to the rest of the country, and joining the growing ranks of abolitionist countries worldwide.

Yours sincerely

Hérve Berger
For the Secretary General

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