

UNITED STATES OF AMERICA

Death Penalty Developments in 1996

Introduction

Amnesty International is gravely concerned that the United States of America (USA) continues to use the death penalty extensively. At the end of 1996 more than 3,150 prisoners (an unprecedented number) were under sentence of death in 34 states, a further 10 under US federal civilian law and nine under US military law. Forty-five prisoners were executed in 19 states during 1996. This brings to 358 the total number of prisoners executed in the USA since 1977.

The total number of executions in 1996 would have undoubtedly been higher had a new law in Texas not been subjected to constitutional challenge in the courts. The law is designed to shorten the appeals process for death row inmates, thus speeding up executions in the state. The legal challenge prevented the majority of executions taking place during the year. Amnesty International noted with concern that in December the Texas Court of Criminal Appeals upheld the law and denied the appeal.

The federal government also introduced new legislation designed to increase the number of executions in the USA by shortening the time taken by appeals for death row prisoners. The *Anti-terrorism and Effective Death Penalty Act*, signed into law by President Clinton on 24 April 1996, severely limits the number of *habeas corpus* appeals allowed by condemned prisoners and places a time limit of one year on the filing of such appeals.

Amnesty International condemns the federal government's limiting of the legal appeals available to death row inmates and its continuing use of the death penalty, which is against international trends away from executions and in violation of international human rights standards.

Racial discrimination in the use of the death penalty continues to be of major concern. For example, 16 of the prisoners executed in 1996 were from ethnic minorities (35.55%), approximately double the percentage in the general population. Also, the vast majority of those executed had been convicted of the murder of a white victim, even though ethnic minorities are murder victims in almost equal numbers as whites.

Racial discrimination was also highlighted in a study conducted for New Jersey's Supreme Court, made public in February. The study concluded that black defendants in the state are 10 times more likely to receive a death sentence than white defendants (where other factors were equal) from a jury. The study analysed 341 murder cases dating back to 1982 in which defendants faced the death penalty and found "strong and consistent biases"

against black defendants. Of the 16 prisoners under sentence of death in New Jersey, 10 are from ethnic minorities.

In July Amnesty International published a report, *USA: The Death Penalty in Georgia: Racist, Arbitrary and Unfair* (AMR 51/25/96), which provided overwhelming evidence that the death penalty is applied in a racial manner in Georgia.

The Clinton administration refused to accept the findings of the report. The federal government has consistently refused to become involved with the application of the death penalty at state level. In previous correspondence with Amnesty International, the federal authorities refused to intervene in individual states' administration of the death penalty, simply stating:

“The Administration and this Department support the death penalty in appropriate cases. By the same token, **we are unalterably opposed to its application in an unfair manner, particularly if that unfairness is grounded in racial or other discrimination.**” (Emphasis added)

The federal authorities' comments indicate that they believe that the death penalty is not currently used in an “unfair manner”.

The federal government may itself be guilty of racial bias in its use of the death penalty. As of 31 July 1996, 10 prisoners were sentenced to death under federal law, nine of which belong to ethnic minorities.

Amnesty International is appalled that the federal government is willing to ignore the realities in the use of the death penalty. There are numerous examples of the federal authorities intervening in the affairs of individual states: in the 1960s the federal authorities enacted laws to ensure that citizens are not denied their right to vote because of their race¹. However, federal authorities are currently prepared to ignore the racially biased use of capital punishment.

Amnesty International noted and welcomed the granting of clemency by state governors to three condemned prisoners during 1996. Joseph Payne in Virginia and Donald Paradis in Idaho received clemency after the governors cited doubts concerning their guilt

¹The US Voting Rights Act, passed on 6 August 1965, suspended literacy tests and other voter tests and authorised federal supervision of voter registration in states and individual voting districts where tests had been used and where fewer than half of voting age residents were registered or had voted. The Act dramatically increased the black vote in elections. In 1964 687,000 (28.6%) of blacks voted in the southern US; this increased to 1,150,000 (47.5%) in 1966.

for the crimes for which they were sentenced to death and had their sentences commuted to life imprisonment without the possibility of parole. Prior to 1996, the last prisoner to receive clemency was Bobby Shaw in Missouri in 1993.

Three states passed laws during 1996 that allow for the relatives of victims to watch the execution of the prisoner convicted of the murder of their loved one: Delaware, Oklahoma and Texas.

On 9 August 1996, Oklahoma Senator Brooks Douglas, the author of the law that allows victims' relatives to watch executions, witnessed **Stephen Hatch** be put to death. Hatch was sentenced to death for the murder of Senator Douglas' parents despite not being the trigger man. Evidence suggested that he was outside the house where the murders took place. Hatch's co-defendant and the alleged trigger man, Glen Ake, was also condemned to death but had his sentence overturned on the grounds that he was denied psychiatric assistance in his legal defence. He received two life sentences at the second sentencing hearing.

In Texas the execution of **Leo Jenkins** on 9 February 1996 became the first to be watched by the victims' relatives in the state. Prior to the execution the area for witnesses had been divided by a soundproof wall to separate the family of the victim from the prisoners' witnesses. Jenkins, who chose to abandon his appeals and allow the state to execute him, apologised to the family of his victim: "I'm sorry for the loss of the Kellys, but my death today is not going to bring their children back. I think the state of Texas is wrong to execute me, there's no way to justify this." A total of nine states allow for victims' relatives to witness executions.

Many states continue to devote large amounts of money towards the legal defence of death row prisoners in the hope of increasing the number of executions by speeding up the appeals process. In California there was cross-party support for an increase of \$23 million in the budget for defence lawyers for death row inmates. California currently has more than 450 death row inmates (the largest death row in the country). Other politicians, while supporting the use of the death penalty, refuse to provide sufficient funds for defence lawyers. The Texas legislature reduced the budget for the legal defence of death row inmates (of which there are more than 440) from \$4 million to \$2 million in 1996.

The state of Oregon carried out its first execution since 1962 on 6 September 1996 when Douglas Wright, who had chosen to abandon his appeals and allow the state to carry out his execution, was put to death. Virginia had the highest number of executions (8) during the year. Other executions were carried out in South Carolina and Missouri (six each); Delaware and Texas (three each); Arizona, California, Florida, Georgia and Oklahoma (two each); and Alabama, Arkansas, Illinois, Indiana, Louisiana, Nebraska, Nevada and Utah (one each).

At the end of 1996 at least 47 juvenile offenders were under sentence of death in 15 states; all had been convicted of murders committed when they were 16 or 17 years old (this represents an increase of three from the end of 1995). No juvenile offenders were executed during the year. The last juvenile offender to be executed in the USA was Christopher Burger in Georgia on 12 December 1993.

Several of the prisoners executed in 1996 suffered from mental illness or mental retardation. In Arizona Luis Mata was executed despite being described by clinical psychologists as suffering from "significant brain damage that affects almost every aspect of his life." In the case of Nicholas Hardy, a trial resulting in a death sentence was only possible after 14 months treatment in a mental health care program - treatment that, because it was successful, resulted in the authorities being able to sentence Hardy to death. Hardy remains on Florida's death row.

Amnesty International welcomed a decision by the Constitutional Court of Italy which refused to extradite Pietro Venezia, wanted on charges of murder in Florida, to the USA because of the state's provisions for the death penalty. This was despite assurances from US authorities that Venezia would not be subjected to capital punishment.

Several prisoners faced prolonged execution processes; medics took over an hour to complete the lethal injection of Tommie Smith in Indiana, and the electrocution of Larry Lonchar in Georgia was reported to have taken over 45 minutes after the first charge of electricity failed to kill him.

Amnesty International opposes the death penalty unconditionally, considering it to be an extreme form of cruel, inhuman and degrading punishment.

Amnesty International remains appalled that the USA continues to grossly violate the human rights of citizens through the use of the death penalty. A majority of the world's countries have abandoned the use of the death penalty and the USA is becoming increasingly isolated at an international level as almost the only industrialized, western democracy that continues to execute its citizens judicially. Also, the USA applies the death penalty in a manner that is clearly in violation of many international standards; it is inflicted upon the mentally ill or retarded, defendants whose right to a fair trial has been removed because they received inadequate legal representation at trial (a situation worsened by the removal of federal funding in 1996 for many lawyers specialised in capital law²) and who may be innocent of the crime for which they were sentenced to death. The support, by many politicians, for the use of capital punishment for their political

²See AI publication *USA: Developments on the death penalty 1995* AI index: AMR 51/01/96

gain distorts the independence of the judiciary and may render many judges unwilling to uphold the US constitution because of electoral considerations.

With a myriad of faults running through the administration of the death penalty in the USA, even its most ardent supporter should call for its abolition. Amnesty International strongly urges the US authorities to end the use of the death penalty at the earliest possible opportunity.

The risk of executing the innocent

Ellis Wayne Felker was executed in Georgia on 16 November 1996 for the murder of Joy Ludlum in 1982. Ludlum disappeared 14 days before the discovery of her body in a water-filled ditch. Felker, who knew Ludlum, was the main suspect and was put under police surveillance within hours of her disappearance. The autopsy findings on Ludlum's body put her death within the previous five days. This clearly ruled Felker out as a suspect for her murder as he had been under police surveillance for the previous 13 days. However, the laboratory technician (who had no medical training) changed the findings of the autopsy to state that Ludlum's body could have been in the water for 14 days.

Attorneys representing Felker during the appeals process showed notes from the autopsy and photographs of Ludlum's body to pathologists who unanimously concluded that she could not have been dead for longer than three days. In spite of this Felker's conviction was upheld on appeal.

Felker came within hours of execution on 2 May and 10 September 1996. In May he received a stay of execution from the US Supreme Court after his lawyer challenged the *Anti-terrorism and Effective Death Penalty Act* (see page 23). At the end of June the US Supreme Court lifted the stay of execution. However, the Georgian authorities did not obtain another execution warrant until after the Olympic Games had taken place in Atlanta in July, and Felker was the first prisoner to face execution in the state after the Olympics ended.

The Attorney General of Georgia, Michael Bowers, has gone on record as stating his belief that there were no innocent prisoners on death row. In language completely unsuitable for someone in charge of the legal system of Georgia, Bowers was quoted as stating that: "There is rarely any question about the guilt of these people, virtually none. That is a myth...these guys on death row are the pits." When asked specifically about Felker, Bowers replied, "I've talked to the cops who investigated him, and I asked them: 'Guys, is there any doubt about his guilt?' And they told me, 'Bullshit'." Four prisoners have been released from Georgia's death row after being exonerated since 1976.

Immediately prior to Felker's scheduled execution on 10 September 1996 the prosecution admitted that it had withheld evidence from the defence and handed over five crates of police notes and other materials. The courts granted Felker two 48-hour stays of execution, followed by a 40-day stay of execution to allow for defence attorneys to examine and evaluate the new evidence. Felker was within minutes of the execution when the first stay was issued. His leg and head had been shaved in order to fit the electrodes.

On 26 October 1996 the Georgia Supreme Court refused to extend Felker's stay of execution or to consider whether the new evidence might exonerate him. The Court based its decision on a procedural point claiming that it was the responsibility of the defence attorneys, under the *Georgia Open Records Act*, to find the boxes of previously undisclosed evidence at an earlier date. An execution date of 14 November was issued. Attorneys representing Felker claimed to have had inadequate time to examine the five crates and were quoted as stating: "There are numerous possible leads which we have had no time to investigate. The stack of new paperwork is more than two feet thick." The boxes contained new forensic evidence from the crime scene and a signed confession from another suspect in the crime.

Felker received another 24-hour stay of execution on 14 November from the US Supreme Court. Again the stay was issued minutes before the execution was scheduled and after Felker's leg and head had been shaved; he was not told of the stay until after the execution was due to take place. At the time he was due to die, Felker was talking to his British wife by telephone. He told her, "I don't know what's happening. They should be coming to strap me in but I'm still here, pacing up and down."

The appeal, which was based on the new evidence that the prosecution had previously failed to make available to defence attorneys, had been denied by the Georgia Supreme Court earlier in the day. In an opinion dissenting from the majority of the court, Justice Norman Fletcher, the court's presiding judge, condemned the prosecution's behaviour saying that the state had punished Felker by failing to disclose the evidence, thus raising "serious questions about whether the State afforded Felker due process [of law]...In post-conviction proceedings, the State repeatedly misrepresented its entire file." According to the opinion, the District Attorney in charge of the case had even denied under oath that the new evidence existed and that "the State's repeated failure to comply with well-settled constitutional principles deprived Felker of a fair trial".

Despite the strong wording of Fletcher's dissenting opinion, the US Supreme Court unanimously denied Felker's appeal late on the afternoon of 14 November. Felker was executed within a few hours of the decision.

Prior to the execution, prison guards allowed Felker to walk outside the "Death House" (a small cell adjacent to the execution chamber) on a small patch of grass. Felker

took off his shoes and socks to walk on the grass and described it to his wife as feeling “cool, strange. It reminded me of all the things I hoped one day we’d have the chance to do”.

Felker tape recorded a last statement declaring that he was innocent. He also expressed his gratitude to Amnesty International for its work against the death penalty: “I am very appreciative of the concern and time you’ve shared in an attempt to help me. I, and others in my predicament, are well aware of the integrity with which you have attacked the endless and insurmountable injustices...At times, I’m sure you must feel as though you make no progress at all...I assure you, however, the changes are there as proof, and to you that must serve as your gratification and levity...”.

Felker’s 75-year-old mother said her “final” goodbye to her son five hours before the execution; it was the fourth time in seven months she had believed she would not see her son again. Relatives of Felker’s alleged victim were in the prison on the night of the execution. Attorney General Michael Bowers told newspapers: “When I walked into the office after the execution the first person I happened to see was Mrs Ludlum. I’m glad for her sake justice was done.” Another prison official stated: “The Ludlums can come (sic) home tonight and have closure.”

The execution by electrocution took a total of seven minutes and 49 seconds.

In July, four black men were released in Illinois having been proved innocent of the murders they were convicted for 18 years earlier. Two of the men, **Dennis Williams** and **Verneal Jimerson**, were sentenced to death in 1978 for the rape and murder of Carol Schmal and the murder of Lawrence Lionberg, both white. Jimerson was released after the trial when the only witness connecting him to the crime recanted her evidence. However, in 1984, the same witness, having made an agreement with the prosecution to gain release from a prison sentence she was serving in return for her testimony, changed her mind. Jimerson was rearrested, convicted and sentenced to death for a second time.

The four men had been represented by lawyers working free of charge since 1990. Their case had also been worked on by student journalists from Northwestern University who studied the case as a possible miscarriage of justice. The students’ investigation unearthed police notes that implicated other suspects in the crime. They also located the main prosecution witness who admitted that she had been coerced by police into falsely implicating the four men.

In February 1995 another suspect confessed to the crime and the police reopened the investigation and agreed to exhume Schmal’s body to allow for DNA testing (they had previously refused to allow the tests). The tests proved that semen found inside Schmal’s

body could not have come from the four men and the convictions were overturned by an appeal court.

At a press conference following the men's release, Williams blamed racism for the miscarriage of justice: "The police just picked up the first four young black men they could and that was it. They didn't care if we were guilty or innocent." Williams went on to describe leaving death row as feeling like "I was leaving a mortuary with a bunch of bodies waiting to be dressed".

The Cook County State Attorney, Jack O'Malley, apologised to the four men for their ordeal. O'Malley described the legal system in the USA as "the best in the world" but stated that it was not flawless and that this case was "a glaring example of its fallibility." At least eight condemned inmates have been released from Illinois's death row after being exonerated for the crimes for which they were sentenced to death.

In September 1996 **Roberto Miranda** was released from Nevada's death row where he had been under sentence of death for 14 years. Miranda, a Cuban national, was sentenced to death for the murder of Manuel Rodriguez Torres, but always maintained that the main prosecution witness against him committed perjury motivated by Miranda's sexual relationship with the girlfriend of the witness.

Attorneys representing Miranda during the appeals process found the girlfriend and other witnesses whom the original trial lawyer had failed to locate. The appeal court granted Miranda a new trial, finding that "The lack of pretrial investigation and preparation by trial counsel...cannot be justified." The case was dismissed after the prosecution declined to pursue it further.

In May 1996 the conviction against **Lloyd Schlup**³ was overturned. Schlup, on death row in Missouri since 1984, was found to have been inadequately legally represented at his trial. Although Schlup was convicted of a murder committed in prison, his trial lawyer had failed to interview inmates who witnessed the killing and stated that Schlup was not involved in the murder. The appeal court judge ruled that Schlup was "more likely than not" innocent.

Schlup had previously come close to execution in 1992 and 1993. In 1992 a federal judge issued a stay minutes before the execution was scheduled to take place and in 1993 the governor of Missouri, Mel Carnahan, stayed his execution eight hours before it was scheduled to take place.

³For further information see *USA: Death Penalty Developments 1994 and 1995* AMR 51/01/95 and AMR 51/01/96

The prosecution attempted to use the provisions of the *Anti-terrorism and Effective Death Penalty Act* (see page 23) to stop Schlup's appeal being heard but were denied by the judge. Attorneys representing Schlup were critical of the law, stating that it would have "dramatically increased the likelihood" of his execution taking place on the earlier occasions. Schlup is currently awaiting a new trial.

Texas death row inmate **Ricardo Aldape Guerra** had his conviction overturned by an appeal court in August 1996. Guerra, a Mexican national, was sentenced to death in 1982 for the murder of a police officer. The officer was shot after he stopped the car in which Guerra and his companion Roberto Carrasco Flores were travelling. Flores was killed in an exchange of gunfire later the same day and was found with the murder weapon and the slain officer's gun. The prosecution maintained that the two switched guns immediately after the officer was killed. This theory was dismissed by the appeal court as speculation with no supporting evidence. Guerra will now be retried.

The case has been closely followed by officials from the Mexican government. At a recent hearing a Mexican official was quoted as stating: "We believe in Ricardo's innocence as he has always claimed".

In 1992 Guerra came within three days of execution before winning a reprieve from an appeal court.

In August 1996 the city of Philadelphia agreed to pay \$1.9 million compensation to a former death row inmate. **Neil Farber** was sentenced to death in 1981 but released in 1985 after the appeal courts found that a detective and police sketch artist had conspired to frame him. In the ruling freeing Farber, the judge called the handling of the case by police "a Kafkaesque nightmare...a malevolent charade...the so-called justice system of a totalitarian state". In a civil suit Farber sued the city contending that he suffered bleeding ulcers and a nervous breakdown because of his unjust imprisonment.

Joseph Payne was scheduled to be executed in Virginia on 7 November 1996. He was sentenced to death for the murder of David Dunford in 1985.

No physical evidence linked Payne to the crime. The case against him rested on the uncorroborated eyewitness testimony of Robert Smith. Payne, Dunford and Smith were all prisoners at Virginia's Powhatan Correctional Center, where the murder took place.

Seven inmates of the prison came forward after the trial and made statements that Smith committed the murder and testified against Payne after being offered inducements by the prosecuting authorities in return for his testimony. Smith described the inducements

to another inmate as so good that he would "testify against his grandmother today...to get the hell out of jail". In 1987, Smith signed a 16-page affidavit stating that he falsely testified against Payne after being pressured by prison officials. He has since recanted the affidavit. Smith was promised a 10-year reduction in his sentence in return for his testimony and has been released from prison.

During the trial, Smith admitted that he had taken part in the conspiracy to kill Dunford and that he had received a 10-year reduction in his sentence for his testimony. Other witnesses described Smith as a cheat and a liar. Two other witnesses implicated Payne in the conspiracy to murder Dunford: the first was described by the prosecution as mentally unstable and the second testified that Payne withdrew from the conspiracy prior to the day of the murder.

The prosecution was so unsure of obtaining a conviction against Payne that, while the jury were considering their verdict, they offered him a sentence of imprisonment (to run concurrently with the sentence he was serving). The defence rejected the offer and the jury brought in a guilty verdict.

The case against Payne rested almost entirely on the credibility of Smith's testimony. The prosecution attorney is quoted in court papers as stating: "without question had [Smith] not been willing to testify, we would not have been successful in getting a conviction". He also stated that "I have no [doubt] that he [Smith] perjured himself on the stand to get whatever concessions he got. I wouldn't have prosecuted him [Payne] if I hadn't been totally convinced that Joe Payne was the killer."

Since the trial, Payne's lawyers have presented evidence showing that Smith had received an additional five-year reduction in his sentence, the dismissal of a forcible sodomy charge against him and favourable parole consideration in return for his testimony; these additional inducements were not made known to the jury.

During the appeal process, the courts have consistently put more faith in Smith's testimony than the testimonies of the other six prisoners who stated that Payne did not commit the murder. Five of the six did not testify at the original trial.

Prison officials appeared to be enthusiastic that the death sentence was obtained for the murder of Dunford. In a letter to another prison official, the prison's warden wrote "...it is very critical to send a signal to others that this type of action will not be tolerated...I cannot think of a better signal to send than **someone** being convicted of capital murder" (emphasis added).

Joseph Payne's sentence of death was commuted to life imprisonment without the possibility of parole by Virginia's Governor, George Allen, three hours before his

execution was scheduled. Payne learned of the Governor's decision to grant him clemency via a television set in the "death house".

In a brief written statement, Governor Allen said there was ample evidence of Payne's guilt **in the record** (emphasis added), but that it was his responsibility as governor to commute a death sentence "if I believe that there exists a substantial question involving the reliability of evidence presented at or after the trial...this is such a case." Allen also stated that his decision was based on "consideration of the totality of the records, evidence and materials before me."

Prior to the granting of clemency, four members of the jury that convicted and sentenced Payne came forward to state that they now doubted their verdict. Governor Allen denied that his decision was influenced by the "second thoughts" of the jurors in the case stating: "I have not given any weight or credence to those affidavits."

The mother of Payne's alleged victim also pleaded to the governor for Payne to be spared. In an affidavit Reba Dunford stated: "I have doubts that Joe Payne killed my son. I can think of no greater tragedy than killing an innocent man. Please do not let this happen Governor Allen. It would be a terrible mistake and one that I could not live with."

Despite the strong doubts around the guilt of Joseph Payne, the US Supreme Court denied his final legal appeal. Governor Allen was the last hope Payne had of not being executed.

The District Attorney responsible for the case, John Latane III, criticised the Governor's decision and confirmed his belief that "Mr Payne was absolutely and totally guilty".

Joseph Payne's case illustrates the reluctance of the courts to heed new evidence introduced during the appeals process. The Fourth Circuit Court of Appeals denied Payne's appeal despite admitting there was "copious evidence" in his favour and a "wealth of evidence" that Smith was "an appalling and known prevaricator". The Court's opinion was that it must "presume factual finding made by a state court...to be correct."

Clemency

Amnesty International noted and welcomed the decision that for the first time since 1993, a death sentence was commuted by a state governor. In 1996 three condemned prisoners had their sentences commuted to life imprisonment without the possibility of parole in Illinois, Idaho and Virginia.

Joseph Payne was granted clemency by Virginia's governor on 7 November 1996 (see above).

Idaho Governor Phillip Batt commuted the death sentence of **Donald Paradis** on 24 May 1996 to life imprisonment without parole. The Governor cited "lingering doubts" concerning Paradis' guilt for the crime for which he was sentenced to death. Paradis had been on death row since 1980.

The commutation followed a vote of 3-2 in favour of Paradis by the Idaho Board of Pardons and Paroles. The Board heard evidence of Paradis' innocence including the confession of another man to the murder and that Paradis' co-defendant had been acquitted at a separate trial which used the same evidence as that used to convict Paradis.

Guinevere García, 35, was scheduled to be executed in Illinois on 17 January 1996. She was sentenced to death in 1992 for the murder of her 60-year-old husband, George García, who had brutally abused her. Guinevere García had chosen to drop her appeals and requested that she be executed.

García had suffered a childhood of deprivation and extreme sexual and physical abuse. She started drinking alcohol at the age of 11 and at 14 was gang-raped. Within a year of the rape she had started working as a stripper and prostitute. At the age of 17 she became pregnant and gave birth to a daughter named Sara. Her grandmother wanted custody of the child as she believed that Guinevere García was an unsuitable mother because of her heavy drinking and her recent arrest on a charge of prostitution. After an argument with her grandmother about Sara's custody, Guinevere García went home and drank herself into a blackout. When she regained consciousness she found her daughter was dead in her arms having been suffocated by her while she was drunk.

The baby's death was originally ruled as accidental suffocation. However, after a series of fires that coincided with the anniversaries of Sara's birth and death, the police questioned Guinevere García. She confessed to killing her daughter and committing arson. In 1983, four years after the death of her daughter, she pleaded guilty to Sara's murder and was sentenced to 20 years' imprisonment. She was also convicted of four charges of arson.

While in prison, Guinevere García married George García, a former client from her time as a prostitute. They divorced but remarried when she was released in the spring of 1991. According to Guinevere García, her husband was abusive and continually beat her. In July 1991, she became intoxicated after a quarrel with George García and shot him outside their home.

At the sentencing phase of her trial (a post-conviction hearing that determines whether the defendant will receive the death penalty) she waived her right to a jury and

was sentenced to death by three judges. The judges decided that the mitigating factors of Guinevere García's life did not outweigh the aggravating factors of her criminal history and the crime. Although she refused to testify on her own behalf during the penalty phase of the trial, the judges were aware of the sexual abuse Guinevere García had suffered as a child.

The appeal court determined that Guinevere García was mentally competent to drop her appeals and consent to her execution. At one of the hearings Guinevere García told the judge: "I don't want to die, your honour, but my life is miserable". She added "I made peace with God and myself. I am sitting in prison while my victims are dead. My life has no purpose, no meaningful existence." Describing her time in prison, she stated: "My life is over. This is not living. I don't want to appeal. I don't want to exist in Room Six of the condemned unit waiting until someone decides to put that needle in my arm."

A team of clinical psychiatrists and therapists hired by the prosecution testified that Guinevere García was suffering from personality disorders. However, they contended that this would not impair or invalidate her decision to drop her appeals. The four experts also asserted that Guinevere García was not suicidal: "A suicidal individual wants to take the law into their own hands, but García is letting the law take its course. She is allowing society to make its own judgement."

In granting clemency, Illinois Governor Jim Edgar stated that García's was not the sort of case that had led him to support the death penalty during his political career and cast doubt on whether she should have initially received a death sentence, pointing out that there were more than 200 prisoners convicted of multiple killings in the state who were not given a death sentence. The governor denied that García's being a woman had affected his decision and also stated that he did not believe she was suffering from "battered woman syndrome". The sentence was commuted to life imprisonment without the possibility of parole.

In a candid interview with the British newspaper *The Observer*, Howard Marsellus, chairman of the Louisiana Board of Pardons and Parole from 1984 to 1986, admitted that political pressure influenced decisions on clemency.

Marsellus remains deeply troubled that he may have allowed an innocent man to be put to death in the case of Timothy Baldwin, executed in 1984. Marsellus believes his actions were totally wrong: "I lacked the courage to vote on the basis of how I felt or what I believed. I gave into the prestige and power, the things that went with my job. I knew what the Governor, the man who had appointed me, wanted: no recommendation for clemency in any death case."

Baldwin was convicted of the murder of an elderly woman in 1978. After the trial his lawyers found a hotel receipt proving he was hundreds of miles away in another state on the night of the murder. The prosecution promptly claimed that he had driven to the hotel in order to establish an alibi and then returned to Louisiana to commit the murder.

The main prosecution witness against Baldwin was his girlfriend Marilyn Hampton, who received a life sentence, not the death penalty, for her part in the murder. The prosecution claimed that Hampton waited outside in a car while Baldwin committed the murder. The governor of Louisiana visited Hampton in prison before signing a death warrant for Baldwin's execution. Marsellus believes the purpose of the visit was to ensure, via inducements, that Hampton maintained her original testimony. Baldwin was executed shortly afterwards. Two months later the Board of Pardons and Paroles received Hampton's file marked "expedite". Seven years into a life sentence for first-degree murder Hampton was freed.

Marsellus witnessed Baldwin's execution and remembers the night clearly: "He [Baldwin] looked into my face and said 'You are murdering an innocent man.' That's what I did."

Antonio James (see page 20) was executed in Louisiana on 3 March 1996. James was refused clemency by the Board of Pardons and Paroles despite evidence that he may not have been the "trigger man". No condemned prisoners have been granted clemency in Louisiana since the resumption of executions in 1983.

The death penalty as a political tool

Politicians from both major political parties continued to use the death penalty as a means of courting public support. All too often they have misguided the public about the nature of the death penalty as a gross human rights violation, on behalf of political expediency during electoral campaigning. For example, Bob Dole, the unsuccessful Republican candidate for the presidency, toured California's death row. At a press conference following the tour Dole complained that more death row inmates die of old age than by lethal injection and added "Is this America? Do we believe in justice?" During his presidential campaign, Dole reportedly never referred to the ethical dilemma of supporting a form of punishment which constitutes a gross human rights violation.

Not surprisingly such trivialization of the death penalty led California voters to overwhelmingly approve an expansion of the laws allowing for the use of the death penalty. In a vote of 86% to 14% five million people approved legislation in March that would allow for the death penalty to be imposed for a murder committed during a car-jacking or by drive-by shooting.

The Republican Governor of California, Pete Wilson, pledged his support for reforms aimed at cutting the time of the appeal process for death row inmates in the state from 15 to five years. To achieve this he pledged \$23 million, an estimate of the amount needed to make California an “opt in” state under the *Anti-terrorism and Effective Death Penalty Act* (see page 23). At a news conference on 27 June 1996 announcing the new measures, Wilson said justice should be both swift and fair and that “in no case is this more true than in capital punishment where every delay denies justice to the victims”. Both political parties pledged support for the measures in the California Legislature.

Disturbingly, politicians also used the death penalty in political advertisements during the run-up to elections. For example, advertisements in California featured Richard Allen Davis, convicted and sentenced to death for the murder of 12-year-old Polly Klaas. Radio and television adverts placed by Republican Andrea Seastrand attacked her political opponent, Walter Capps, for his position on the death penalty many years earlier, stating: “When Richard Allen Davis got the death penalty he rightly deserved for murdering Polly Klaas, two people were disappointed: Richard Allen Davis and Walter Capps. Walter Capps cares about criminals, Andrea Seastrand cares about victims.” Capps responded to the advert by accusing Seastrand of “manipulating public feeling around this tragic story. It’s about as low as you can go in a political campaign.” Other politicians ran similar advertisements around the Klaas case.

The failure of some politicians to tell the truth about the death penalty goes beyond its human rights implications. For example, in a promise they are clearly unable to fulfill, the Governor and Attorney General of Arizona told voters they intended to execute all 123 death row inmates in the state within the next three years. Legal appeals would prevent this number of executions taking place within that time span. Arizona has executed six prisoners since 1992.

In the Tennessee State Supreme Court Justice Penny White failed to be re-elected to the Court in an election which local media called a “death penalty referendum.” White had joined in an opinion of the Court in the case of death row inmate Richard Odom. The Court found that the rape and murder of a 78-year-old woman did not fit within the charged aggravating circumstance of “torture or serious physical abuse beyond what was necessary to produce death” (the prosecution would be required to prove this in order to obtain a death sentence) and overturned Odom’s death sentence. Governor Sundquist of Tennessee said after the election that if he were one of the other justices who signed the opinion “I’d be a little bit worried” about future elections.

During the campaign leading up to the elections a right-wing think tank, the Tennessee Conservative Union, issued an analysis of 13 rulings by White in criminal cases and concluded that she was “not the law-and-order Justice some of her supporters depict her to be.”

The Governor of Arizona, Fife Symington, had previously criticised the state's Supreme Court for staying the execution of **Luis Mata** (see page 17) in 1995, calling them "judges obstructing justice". The Court stayed Mata's execution to allow for more time to examine whether he received inadequate legal representation at his trial. Symington was quoted in the press as saying he believed the Mata case was "another study in how judicial activism is making the United States a land where vicious killers become media stars and escape their punishment while their victims suffer for years in anonymous silence." He made the statement at a press conference where he also announced plans to make death row inmates perform hard labour while awaiting execution. At his side were the parents of Mata's victim, who were also quoted in the press as calling for Mata's execution.

District attorneys usually argue during elections that they will make more use of the death penalty if re-elected. However, there are some dignified exceptions; for example, Jim Finkelstein, when seeking election as district attorney in Albany, Georgia, criticised his opponents' use of the death penalty on the grounds of cost. In a press conference Finkelstein pointed out that the current district attorney had committed \$7 million towards prosecuting seven death penalty cases. Finkelstein suggested that the money would be better spent on crime prevention measures, stating: "We can spend millions to take a life or we can spend thousands to save a life." Both candidates lost the election.

Alarmingly, Amnesty International has noted that some US government officials have even campaigned for the execution of children. For example, Governor Gary Johnson of New Mexico stated at a press conference that he favoured the death penalty for juveniles as young as 13 years old. Current New Mexico law forbids the death penalty for anyone under the age of 18 at the time of the offence. The US Supreme Court has ruled the execution of juveniles under the age of 16 unconstitutional and therefore prohibited.

In New Jersey Assemblyman George Geist attacked the state's "liberal" Supreme Court in March stating: "I think people are sick and tired of a court that seems out of touch with the people. There is frustration out there with the third branch of government, the only one not elected by the people. They should stop listening to lawyers."

Reacting to comments similar to those of Geist, retiring federal judge H. Lee Bardkin wrote to President Clinton complaining: "In the current political campaign, enforcement of constitutional rights is equated with being soft on crime and, indeed, even with causing it. The Bill of Rights is characterised as a collection of "technicalities" - the only "right" apparently remaining is to own an automatic weapon..."

Some government officials will go to extreme measures in order to secure a death sentence. For example, Governor George Pataki of New York took the unusual step of

removing District Attorney Robert Johnson from a case involving the murder of a police officer. Pataki cited Johnson's statements that he would "refuse" to seek the death penalty when removing him from the case. Johnson is opposed to the death penalty (and was re-elected as the District Attorney for the Bronx on a "no death penalty platform") but had gone on record as stating that he would seek a death sentence in certain circumstances. He had not yet made a decision in the case when he was removed by Governor Pataki. Johnson was replaced by New York's Attorney General who announced that he would seek a death sentence against the defendant, Angel Diaz. Angel Diaz committed suicide while awaiting trial.

The death penalty was reintroduced in New York on 1 September 1995. However, the state has yet to impose a death sentence. In July Stewart Hancock, a former member of New York's highest court, the Court of Appeals, from 1986 to 1993, predicted that the state's death penalty law will be struck down as unconstitutional by the appeal courts.

In October the Death Penalty Information Center published a report, *Killing for Votes: Politicizing the Death Penalty Process*⁴, addressing the political nature of the use of the death penalty. The report, which mirrors some of Amnesty International's findings and concerns on this issue, examined the role of elected officials in the death penalty process and concluded that "...the recent emphasis on the death penalty interferes with the essential impartiality of the justice system...Politicians fan the flames of spiralling effort to seek more death judgements and faster executions by making allegiance to the death penalty a litmus test for public office..."

The report cites numerous instances of outrageous behaviour by elected officials responsible for administering the death penalty. For example, in Missouri Judge Earl Blackwell issued a press release related to his judicial election, announcing his new affiliation with the Republican Party. At the time he was presiding over a death penalty case against an unemployed black defendant. The press release stated, in part: "The Democrat party places far too much emphasis on representing minorities...people who dont' (sic) work, and people with a skin that's any color but white...I believe the time has come for us to place more emphasis and concern on the hard-working taxpayers in this country...[the] majority group of our citizens seem to have been virtually forgotten by the Democrat party."

The judge refused a motion to remove himself from the trial. The defendant, Brian Kinder, was convicted and sentenced to death.

⁴ Available from The Death Penalty Information Center, 1606 20th St. NW, Washington, DC 20009. Phone (202) 347 2531.

The infliction of the death penalty on the mentally ill

Amnesty International is also greatly concerned that a number of prisoners suffering from mental illness or mental retardation were executed in 1996. The execution by a state, instead of the care, of a mentally ill person - regardless of the danger he or she may be to society - is a practice abhorred and condemned by the international community.

Luis Mata was executed in Arizona on 22 August 1996. Mata may have suffered brain damage at birth, and an accident when he was six caused him a serious head injury. His father had severe drinking problems, and often beat his wife and children, especially Luis, whom he kicked and punched in the head, and sometimes beat with electric cords. Luis began drinking alcohol when he was nine years old. At school he was a slow learner, and was placed in a special education class at age 11.

A clinical psychologist describes Mata as having "significant brain damage that affects almost every aspect of his life". Another expert testified that he "suffers from organic brain dysfunction. Mr Mata is unable to control his conduct in the way that normal people do because of his brain damage". In intelligence quota (IQ) tests Mata scored 64-70 (an average person would score 100).

The trial prosecutor signed an affidavit stating that if he had been aware of Mata's poor IQ and his family background, he would not have sought the death penalty against him.

Larry Gene Bell was executed in South Carolina on 4 October 1996. Mental health experts testified that Bell believed he was Jesus and chose to die in the electric chair (rather than by lethal injection) because it was made of "true blue oak", the same materials as Christ's cross and was therefore a gateway to God's throne. The prosecutor in the case acknowledged Bell's serious psychotic disturbance when he stated that Bell was "the epitome of evil. **He has no conscience**, he has no remorse. He's the soul of sadism, and he's the Hannibal Lecter [a fictional serial killer] of South Carolina" (emphasis added).

In Florida Nicholas Hardy was sentenced to death on 14 February 1996 for the 1993 murder of police officer James Hunt. Hardy shot himself in the head shortly after killing Hunt. After a spell in hospital Hardy was discharged and his condition described as "near-vegetative". Six months after his attempted suicide, a court ruled that Hardy was incompetent to stand trial because of brain damage and ordered that he attend a mental retardation treatment program for mentally deficient defendants at Florida State Hospital. After 14 months in the program and an increase of 10 points (to 79) in his IQ, a judge, citing Hardy's "remarkable progress", found him competent to stand trial. Hardy was then tried and sentenced to death.

Attorneys representing Hardy criticised the state's effort to improve his mental health, stating that it was solely for the purpose of sentencing him to death. A member of the defence team stated: "If Hardy had not have been so diligent, had he not been so eager to learn, he wouldn't be here today... [Hardy] knows he's been sentenced to death. But understanding and comprehending are deeper than that."

Members of Hunt's family and police officers publicly celebrated Hardy's death sentence. News of the sentence was broadcast over police radios and the officer who investigated the murder was the first to request to witness the execution. Hunt's widow also indicated that she would attend the execution. Hunt's 10-year-old son attended the sentencing and said he was "really glad this had happened". Hardy remains on death row.

In April 1996 the US Supreme Court raised the level of constitutional protection for criminal defendants suffering from mental illness or mental retardation. The ruling invalidated laws relating to mentally ill defendants in four states that used the previous standard when deciding if a defendant was mentally ill. The four states are Oklahoma, Rhode Island, Pennsylvania and Connecticut.

The Court raised the standard from the "clear and convincing evidence" of mental illness required by the four states to a "preponderance of the evidence" required by the Federal Government and most other states. The ruling set aside the death sentence of Oklahoma inmate Bryon Cooper. At a pre-trial hearing in 1989, Cooper was delusional and incoherent, leading the judge to commit him to a state mental hospital for three months. At his trial, Cooper sat mumbling in a foetal position. He became convinced that his lawyer was trying to kill him, displaying such fear that he tumbled backwards over a railing when the lawyer approached him on the witness stand. However, the judge declined to find him incompetent to stand trial.

While welcoming these developments, Amnesty International remains seriously concerned about the level of contempt which many members of the US criminal justice system continue to hold against the obligations towards the mentally ill and human rights. For example, the Attorney General of Oklahoma, Drew Edmondson, accused Cooper's appeal as being an attempt to make it easier for criminal defendants to "hide" behind a claim of mental incompetence: "This lawsuit is another example of why people are so disgusted with the criminal justice system. It represents another chance for the criminal to slap justice in the face."

Methods and cruelty of executions

Four methods of execution were used during 1996: lethal injection (35), electrocution (8), hanging (1) and firing squad (1).

Billy Bailey was executed by hanging in Delaware on 25 January 1996. Delaware changed the method of execution to lethal injection in 1986. Prisoners such as Bailey, who were sentenced to death prior to the passing of the legislation introducing lethal injection as the method of execution, are given the choice between the two methods. Paradoxically Delaware's governor at the time of the change in methods, Michael Castle, called hanging "barbaric and inhumane" when he signed the law introducing lethal injection. Amnesty International believes that any execution is a gross human rights violation which includes a degree of torture of the victim regardless of the method.

John Taylor was executed by firing squad in Utah on 26 January 1996. Taylor abandoned his legal appeals and allowed the state to execute him. He chose to be shot over lethal injection, introduced as the method of execution in 1986, telling reporters that he didn't want to "flip around like a fish out of water" which he feared with lethal injection.

Following publicity surrounding the execution by firing squad, lawmakers in Utah signalled their intent to make lethal injection the sole method of execution. The last person to die by firing squad in the USA was Gary Gilmore in 1977; his execution was the first after the US Supreme Court declared the death penalty constitutional in *Gregg v. Georgia*.

On 3 March 1996 **Antonio James** was executed in Louisiana. The Warden of Angola Penitentiary, Burl Cain, candidly described James' execution in a press interview which reflects the horrific nature of the procedure:

"...No matter what method you use, execution's not easy. But the biggest problem is getting them ready to die. He [James] had found Christ, I had got to know him real well: I will not kill a man I don't know...And I promised I would hold his hand from the moment we strapped him down on the table until he died. But it was terrible because we couldn't get the intravenous lines into his arm. He was strapped down but they couldn't find a vein. He was lying there for 15 minutes, and I finally had to ask him Antonio, please make a fist, so we can find your vein. We had to get him to make a fist so we could kill him. Then the doctor got the line in he used an alcohol swab to sterilise the skin and I said, what's the point? After we got the lines in it took another few minutes...I would not like to execute an inmate without faith because I know I would be sending his soul straight to hell."

In the same interview Cain also talked of his dislike of the prospect of executing inmates with mental health problems or those sentenced to death for crimes similar to those serving life terms in the prison:

"I believe in the system. Eddie Mitchell [a death row inmate with an intelligence quota of 65] had due process [of law] and if he dies, it will be after many hearings. That's

the wonderful thing about this country. Fair or not fair, there's the law of the land: the alternative is anarchy or dictatorship. Our system may be wrong but it's still the best in the world."

Tommie Smith became the first prisoner to be executed by lethal injection in Indiana on 18 July 1996; previously execution had been by electrocution. The execution team failed to locate a suitable vein in Smith to administer the lethal injection and were forced to seek help from a doctor, whose only role in the execution was to pronounce death. Prison officials were aware that Smith had unusually small veins and had forewarned the doctor that he might be required to take part in the execution.

According to press reports, it took over an hour to find a suitable vein in Smith, during which time he was strapped to the execution gurney and was fully conscious. An attempt by the doctor to insert the needle into Smith's neck failed and the injection was eventually administered through his foot. Witnesses to the execution were permitted to view Smith only after the needle had been successfully inserted.

Amnesty International believes that the participation of health professionals in executions is a violation of basic principles of medical ethics. Many national and international bodies representing the medical profession have declared that health personnel should not participate in executions. In spite of a growing professional consensus against the abuse of medical skills, Amnesty International continues to receive reports of professional involvement in executions. Amnesty International condemns such participation.

The torture component of an execution is also clearly illustrated by the case of **Larry Lonchar** who was executed by electrocution in Georgia on 14 November 1996. According to press reports, the first charge of electricity failed to kill Lonchar. After he was examined and found to be still alive a second charge was administered. The execution took a total of 45 minutes to complete.

In California **William Bonin** became the first prisoner to be executed by lethal injection in the state on 23 February 1996. This followed a 1994 ruling by the US District Court that execution by lethal gas (then the method of execution) constituted "cruel and unusual punishment" and was therefore in violation of California's constitution. This was the first court ruling in the USA that any method of execution constituted cruel and unusual punishment. The judge found that prisoners suffered "excruciating pain for between 15 seconds and several minutes" and that a gas chamber execution violates "evolving standards of human decency and has no place in a civilized society." Four other US states have provisions for the use of the gas chamber: Arizona, Maryland, Mississippi and North Carolina.

In an attempt to circumvent the ban, California introduced a new law allowing inmates to choose to be executed by lethal gas rather than lethal injection. California appealed the decision, but was denied by the Ninth US Circuit Court of Appeals, who also found that execution by lethal gas caused “extreme pain for several minutes”.

However, California (joined by 13 other states) then appealed the ruling to the US Supreme Court, arguing that it could adversely affect other methods of execution. The Court ruled that the issue must be re-examined by the Ninth US Circuit Court of Appeals in light of the new law allowing inmates a choice of execution method. The Court’s decision is not expected until 1997.

Amnesty International believes that by continuing practices which include torture and cruel, inhuman and degrading treatment of prisoners, the US government is failing in its moral obligations before the international community to abolish and criminalize such practices.

Prisoners who abandoned their appeals and sought execution

Eight of the 45 prisoners executed in 1996 abandoned their appeals and sought execution.

The execution of prisoners who have chosen to abandon their appeals in no way relieves the state of its responsibility in taking the life of one of its own citizens. “Consensual” executions are not a product of a prisoner’s freely taken decision to end his own life but rather a refusal to face the appalling strains of living under a sentence of death, often in almost total isolation and under harsh prison conditions. It is contradictory that most US states forbid the assistance of a suicide but many are willing to take the life of a death row prisoner unable to face the reality of his situation.

The US Constitution guarantees legal rights to **all** US citizens. However, prisoners who refuse to continue their legal appeals may have suffered from constitutional violations during their trials that the appeal courts have not had the opportunity to address.

Larry Lonchar was executed in Georgia on 14 November 1996. According to reports by a psychiatrist Lonchar had suffered severe brain damage at some point in his life, which had left him “neurologically impaired” and a manic-depressive with paranoid tendencies. Lonchar had dropped his appeals and been scheduled for execution on at least three previous occasions but chose to take up his appeals before the execution was carried out. On one of the occasions Lonchar came within 30 minutes of execution before the court stayed the execution after he had announced his intention to resume appeals.

On 6 September 1996 **Douglas Wright** became the first prisoner to be executed under Oregon’s current death penalty laws; the last execution in the state was in 1962.

Wright chose to abandon his appeals and had written to the Attorney General and to the state Supreme Court requesting that his execution be carried out. In a hearing to determine whether he was mentally competent to make such a decision, Wright was asked 40 questions by a judge concerning the consequences of his action. The judge then ruled that Wright was mentally competent and signed the death warrant. The judge, who had sentenced Wright to death at the original trial, described signing the warrant as “really hard...I didn’t think about it. You learn to put blockers on. I didn’t enjoy it.”

The Governor of Oregon, John Kitzaber, had declared himself “personally and philosophically opposed to the death penalty” but stated that as he was sworn to uphold the constitution of the state which allows for the use of the death penalty he would allow Wright’s execution to take place.

In Texas **Joe Gonzales** was executed on 18 September 1996 after the shortest stay ever on the state’s death row; Gonzales had been sentenced to death nine months earlier but refused to appeal the sentence. An automatic appeal was made to the Texas Court of Criminal Appeals which upheld the conviction and sentence.

In a final written statement, Gonzales said: “There are people all over the world who face things worse than death on a daily basis, and in that sense I consider myself lucky. I cannot find the words to express the sadness I feel for bringing this hurt and pain to my loved ones. I will not ask for forgiveness for the decisions I have made in this judicial process, only acceptance. God bless you all.”

Other prisoners who dropped their appeals and were executed in 1996 were: **John Taylor**, executed in Utah on 26 January; **Leo Jenkins**, executed in Texas on 9 February; **Robert South**, executed in South Carolina on 31 May; **Darren Bolton**, executed in Arizona on 19 June; and **Michael Torrence**, executed in South Carolina on 6 September.

State and federal initiatives to speed the appeal process for condemned prisoners

On 24 April 1996, President Clinton signed the *Anti-terrorism and Effective Penalty Act* into law. The Act had previously been passed by both houses of Congress.

Amnesty International is seriously concerned that the Act limits the number of *habeas corpus* appeals allowed by death row inmates in federal courts and places a time limit on how long condemned prisoners have to file such appeals, therefore effectively facilitating the execution of prisoners.

Under the new law, federal courts can overturn state court judgements in only three instances: if the state court's decision is "contrary to clearly established" federal law as determined by the Supreme Court; if it involves an "unreasonable application" of clearly established law; or if the state court's factual determination is "unreasonable".

A time limit of six months from the denial of state appeals for the filing of federal *habeas corpus* appeals is set by the Act if the state has "opted in", that is, provided adequate legal assistance to death row inmates to qualify as an "opt in" state. To date, no state has been deemed to have adequate legal representation for death row inmates to qualify; at least eight states have been refused. The Act also limits to one the number of federal appeals allowed by a prisoner; further appeals would only be heard by the Court if a three-judge panel found that they presented substantive issues such as conclusive proof of innocence. The decision of the three-judge panel is not subject to appeal.

The law is designed to hasten the appeals process for death row inmates. The average time between sentencing and execution for the 56 prisoners executed in 1995 was 11 years and 2 months; cases have been known to take 19 years. The Act aims to reduce the appeals process to 2 years. The US Supreme Court upheld the Act as constitutional in its ruling in *Felker v. Turpin* in June. The case led to a temporary hiatus in executions from 4 May to 17 July, during which time the only two prisoners executed had dropped their appeals. Senator Orrin Hatch, Chairman of the Judiciary Committee in Congress and one of the main sponsors of the law, hailed the decision as a step forward: "We've protected the rights of these people who have been convicted, but we are going to quit playing this game of incessant frivolous appeals at the cost of taxpayers paying unnecessary dollars and the pain for the victims and their families." However, other legal experts predicted that the law would lead to the execution of prisoners who were innocent but had been denied the opportunity for further appeals which might have exonerated them.

Many other states have recently enacted new laws or legal procedures to accelerate the appeals process of law for death row inmates at state level. For example, in 1995 **Texas** introduced a law requiring death row inmates to raise all their claims of constitutional violations in a single appeal. The law also stipulates that all state appeals, direct and *habeas corpus*, are filed at the same time; previously *habeas corpus* appeals were not filed until the direct appeal had been denied. The new law was constitutionally challenged by death row inmate James Davis. At the end of 1996 the Texas Court of Criminal Appeals upheld the new law and denied the appeal. The challenge led to the temporary suspension of executions in Texas; only three prisoners were executed during 1996, two of which had abandoned their appeals and allowed their execution. Nineteen prisoners were executed during 1995.

In November the Texas Court of Criminal Appeals made a further attempt to speed the appeals process by ordering 48 new lawyers to represent death row inmates. The Court

stated that it had been forced to take this action as not enough lawyers had come forward voluntarily to represent death row inmates. Opponents of the enforced appointments pointed out that attorneys should be offered sufficient financial compensation to ensure that they voluntarily represent condemned prisoners. In 1995, the Texas legislature cut the 1996 budget for the legal representation of death row inmates from \$4 to \$2 million.

Amnesty International believes that the limiting of the appeals process will further undermine the right to a fair process of law for many on death row. For example, it will lead to the execution of more prisoners whose convictions or sentences were racially motivated, who were poorly legally defended and who may have credible claims of innocence.

Extradition of prisoners to the USA by foreign governments in capital cases

Amnesty International expressed grave concern and dismay about the Canadian Minister of Justice and Attorney General's decision in July to order the extradition of two Canadian citizens, **Atif Ahmad Rafay** and **Glen Sebastian Burns**, to Washington State, USA, to face charges of capital murder. The Minister had failed to seek assurances from the US authorities that the death penalty would not be imposed despite an agreement between the two countries that Canada can do so.

The decision to allow the extradition was in contrast to the application by the Filipino authorities to the Canadian authorities to allow extradition of **Rodolfo Pacificador**, wanted for murder in the Phillipines. The Minister of Justice and Attorney General granted the application for extradition but not before he sought and received assurances that Pacificador would not receive a death sentence if convicted.

Amnesty International welcomed the Italian Court's stance on prioritising a prisoner's human rights when it rejected requests from the US authorities for the extradition of an Italian in June who might have faced the death penalty. Italy's Constitutional Court ruled that **Pietro Venezia**, wanted on charges of murder in Florida, could not be extradited to the USA because of the state's provisions for the use of the death penalty. The Court ruled that assurances given by US authorities that Venezia would not face the death penalty were insufficient to allow for the extradition as the Italian Constitution states: "Participation of the Italian state in the infliction or execution of a capital sentence is not admissible under any circumstances and for any type of crime" and that the guarantees from the US were inadequate when considering the "fundamental value of life".

Venezia had appealed to the Constitutional Court after the Italian Ministry of Justice had agreed to the extradition after receiving the guarantees that a death sentence would not be imposed.

Statistics⁵

Total executions since the resumption of executions in 1977

77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96
1	0	2	0	1	2	5	21	18	18	25	11	16	23	14	31	38	31	56	45

RACE OF DEFENDANTS EXECUTED TOTAL NUMBER: 358

White	201 (56.16%)
Black	135 (37.72%)
Latino	19 (5.31%)
Native American	2 (.55%)
Asian	1 (.26%)

RACE OF VICTIMS (as of 31/7/96) TOTAL NUMBER: 451

White	370 (82.04%)
Black	57 (12.64%)
Latino	17 (3.77%)
Asian	7 (1.55%)

EXECUTION BY STATE TOTAL NUMBER: 27

1. Texas	107 (29.89%)
2. Florida	38 (10.63%)
3. Virginia	37 (10.34%)
4. Louisiana	23 (6.43%)
5. Missouri	23 (6.43%)
6. Georgia	22 (6.15%)
7. Alabama	13 (3.64%)
8. Arkansas	12 (3.36%)
10. South Carolina	11 (3.08%)
11. Delaware	8 (2.24%)
12. Illinois	8 (2.24%)
13. North Carolina	8 (2.24%)
14. Oklahoma	8 (2.24%)
14. Arizona	6 (1.68%)
15. Nevada	6 (1.68%)
16. Utah	5 (1.40%)
17. Mississippi	4 (1.11%)
18. California	4 (1.11%)
19. Indiana	4 (1.11%)
20. Nebraska	2 (0.55%)
21. Washington	2 (0.55%)

⁵ Source: Legal Defence and Education Fund, New York

22. Pennsylvania	2 (0.55%)
23. Idaho	1 (0.27%)
24. Maryland	1 (0.27%)
25. Oregon	1 (0.27%)
26. Wyoming	1 (0.27%)
27. Montana	1 (0.27%)

Forty-seven of the 358 prisoners executed since 1977 choose to abandon their appeals and allow their execution.

EXECUTIONS BY METHODS USED

Lethal injection	217
Electrocution	127
Gas Chamber	9
Hanging	3
Firing Squad	2

JURISDICTIONS WITH DEATH PENALTY STATUTES: 38 STATES AND 2 FEDERAL

Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming, US Government, US Military.

(underlined states have death penalty statutes but no death sentences imposed)

JURISDICTIONS WITHOUT CAPITAL PUNISHMENT: 12 STATES AND 1 FEDERAL

Alaska, District of Columbia (Federal), Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, Wisconsin.

JUVENILE OFFENDERS EXECUTED SINCE 1977 TOTAL NUMBER: 9

Charles Rumbaugh (Texas)	11 September 1985
James Terry Roach (South Carolina)	10 January 1986
Jay Pinkerton (Texas)	15 May 1986
Dalton Prejean (Louisiana)	18 May 1990
Johnny Frank Garrett (Texas)	11 February 1992
Curtis Harris (Texas)	1 July 1993
Frederick Lashley (Missouri)	28 July 1993
Ruben Cantu (Texas)	24 August 1993
Christopher Burger (Georgia)	7 December 1993

(all were 17 years old at the time of the offence)

JUVENILE OFFENDERS ON DEATH ROW: At least 47 in 15 states

Alabama (5); Arizona (2); Arkansas (1); Florida (3); Georgia (2); Kentucky (1); Louisiana (1); Mississippi (3); Missouri (3); Nevada (1); Oklahoma (1); Pennsylvania (2); South Carolina (2); Texas (17); Virginia (3). (As of 30 June 1996).

DEFENDANT-VICTIM RACIAL COMBINATIONS (as of 31 July 1996)

White defendant and

White victim	259 (57.43%)
Black victim	5 (1.11%)
Asian victim	2 (0.44%)
Latino victim	8 (1.77%)

Black defendant and

White victim	102 (22.62%)
Black victim	51 (11.31%)
Asian victim	2 (.44%)
Latino victim	1 (.22%)