
amnesty international

UNITED STATES OF AMERICA State cruelty against families

4 September 2001

AI INDEX: AMR 51/132/2001

“You’ll never hear another sound like a mother wailing when she’s watching her son being executed. There’s no other sound like it. It is just this horrendous wail. You can’t get away from it. That wail surrounds the room. It’s definitely something you won’t ever forget.” Media witness to more than 50 executions in Texas, National Public Radio, October 2000.

On 15 August Rena Beazley’s son was less than four hours from execution when the Texas Court of Criminal Appeals stopped it. Napoleon Beazley was returned to death row, where he awaits his fate. In April and again in May, the brother of George, Charles and Diane Scott was minutes from execution in Ohio, the second time with catheters already in his arms to receive the lethal injection needles, when courts granted stays. On the state’s third attempt on 14 June, the execution of Jay Scott went ahead.

The cruelty of the death penalty is not confined to the prisoner whose life is toyed with in the name of justice. Relatives of the condemned are also ensnared in the cycle of hope and despair that this degrading punishment inevitably breeds. Bettye Roberson wrote in 1995: “If my son gets executed, a part of me will die with him. Every day I have lived with that threat for the past eight years...This is the true torture of the death penalty”. Brian Roberson was executed in August last year after 13 years on death row in Texas.

While there is growing disquiet in the USA about the risk of executing the innocent, there appears to be little equivalent concern for these other “innocent” victims of the death penalty who live day after day, for years, in the knowledge that their government intends to kill their loved one.

John Byrd is due to be executed in Ohio’s electric chair on 12 September. At his clemency hearing on 20 August, his mother pleaded for mercy: “I plead, I beg – my body, my mind, my soul – please don’t let them execute my baby, please”. She has lived with that prospect for 18 years. In Indiana in March, a few hours after visiting Gerald Bivins for the last time, his mother attempted suicide. Twenty-four hours later, medical technology was keeping her alive in intensive care whilst at the same time killing her son in the state’s lethal injection chamber. Joseph Cannon was executed in Texas in 1998 after 18 years on death row. The first attempt failed, when the lethal injection needled blew out of his arm. The witnesses were briefly ushered out of the viewing area, among them Joseph Cannon’s mother. After seeing her son killed a short while later, she collapsed in distress and had to be taken to hospital.

Politicians – many of whom trumpet “family values” – have frequently suggested that a retributive execution can somehow bring “closure” to those who lose loved ones to murder – without indicating how the family of the prisoner should achieve the same after the state kills their relative. An execution, of course, cannot guarantee any such emotional relief to the bereaved, and even if it could, this would mean that the vast majority of murder victims’ relatives are being denied this disturbing form of state-sponsored therapy. For only a tiny percentage of the thousands of murders committed each year in the United States result in this symbolic punishment. The state will argue that the system is winnowing out the “worst of the worst”. In reality, the condemned are selected for death under a system characterized by arbitrariness, discrimination and error. The mistakes and inequities are perpetrated not only on the defendants, but also on their families. In the end, and for no measurable benefit, all the state achieves by an execution is one more dead body and more grieving relatives. This cannot be the policy of a responsible government looking for constructive responses to violent crime.

Human rights violations come in many forms. Torture and the death penalty are two close cousins. “Disappearance”, whereby government agents detain an individual and deny all knowledge of their whereabouts, is another. Families of the “disappeared” are subjected to the anguish of not knowing the fate of their loved ones. Are they being tortured? Will they be killed? The UN Declaration on the Protection of All Persons Against Disappearances states that a “disappearance” causes “grave suffering” not only to the victims but also to their families. The Human Rights Committee, the expert body which monitors compliance with the International Covenant on Civil and Political Rights (ICCPR), has also recognized that “disappearances” are not just a human rights violation against the victims, but also against their relatives because of the mental torture, or cruel, inhuman and degrading treatment to which it subjects them.

Family members of the judicially condemned know the whereabouts of their loved one, but do not know their fate. All they know is that the government has said that it intends to kill their brother, or mother, or sister, or father. As with “disappearances”, the rest is left to the imagination. In 1988, parents of those on South Africa’s death row wrote in a petition to the country’s president: “To be a mother or father and watch your child going through this living hell is a torment more painful than anyone can imagine”. South Africa, along with 108 other countries, no longer pursues this shameful policy, having recognized its futility and incompatibility with human dignity.

Article 23 of the ICCPR states that the family “is entitled to protection by society and the State”. At the same time, Article 6 of the treaty recognizes the possibility that some countries may retain the death penalty. However, it places strict limitations on its use, pending abolition. One of these restrictions, of which the USA has been reminded by the Human Rights Committee but chosen to ignore, is Article 6.5’s unequivocal prohibition on the use of the death penalty for crimes committed by under-18-year-olds, such as Napoleon Beazley and Joseph Cannon. The execution of such individuals therefore also violates Article 23.

Another restriction, enshrined in Article 6.1 of the Covenant, prohibits the arbitrary deprivation of life. The Human Rights Committee, regarding the right to liberty, has stated that ‘arbitrariness’ should not be equated to ‘against the law’, but that it should be interpreted more broadly, to include notions of inappropriateness, injustice and lack of predictability.

The use of the death penalty against Jay Scott, for example, was certainly *inappropriate* in view of his history of profound mental illness. The execution of John Byrd will certainly be *unjust*, given that the only thing that separates his punishment from the life sentence given to his co-defendant (who has since confessed to the murder) is the disputed word of a jailhouse informant.

Evidence of the US death penalty’s *unpredictability* is overwhelming. In a country where the difference between a death sentence and a life term can hinge on the quality of the defence lawyer, the

race or status of the victim or defendant, the conduct of the prosecutor, the resources of the prosecuting county, or even whether the jury understood its sentencing options, every execution arguably violates Article 6's ban on the arbitrary deprivation of life. If so, each of these killings also violates Article 23's obligation on the state to protect the family.

What is not in doubt is that there is an easy solution. The USA can join the majority of the world's countries and stop subjecting prisoners and their families to this cruel, inhuman and degrading treatment.

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