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USA

The Death Penalty in the United States of America: Developments from 1 September 1989 to 31 December 1990

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SUMMARY

This document updates statistical and other information given in Amnesty International's earlier papers about the death penalty in the USA. It provides information on executions and other developments in the use of the death penalty in the USA for the period 1 September 1989 to 31 December 1990.

By the end of December 1990 the number of prisoners on death row had risen to over 2,400. Some 50 percent of these were white, 40 percent black, and the remaining 10% from other ethnic minority groups. Three prisoners were executed from 1 September 1989 to 31 December 1989, bringing the total for that year to 16. Twenty-three executions were carried out in 1990. In 1990 three states resumed executions after periods of more than 20 years and a juvenile offender (aged 17 at the time of the crime) was executed, contrary to international standards which prohibit the execution of persons under the age of 18 at the time of the crime.

Amnesty International continues to be concerned that the death penalty is imposed in a racially discriminatory manner. In February 1990 the General Accounting Office (GAO), an independent agency of the federal government, published the findings of a survey it had conducted into the effects of race on capital sentencing practices. Eighty two percent of the research studies it examined suggested that those who murdered

white victims were significantly more likely to be sentenced to death than those who murdered black victims.

As of 31 December 1990 there were at least 29 prisoners under sentence of death for crimes committed when they were under 18 years of age. Dalton Prejean, a mentally retarded, black juvenile offender was executed by the state of Louisiana on 18 May 1990. A second juvenile offender was scheduled for execution by the state of Georgia in December 1990, but later received a stay of execution.

At least seven of the prisoners executed since September 1989 were reported to have been suffering from mental illness, brain damage or mental retardation. In November 1990 the US Supreme Court ordered a Louisiana court to reconsider a ruling that a mentally ill prisoner on death row could be forced to take medication to render him sane enough to be executed.

Amnesty International was concerned to hear that doctors had assisted in the execution of Charles Walker in Illinois on 12 September 1990 - the first execution to be carried out in the state since 1962. The involvement of doctors in executions is contrary to guidelines issued by the American Medical Association and the World Medical Association. In an article in the *American Medical Association (AMA) News* in November 1990 reference was made to at least two other such instances having taken place in recent years in the state of Missouri.

Two prisoners under sentence of death in Texas were released in 1990 after substantial doubt had been raised about the evidence on which they had been convicted. Both men had proclaimed their innocence and one of them - Clarence Brandley - had come within 5 days of execution in 1987.

A congressional committee removed all death penalty provisions from a federal crime bill which was then passed by Congress in October 1990. The US Senate and House of Representatives had earlier approved draft bills which would have reintroduced the death penalty for a number of federal crimes, extended it to crimes not previously punishable by death and limited federal appeals in state death penalty cases. The House bill had included an amendment which would have allowed defendants to seek reversal of their death sentences if they could show a pattern of racial discrimination in death sentencing. This too was dropped from the legislation.

During the 1990 state legislative sessions, Kentucky and Tennessee passed legislation prohibiting the execution of the mentally retarded. Other legislation was passed to expand the scope of states' death penalty statutes. Bills proposing the reintroduction of the death penalty in 12 abolitionist states failed to pass, although a death penalty bill in New York came close to succeeding. This paper gives details of the major legislative and state developments on the death penalty for the period 1 September 1989 to 31 December 1990.

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 summarises a 21-page document (8745 words), *USA: The Death Penalty in the United States of America: Developments from 1 September 1989 to 31 December 1990* (AI Index: 51/13/91), issued by Amnesty International in April 1991. Anyone wanting further details or to take action on this issue should consult the full document.

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USA

THE DEATH PENALTY IN THE UNITED STATES OF AMERICA: DEVELOPMENTS FROM 1 SEPTEMBER 1989 TO 31 DECEMBER1990

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USA
The Death Penalty in the United States of America: Developments from 1 September 1989 to 31 December 1990

Introduction

This document updates statistical and other information given in Amnesty International's earlier papers about the death penalty in the USA (see in particular, AMR 51/01/88 - *Developments in 1987*; AMR 51/01/89 - *Developments in 1988* and AMR 51/46/89 - *Developments from January to August 1989*). 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 present document provides information about the 26 prisoners executed between 1 September 1989 and 31 December 1990. It summarises state and federal legislative developments and looks at issues including racial discrimination in the imposition of the death penalty, doctors' participation in executions, inadequate legal representation for capital defendants and the cases of juvenile offenders sentenced to death.

As of January 1991 an unprecedented 2,412 prisoners were under sentence of death in 34 states and under US federal military law. Twenty-three prisoners were executed in 1990, bringing to 143 the number of executions in the USA since executions resumed in the 1970s. This was an increase over the previous two years - a trend expected to continue as appeals in many cases run out. The majority of executions continued to be carried out in the southern states (with the largest number in Texas). However, executions have increased in other regions of the USA. In 1990 Arkansas, Illinois and Oklahoma each resumed executions after more than 20 years. Missouri, which resumed executions in 1989, executed four prisoners in 1990. Texas had the largest number of prisoners under sentence of death (332 in January 1991), followed by Florida (298) and California (296), although the latter had not yet carried out any executions.

Among those executed in 1990 was Dalton Prejean, a black, mentally retarded juvenile offender who was executed by electrocution in Louisiana on 18 May. The USA remains one of the few remaining countries in the world to execute people under 18 at the time of the crime, contrary to international standards. Several other executed prisoners had histories of mental illness or were mentally retarded. Race continued to be a factor in death sentencing, according to studies and statistics. This was borne out in a survey on the effects of race on capital sentencing practices conducted by the

General Accounting Office (GAO), an independent agency of the federal government, which published its findings in February 1990. Eighty-two percent of the studies it examined suggested that those who murdered white victims were significantly more likely to be sentenced to death than those who murdered black victims.

During the 1990 state legislative sessions, Kentucky and Tennessee passed legislation to prohibit the execution of the mentally retarded. Only two other states (Georgia and Maryland) already had such legislation. During the 1989 legislative session, the Governor of Illinois used his veto to prevent the passage of a bill which would have prohibited the execution of the mentally retarded. The bill had passed both House and Senate. Missouri raised the minimum age at which an offender could be sentenced to death from 14 to 16 years at the time of commission of the crime. This brought the state into line with a 1989 US Supreme Court ruling that offenders as young as 16 could be executed. Five states adopted laws expanding the scope of the death penalty to include drug-related murders. Bills seeking to reinstate the death penalty were introduced in 12 abolitionist states. None passed, although a death penalty bill in New York came close to succeeding.

A federal crime bill was introduced in 1990 which would have reintroduced the death penalty for a number of federal crimes, extended the number of crimes for which the death penalty could be imposed and limited federal appeals in state death penalty cases. Although these measures were approved by the US Senate and House of Representatives, they were unexpectedly dropped from the final version of the bill passed by Congress. There were no major US Supreme Court rulings on broad-based death penalty issues during the period reviewed. However, in recent years the Court has progressively narrowed the grounds on which prisoners may appeal their capital convictions or sentences. It has also limited retroactive application of its rulings, so that many prisoners sentenced to death under procedures later ruled unconstitutional have been unable to benefit (see AMR 51/46/89 - *Developments January to August 1989*). Overall, some 40% of death sentences imposed since the 1970s have been overturned on state or federal appeal.

Two prisoners under sentence of death in Texas had their convictions overturned and were released in 1990 after the state dropped all charges against them. Both had proclaimed their innocence of the crimes for which they had been convicted. One of the prisoners - Clarence Brandley - had been on death row since 1981 and had come within days of execution in March 1987. His case was cited in an Amnesty International report - *The Risk of Executing the Innocent*, AMR51/19/89.

Amnesty International opposes the death penalty unconditionally, believing that it is a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment or punishment as enshrined in the Universal Declaration of Human Rights and other international human rights instruments. The reintroduction or expansion of the death penalty in state or federal legislation and the increase in executions is contrary to international human rights standards which encourage

governments to restrict progressively the use of the death penalty with a view to its ultimate abolition.

The Federal Death Penalty

The death penalty is currently authorized under federal civilian law only for murders resulting from aircraft hijacking and drug related killings. No death sentences have yet been imposed under these laws. The last execution under federal law was in 1963.

However, in 1990 the US Senate and House of Representatives passed similar versions of a major crime bill which included measures to expand the federal death penalty. The bill would have enabled the death penalty to be re-instated for a number of crimes (including treason, assassination of the President and first-degree murder of federal officials) by amending federal sentencing procedures to conform to US Supreme Court guidelines. It would also have increased the number of federal crimes punishable by death, including extending the death penalty to certain drug-related offenses not involving homicide. The bill also included provisions which would have limited federal *habeas corpus* appeals in state death penalty cases - a stage at which many state death penalty cases are currently overturned.

The House version of the bill also included the Racial Justice Act (RJA), giving (state and federal) defendants the right to seek a reversal of their death sentences if they could show a pattern of racial discrimination in death sentencing. A similar amendment had failed to gain majority approval in the Senate.

A joint conference committee, made up of members of both houses of Congress met in late October 1990 to reconcile the differences between the two versions of the crime bill. Several key members of this committee refused to compromise on the RJA, insisting that this should remain part of the proposed legislation. Others were strongly opposed to inclusion of the RJA. In order not to jeopardise the whole crime package, the committee decided to remove all death penalty clauses from the bill (as well as some controversial gun control provisions). The final bill passed by Congress on 26 October 1990 thus contained no death penalty provisions.

Amnesty International wrote to members of the US Senate and House of Representatives in November 1989 and July 1990, pointing out that the proposals to expand the death penalty under federal law were contrary to international standards, including Article 4(2) of the American Convention on Human Rights, signed by the USA, which states that the death penalty "shall not be extended to crimes to which it does not currently apply". Amnesty International also expressed concern at the proposals to limit federal *habeas corpus* review of state death penalty cases, saying that it was disturbed by any measure which would reduce the judicial scrutiny afforded in capital cases.

Renewed attempts to expand the federal death penalty - which is strongly supported by the Bush administration - are expected to be made in 1991.

The death penalty under federal military law

The death penalty is provided under US military law. Five former members of the US armed forces were under sentence of death for murder in 1990: four are black, one white. The last execution of a soldier sentenced to death under military law was in 1961.

Prisoners Executed between 1 September 1989 and 31 December 1990

Three executions (1 in Alabama and 2 in Texas) were carried out between 1 September and 31 December 1989, bringing the total number of executions for 1989 to 16. Between 1 January and 31 December 1990, 23 executions were carried out in eleven states as follows: Alabama 1, Arkansas 2, Florida 4, Illinois 1, Louisiana 1, Missouri 4, Nevada 1, Oklahoma 1, South Carolina 1, Texas 4, Virginia 3. This brings the total number of prisoners executed since 1976 (when the death penalty was reinstated by the courts) to 143. Texas alone has carried out 37 executions since 1976, more than a quarter of the US total; followed by Florida (25), Louisiana (19) and Georgia (14).

No since 1977	Name	Date of execution	State	Method	Race of offender	Race Victim
118	James Paster	20.9.89	TX	L.Inj.	W	W
119	Arthur Julius	17.11.89	AL	L.Inj.	B	B
120	Carlos de Luna	7.12.89	TX	L.Inj	HIS	HIS
121	Gerald Smith	18.1.90	MO	L.Inj	W	W
122	Jerome Butler	21.4,90	TX	L.Inj	B	B
123	Ronald Woomer	27.4.90	SC	Elect.	W	W
124	Jesse Tafero	4.5.90	FL	Elect.	W	W
125	Winford Stokes	11.5.89	MO	L.Inj.	B	W
126	Leonard Laws	17.5.90	MO	L.Inj.	W	Ws

No since 1977	Name	Date of execution	State	Method	Race of offender	Race Victim
127	Johnny Ray Anderson	17.5.90	TX	L.Inj.	W	W
128	Dalton Prejean	18.5.90	LA	Elect.	B	W
129	Thomas Baal	3.6.90	NV	L.Inj.	W	W
130	John Swindler	18.6.90	AR	Elect.	W	W
131	Ronald G Simmons	25.6.90	AR	L.Inj.	W	Ws
132	James Smith	26.6.90	TX	L.Inj.	B	W
133	Wallace Thomas	13.7.90	AL	Elect.	B	W
134	Mikel Derrick	18.7.90	TX	L.Inj.	W	W
135	Ricky Boggs	19.7.90	VA	Elect.	W	W
136	Anthony Bertolotti	27.7.90	FL	Elect.	B	W
137	George Gilmore	31.8.90	MO	L.Inj.	W	W
138	Charles Coleman	10.9.90	OK	L.Inj.	W	Ws
139	Charles Walker	12.9.90	IL	L.Inj.	W	W
140	James Hamblen	21.9.90	FL	Elect.	W	W
141	Wilbert Lee Evans	17.10.90	VA	Elect.	B	B
142	Raymond Clark	20.11.90	FL	Elect.	W	W
143	Buddy Justus	13.12.90	VA	Elect.	W	W/B

Abbreviations Elect. = Electrocution; L.Inj. = Lethal Injection
W(s) White(s) B = Black HIS = Hispanic
AL = Alabama; AR = Arkansas; FL = Florida; IL = Illinois
LA = Louisiana; MO = Missouri; OK = Oklahoma; SC = South Carolina; TX = Texas; VA = Virginia

Race Disparities In The Imposition of the Death Penalty

As of 21 January 1991 there were 2,412 prisoners under sentence of death in the USA of whom 951 - nearly 40% - were black.[1] The percentage of black prisoners on death rows in some individual states is much higher. Blacks make up only 12% of the total US population. However, statistics based on the race of the offender alone do not necessarily indicate bias. The most marked disparities in death sentencing are revealed when considering the race of the victim in capital cases.

95% of the prisoners executed in 1990 were convicted of murdering white victims as were some 85% of those executed since the death penalty was reinstated in the 1970s. The same applies to the large majority of prisoners on death row. This disparity appears more pronounced, given that a large proportion of homicide victims in the USA are black. The figures also show that 41 black prisoners executed since 1976 were convicted of murdering white victims but no white person has yet been executed for the murder of a sole black victim. State authorities have argued that these disparities are due to differences in the types of crimes committed by or against members of different racial groups. However, research studies have isolated the victim's race as a key factor in death sentencing, after allowing for differences in the types of homicide.

This was borne out in a survey conducted by the General Accounting Office (GAO), an independent agency of the federal government, whose findings were published on 26 February 1990. The GAO had examined numerous research studies on the effects of race on capital sentencing practices in various US states. Eighty-two per cent of these studies suggested that those convicted of murdering white victims were significantly more likely to be sentenced to death than those convicted of murdering black victims.
It identified a "race of victim" influence at all stages of the criminal justice process, with the strongest bias during the early stages of a case when state prosecutors had considerable discretion over whether or not to charge a defendant with capital murder or proceed with a lesser charge. Three quarters of the research studies evaluated by the GAO also suggested that black defendants were more likely to receive the death penalty than white defendants, although the remaining one-quarter suggested the opposite. The GAO concluded that "... the synthesis supports a strong race of victim influence. The race of offender influence is not as clear cut and varies across a number of dimensions." (For further details see *USA:Government Survey Finds Pattern of Racial Disparities in Imposition of Death Penalty.* AMR 51/08/90.)

[1] Statistics published in January 1991 by the NAACP Legal Defense and Educational Fund, New York, give the racial breakdown as follows: 1219 (50.53%) were white; 951 (39.42%) were black; 164 (6.79%) were Hispanic; 47 (1.86%) were Native American; 15 (0.62%) Asian and the remainder unknown.

Pre-trial motion on race discrimination in Columbus, Georgia

In September 1990, an Amnesty International representative attended a pre-trial hearing on race discrimination held in Columbus, Georgia. The hearing was on a motion filed in the case of William Brooks, a black defendant charged with the murder of a white woman. Lawyers from the Southern Prisoners' Defence Committee (SPDC) (which provides legal representation for poor capital defendants in several southern states) argued that the death penalty should not be available in this case as it had been applied in a racially discriminatory manner in the Chattahoochie Judicial Circuit, particularly in the city of Columbus where the case was being prosecuted.
Columbus is the second largest city in Georgia and has a long history of racial violence and racial discrimination.

At the hearing, the SPDC presented data on homicide convictions in the Chattahoochie circuit between 1973 and 1990 which showed that prosecutors had sought the death penalty in 34.3 per cent of white victim cases and only 5.8 per cent of cases involving black victims. This difference could not be accounted for by non-racial factors such as the presence of aggravating circumstances, additional felonies, multiple victims or the murder of strangers. Of the 27 cases which went to trial on a capital charge, 21 (78 per cent) involved white, mainly single victims and six involved black victims, four of which were cases with multiple victims. These figures were despite the fact that 65% of all homicides victims in Columbus were black, according to SPDC data.

The data compiled for the SPDC also showed that the death penalty was sought in 48 per cent of cases where the victim was a white woman and only 9.4 per cent of cases where the victim was a black woman.

The SPDC also presented evidence to show that Columbus prosecutors had consistently used their peremptory challenges (the right to reject potential jurors without explanation) to exclude blacks from trial juries in capital cases involving black defendants. Testimony given by the relatives of nine black murder victims suggested that their cases had been treated differently from those involving white families. The local District Attorney and former county prosecutors testified at the hearing, denying that cases were dealt with on a discriminatory basis and stating that legally relevant factors, often unique to the individual case, were always present in decisions to seek the death penalty. On 19 September the court issued, without further elaboration, a four-word ruling: "The motion is denied".

Amnesty International has examined the data presented to the hearing and believes that the state failed to offer a satisfactory explanation for the pattern of racial disparity in death sentencing.

William Brooks was later convicted and sentenced to life imprisonment by a jury (although the prosecutor had sought the death penalty).

Ten of the 14 people executed in Georgia since the death penalty was reinstated in the 1970s have been black, nine of whom were convicted of murdering white victims. No white person has been executed in Georgia for killing a black victim.

Execution Of Mentally Ill/Mentally Retarded

At least seven of the prisoners executed since September 1989 were reported to have been suffering from some degree of mental illness, brain damage or mental retardation. They are Gerald Smith (executed in Missouri 18/1/90), Rusty Woomer (South Carolina 9/4/90), Dalton Prejean (Louisiana 18/5/90), James Smith (Texas 26/6/90), Ricky Boggs (Virginia 19/7/90), George Gilmore (Missouri 31/8/90), Charles Coleman (Oklahoma 9/9/90).

Three of the above - Prejean, Gilmore and Coleman - were diagnosed as being mildly mentally retarded and also had histories of mental illness. Gilmore, Coleman and several of the others had suffered severe physical abuse in childhood including head injuries which were found to have caused brain damage. Several of the above had alcoholic mothers and are believed to have suffered from Fetal Alcohol Syndrome: brain damage caused by the excessive intake of alcohol while in the womb. Some of these prisoners had themselves become addicted to alcohol during early childhood. (For details see *Information on Prisoners Executed,* P18).

In June 1989, in *Penry v Lynaugh*, the US Supreme Court ruled that the execution of mentally retarded defendants is not categorically prohibited under the Constitution. However, it held that juries in capital cases must be instructed to consider reduced mental capacity as a possible mitigating circumstance at the sentencing hearing. The Supreme Court vacated the death sentence imposed on the appellant, Texas prisoner John Paul Penry, because the sentencing jury at his trial had not been given an opportunity to consider evidence of his mental retardation and abused childhood as mitigation. (See *USA Death Penalty Developments from January to August 1989.* AMR 51/46/89) In July 1990 Penry was again sentenced to death after being retried and convicted of the 1979 rape and murder of a young woman. This time the jury had been able to consider evidence of his low IQ and his family history, including the severe physical abuse inflicted on him by his mother from early infancy, as possibly mitigating circumstances.

Despite the ruling in *Penry*, four US states have passed legislation in recent years prohibiting the execution of mentally retarded defendants: Georgia, Maryland, Kentucky and Tennessee (the two latter adopting the relevant legislation in 1990).

Supreme Court issues order on forcible medication of insane prisoner prior to execution

In November 1990 the US Supreme Court ordered a state court to reconsider a ruling that a mentally ill prisoner on death row could be forced to take medication to render him sane enough to be executed.

The case concerned Michael Owen Perry who was sentenced to death in Louisiana in 1984 after being convicted of murdering his parents and three other relatives. He had a long history of schizophrenic illness pre-dating the killings. Although Perry was found competent to stand trial, he had suffered from regular bouts of psychosis (including auditory hallucinations, paranoia and delusions) throughout his imprisonment and had been periodically placed on psychotropic medication.

In 1986, the US Supreme Court ruled that the execution of an insane prisoner would be "cruel and unusual" punishment in violation of the Eighth Amendment to the Constitution. After hearing evidence about John Perry's mental illness, the Louisiana Supreme Court in 1987 upheld his conviction and death sentence, but ordered the trial court to hold a hearing into the question of his mental competency to be executed. The standard for competency under US law is that a condemned prisoner must be aware of the death penalty and the reason for it. After hearing evidence, the trial court concluded that, while Perry suffered from a major schizophrenic illness, his condition could be stabilised sufficiently to meet the above standard "only when maintained on psychotropic medication in the form of Haldol" (an anti-psychotic drug). The court ordered that he be maintained under continuous medication, against his will if necessary, for the sole purpose of rendering him competent to be executed.

Perry's lawyers lodged an appeal to the US Supreme Court which was supported by the American Psychiatric Association and the American Medical Association. It was argued that the forcible medication of a prisoner solely for the purpose of rendering him competent to be executed violated the due process clause of the Fourteenth Amendment to the Constitution. It was further argued that the withholding of medical treatment from a psychotic prisoner would be cruel and unusual treatment in violation of the Eighth Amendment and that the only proper course of action was therefore to commute Perry's death sentence to life imprisonment and to commit him to an institution for treatment.

In its decision given in November 1990, the US Supreme Court did not issue a ruling on the issue raised but it remanded the case back to the Louisiana courts for reconsideration in the light of an earlier US Supreme Court ruling given in the (non-capital) case of *Washington v Harper*. In *Washington v Harper*, decided in February 1990, the Court held that a prisoner could be forcibly medicated with antipsychotic drugs only if suffering from mental illness likely to cause harm and the treatment was in the prisoner's medical interest. Rehearing by the state court in Michael Perry's case was still pending at the end of the year.

Juvenile Offenders Under Sentence Of Death

As of 31 December 1990 there were at least 29 offenders under sentence of death in 12 states for crimes committed when they were under the age of 18. Their ages ranged from 15 to 17 at the time of the commission of the crime. On 26 June 1989 the US Supreme Court ruled that the execution of offenders as young as 16 was permissible under the US Constitution and does not violate the Eighth Amendment's prohibition of "cruel and unusual punishments" (see AMR 51/27/89: *United States of America: US Supreme Court rulings allow execution of juvenile offenders and the mentally retarded*).

On 18 May 1990 Dalton Prejean, a black, mentally retarded juvenile offender, was executed in Louisiana. He was convicted of the murder of a white police officer, a crime committed in 1977 when Prejean was 17 years old. Dalton Prejean was the fourth juvenile offender to be executed in the USA since 1964 and the first in Louisiana since 1948. The other executions of juveniles were carried out in Texas (Charles Rumbaugh, executed in 1985 and Jay Pinkerton, executed in 1986) and South Carolina (James Roach, executed in 1986).

The execution of juvenile offenders worldwide is extremely rare. More than 70 countries which retain the death penalty by 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 executed juvenile offenders in the past decade (the other countries are Iran, Iraq, Bangladesh, Nigeria, Pakistan and Barbados, with Barbados having raised the minimum age to 18 in 1989). The imposition of the death penalty on a person aged under 18 at the time of the crime contravenes international human rights standards reflected in a number of instruments and treaties, including the International Covenant on Civil and Political Rights and the American Convention on Human Rights, both of which have been signed but not yet ratified by the USA.

Another juvenile offender, Christopher Burger, was scheduled to be executed in the state of Georgia on 18 December 1990. However, he received a last minute stay of execution pending a further hearing in his case.

Christopher Burger, a soldier in the US army, was sentenced to death in 1978 for the 1977 murder of a fellow soldier and part-time taxi-driver. He was 17 at the time of the crime. A co-defendant, aged 20 at the time of the crime was also convicted of the murder and sentenced to death. Christopher Burger suffered a particularly deprived childhood, enduring battering and desertion at the hands of his parents. At the age of 12 he began to inhale organic solvents and smoke marijuana. When he was in his mid-teens he presented clear signs and symptoms of serious psychiatric disorders which led to psychotic episodes; susceptibility to domination and control by others; and life threatening suicide attempts. Despite this perturbed history no mitigating circumstances were presented by his attorneys at the sentencing hearing. In August 1989 Christopher Burger was examined by a professor of psychiatry who, after, carrying out two days of psychiatric tests, found him to be suffering from "organic brain impairment" and to be

"mentally ill". Following the stay of execution granted in December 1990, further hearings in the case were due to take place in 1991.

Participation Of Doctors In Executions In Illinois and Missouri

On 12 September 1990 Charles Walker was executed by lethal injection in Illinois - the first execution to be carried out in the state since 1962. There were protests from medical professionals and other groups when it was disclosed that three unnamed doctors had assisted in the execution by, among other things, inserting the intravenous saline drip through which lethal chemicals were then delivered. The doctors also monitored the course of the execution by electrocardiogram at a monitor placed in an adjacent room. This was widely believed to be the first time that US doctors had played such an active role in a lethal injection by inserting the intravenous line into the condemned prisoner's arm.

However, in November 1990 an article appeared in the *American Medical Association (AMA) News* which stated that this was not the first such instance and that at least two other executions had taken place in which doctors had played a similar role. Both were in the state of Missouri which carried out its first execution for 23 years in January 1989. Five prisoners were executed by lethal injection in Missouri between January 1989 and December 1990: 6 January 1989 (George Mercer), 18 January 1990 (Gerald Smith), 11 May 1990 (Winford Stokes), 17 May 1990 (Leonard Laws) and 31 August 1990 (George Gilmore). According to the *AMA News* article, physicians had been used in at least two of these cases to install intravenous lines to carry the lethal drugs dispensed by the execution machine. However, it appears that doctors' involvement in executions in Missouri did not provoke the same level of protest or debate as there had been in Illinois.

The involvement of doctors in executions is contrary to ethical guidelines issued by the *American Medical Association (AMA)* and the *World Medical Association*, both of which provide that physicians should not participate in executions other than to determine or certify the death of the prisoner. The AMA adopted a resolution in 1980 which stated that "a physician as a member of a profession dedicated to preserving life when there is hope of doing so, should not be a participant in a legally authorized execution". The resolution added that a doctor could "make a determination or certification of death as currently provided by law".

Following widespread protests from medical bodies and doctors about physician involvement in Charles Walker's execution, the *AMA* adopted a further resolution in December 1990. The text of the resolution is as follows:

"Whereas, existing policies of the *American Medical Association, American College of Physicians, American Psychiatric Association for the*

advancement of Science, World Medical Association, British Medical Association and other professional medical organizations condemn physician participation in legally authorized executions as unethical behaviour, except to make a determination or certification of death: and
Whereas, Thirty-six states in the United States provide for the death penalty under certain circumstances, and 17 permit the use of lethal injections and
Whereas, It is a violation of the fundamental concept of "primum non nocere" (above all, do no harm) for a physician to assist, administer, monitor, consult, supervise or otherwise participate in an execution by lethal injection; therefore be it
RESOLVED, That the *American Medical Association* reaffirm, clarify and publicize its position that it is unethical for physicians, regardless of their personal views on capital punishment, to participate in legally authorized executions, except to determine or certify death; and be it further
RESOLVED, That the *AMA* notify all state medical licensure boards and certification and recertification agencies that physician participation in supervising or administering lethal injections is a serious violation of the ethical standards of the medical profession; and be it further
RESOLVED, That the *AMA* notify all state medical licensure authorities and, in particular, all physician members of state licensure boards of this position."

The importance of the new *AMA* resolution lies in the decision to clarify and publicize its statement that it is unethical for physicians to participate in an execution, beyond the determination or certification of death. Although recent attention in the US has focused on the role played by doctors in lethal injection, there have been several instances in past years of doctors playing various roles in the execution process. In the case of lethal injection, this has included identifying suitable veins for use and monitoring the execution. With other forms of execution, however, similar involvement has occurred: by determining that a convicted prisoner is fit for execution, providing technical advice, attending the execution and monitoring the prisoner's heart beat and, in the case of electrocution, directing that further jolts of electricity be administered before a prisoner could be pronounced dead.

In 1981 Amnesty International formulated a declaration on the participation of health personnel in the death penalty, which was revised in 1988 in light of developments on the issue. This states the organization's opposition against medical involvement in executions and notes that involvement could take any of the following forms:

"- determining mental and physical fitness for execution
- giving technical advice

- prescribing, preparing, administering and supervising doses of poison in jurisdictions where this method is used
- making medical examinations during executions, so that an execution can continue if the prisoner is not yet dead..."

Legal Representation In Death Penalty Cases

Indigent capital defendants are provided with state paid lawyers only for the trial and first appeal to the state supreme court. There is no right to funding for any further appeals. However, since 1988, federal grants have helped to establish "resource centres" in about 15 death penalty states. These centres are staffed by small numbers of lawyers who either represent defendants during their federal *habeas corpus* appeals or provide information on relevant case law to "volunteer" lawyers prepared to take on such cases without pay. Many states also now provide some funding for state and federal *habeas corpus* appeals. However, while the situation is better than before, there continues to be a shortage of lawyers prepared to take on such cases. The problem is especially acute in Texas, which has over 300 prisoners under sentence of death and provides no state funding for death penalty appeals (past the direct appeal stage).

The poor quality of legal representation at trial continues to be a major concern in death penalty cases. Most capital defendants are too poor to hire their own attorneys. Many are assigned court-appointed lawyers who are paid extremely low fees. These can amount to as little as $5 an hour in Mississippi and Arkansas, for example, which set a ceiling of $1000 for a capital trial (including time spent investigating a case out of court). South Carolina pays $10 per hour up to a limit of $1,500. In Georgia, capital cases have often been assigned to the lowest bidder. The low level of remuneration - plus the complexity and unpopularity of capital cases - means that cases are often assigned to inexperienced or incompetent attorneys.

Stephen Bright, director of the Southern Prisoners Defence Committee, testified to a congressional committee in May 1990 about the low standard of legal representation in capital cases, especially in the southern states. He cited cases where prisoners were defended by lawyers who had never handled a criminal trial before, who had no knowledge of capital punishment law and who failed to present compelling mitigating evidence in their client's background. He cited a report showing that a quarter of those under sentence of death in Kentucky "were represented at their trials by lawyers who have since been disbarred, suspended or imprisoned". He explained how trial errors often could not be remedied on appeal because the trial lawyer was too inexperienced to "preserve for review" violations of the Constitution, noting that "Thus, ironically, the poorer the level of representation that the defendant receives, the less scrutiny the case will receive on appeal and in post-conviction proceedings". (Statement of Stephen B. Bright to the *Subcommittee on Civil and Constitutional Rights, Committee of the*

Judiciary, United States House of Representatives, concerning The Death Penalty, May 1990).

A report published in *The National Law Journal (NLJ)* in June 1990 expressed similar concerns. The *NLJ* had carried out a six-month study of the legal representation of capital defendants in six southern states :- Alabama, Florida, Georgia, Louisiana, Mississippi and Texas. As of May 1990, these six states had carried out over 80% of all executions in the USA since the death penalty was reinstated in the 1970s. The *NLJ* team had examined more than 100 trial transcripts and interviewed lawyers, judges, prosecutors and experts in death penalty law. The *NLJ* concluded that "indigent defendants on trial for their lives are frequently represented by ill-trained, unprepared court-appointed lawyers so grossly underpaid they literally cannot afford to do the job they know needs to be done."

Among the *NLJ's* findings were that more than half the defence lawyers interviewed were handling their first capital case when their client was sentenced to death; that trial lawyers who represented death row inmates in the six states had been disbarred or disciplined at a rate three to forty-six times higher than the average for lawyers in that state; that the statutory fees for capital trial representation were wholly inadequate and acted as disincentives to thorough trial investigation and preparation. The study also found there was a lack of training or standards for appointment of counsel in death penalty cases which can result "... in an oil and gas lawyer handling a capital trial as his or her first criminal case." The report also showed the disparities in the required standards between states. Louisiana allowed any lawyer with five years' experience in any form of law to be appointed as a defence attorney in a capital case; Alabama's requirement was five years' active criminal practice; while Texas, Mississippi and Florida had no set standards. This contrasted with states such as Ohio and California which set detailed standards of competency for attorneys representing capital defendants. The *NLJ* study found that capital trials in some states were often completed in as little as one to two days, compared with two to eight weeks in other areas where better defence systems existed for indigent defendants. The *NLJ* report noted that for many years the National Legal Aid and Defender Association and, more recently, the American Bar Association, had called for the adoption of standards for the appointment of counsel in capital cases.

Two Prisoners Claiming Innocence Are Released From Death Row in Texas

Two prisoners under sentence of death in Texas had their convictions overturned and were released from prison after substantial doubt had been raised about the evidence in their cases. Both had claimed that they were innocent of the crime for which they had been sentenced to death.

The case of Clarence Brandley is mentioned in Amnesty International's report, *United States of America, The Death Penalty, The Risk of Executing the Innocent* - AMR51/19/89. Clarence Brandley, black, was convicted and sentenced to death in 1981 by an all-white jury for the rape and murder of a white schoolgirl in Conroe, Texas, in 1980. At the time of the crime Brandley worked as a janitor in the school. Brandley's attorneys later alleged that important exculpatory evidence had been "lost" by officials who were under pressure to get a conviction. Among the evidence was body hair and pubic hair found on the victim that was not hers and could not have been that of a black man. An execution date in January 1985 was stayed while the court heard arguments about the new evidence and a request for a new trial. This request was denied and a further execution date set for March 1987. Brandley came within one week of execution before a stay was granted when Brandley's attorneys again presented new exculpatory evidence in the case. The new evidence, examined at a hearing in October, included videotaped testimony by two janitors at the same school where Brandley had worked, identifying another person as the perpetrator of the crime. The state's case against Brandley had previously rested primarily on the testimony of these and two other janitors at the school which had incriminated Brandley in the crime. One of the other two janitors also testified that he had originally lied at the trial, under pressure from an official investigating the crime, to incriminate Brandley. Testimony was also presented that the judge who had presided over the second trial and the District Attorney who had prosecuted the case had conspired to hide facts about the missing evidence in the case.

In 1989 the Texas Court of Criminal Appeals ordered a new trial after setting aside Brandley's conviction citing, among other things, "...the subversion of justice that took place during the investigation." Brandley was released on bond in January 1990. All charges against him were finally dropped in October 1990 when the state said it would not pursue a new trial.

John Skelton, white, aged 61, was released from death row in October 1990 after his conviction and death sentence were overturned by the Texas Court of Criminal Appeals. He had been sentenced to death for the murder of Joe Neal, white, in Odessa, Texas in 1982. Skelton had been on death row for seven years and during that time, had insisted his innocence, claiming to be 800 miles away when the murder was carried out. His attorney had claimed that there was no evidence to show that Skelton had committed the crime.

State Legislative And Other Developments

Bills proposing to reintroduce the death penalty were introduced in twelve abolitionist states: Alaska, Hawaii, Iowa, Kansas, Massachusetts, Michigan, Minnesota, New York, Rhode Island, Vermont, West Virginia and Wisconsin. None of these bills passed into law.

In New York Governor Cuomo again vetoed legislation which would have restored the use of the death penalty in that state. The New York General Assembly had come close to commanding the necessary two-thirds majority which would have permitted it to override Governor Cuomo's veto and pass the death penalty bill into law when one Assemblyman, who had voted against the bill in March, announced the abandonment of his opposition to the death penalty bill. This would have provided the Assembly for the first time in fourteen years with the crucial 100th vote necessary to override Governor Cuomo's veto. Previously it has been the Assembly which has barred the way for a successful override. After first passing through the Senate which generally overrides Mr Cuomo's veto, the bill passes onto the Assembly where the veto is usually upheld, thus preventing the bill from becoming law. If the bill had succeeded in the Senate during the 1990 legislature it would most likely have passed in the Assembly due to the additional pro-bill vote. However, the absence of two key pro-death penalty senators from the Senate due to illness meant that a vote on the bill was never taken in the Senate before the legislature completed its 1990 regular session in July. During the 1990 elections New York increased the number of state legislators opposed to the death penalty. As a result, the Assembly is now far less likely to override Governor Cuomo's inevitable death penalty veto.

Other developments

Arkansas

Two executions were carried out in June 1990 after a period of 26 years without any. John Swindler was executed on 18 June and Ronald Gene Simmons on 25 June. The executions were carried out by lethal injection.

Georgia

In August 1990 the Georgia Board of Pardons and Paroles granted clemency to Billy Moore, commuting his death sentence to life imprisonment a day before he was due to be executed. Billy Moore, black, had been sentenced to death in 1974 for the murder of Fredger Stapleton, an elderly black farmer. Mr Stapleton's family had urged clemency be granted to Billy Moore along with appeals from Mother Teresa and the Rev. Jesse Jackson. Billy Moore has reportedly become a changed man during his time on death row, experiencing a religious conversion in 1974 before he was sentenced to death. He began his own prison ministry and to many he has emerged as a prime example of the redemptive possibility of condemned prisoners.

Illinois

A bill to prohibit the execution of mentally retarded defendants which passed both House and Senate in 1989 was later vetoed by the Governor.
Illinois carried out its first execution in 24 years when Charles Walker was executed by lethal injection on 12 September 1990.
House Bill 643 which adds murder while engaged in a violation of the controlled substances act as an aggravating circumstance to the state's death penalty statute was passed and signed into law.

Kentucky

A bill prohibiting the execution of the mentally retarded was passed and signed into law. The new law imposes automatic life without parole for persons with mental retardation convicted of capital crimes.

Louisiana

Legislation was enacted in 1990 changing the method of execution in the state from electrocution to lethal injection as of 1 January 1991. The new law was brought into effect to provide a more "humane" method of execution. However, it was not made retroactive and therefore will apply only to those prisoners sentenced to death after 1 January 1991. Prisoners sentenced before that date must still be executed by electrocution.

Missouri

A law was passed raising the minimum age at which an offender could be executed from 14 to 16 years at the time of the commission of the crime. This brought the state into line with a 1989 United States Supreme Court ruling that offenders as young as 16 could be executed.
A bill to suspend executions from August 1990 to August 1995 and establish a commission to study and report on disparities in economic or social class in death sentencing failed in Committee.

New Hampshire

New Hampshire expanded its death penalty law to include murder involving sexual assault and drug related murder as death eligible.

Oklahoma

On 10 September 1990 Charles Coleman became the first person to be executed in the state since 1966.

Pennsylvania

A bill extending the number of crimes punishable by death became law in 1989. The new law added drug related murders, non government informant murder, murder of a child under 12 and murder of judges, attorney general or district attorney to the state's death penalty statute.

South Carolina

A law was passed adding drug trafficking as an aggravating circumstance to the state's death penalty law.

Tennessee

A law was passed prohibiting the execution of mentally retarded offenders. The new law imposes an automatic life sentence if a person found to be mentally retarded is convicted of a capital crime. (The act places the burden to establish retardation on the defense. Determination is made by the trial judge, not the jury. If the Court finds no retardation, diminished intellectual capacity may be used as a mitigating circumstance.)

Information On Prisoners Executed

GERALD SMITH (Missouri): white, executed in Missouri 18 January 1990. Smith was sentenced to death for the murder of Karen Roberts, white, in St Louis in 1980. Reported to have suffered from serious childhood head injuries at hands of abusive alcoholic father; to have been hospitalized with brain-damaging lead poisoning at 20 months and to have been addicted to alcohol and barbiturates by age 13.

RUSTY WOOMER (South Carolina): white, convicted of the murder in February 1979 of a white woman who was abducted after a shop robbery. Sentenced to death in June 1980. Reported to have suffered from mental illness following childhood abuse he received from his parents and many years of drug addiction. He was reportedly under the influence of drugs at the time of the crime. His lawyers contended that the trial jury could have been misled by the testimony of a psychiatrist for the prosecution, and may not have appreciated the extent of his neurological impairment.

JESSE TAFERO (Florida): executed on 4 May 1990 for 1976 murder of two white police officers. During his execution by electrocution, three applications of high-voltage electricity were required before Tafero was pronounced dead, due to a malfunction caused by use of the wrong type of sponge in the headpiece. Eye witnesses reported that the first surge of electricity caused flames and smoke to rise from Tafero's headpiece and his head and body continued to jerk. The Florida State Prison Superintendent instructed the hooded executioner to switch from automatic to manual control and to send two additional jolts through Tafero's body. With each jolt Tafero's body slammed back into the electric chair and between the jolts his chest was seen to move and his fists were tightly clenched. The flames and smoke continued during the second and third charges. Tafero was pronounced dead six minutes after the first jolt. Executions in Florida were temporarily suspended while the state carried out an inquiry into the execution. As a result of the inquiry the state declared in July that the electric chair was working properly.

DALTON PREJEAN (Louisiana): a black, mentally retarded juvenile offender, executed in Louisiana on 18 May 1990. He was convicted in May 1978 of the murder of a white police officer when he was 17 years old. He had been tried and convicted by an all-white jury after the prosecutor had used his peremptory challenges to exclude all black prospective jurors from the jury panel. [2]

At his trial, Prejean was found to be borderline mentally retarded, with an IQ in the low 70s and a mental age of 13. However, his trial lawyer failed to present important additional mitigating evidence to the jury at the sentencing hearing. This included the fact that he had a documented history of mental illness, and had been subjected to serious physical abuse and neglect as a child. Dalton Prejean was confined to various institutions between 1972 and 1976, during which period he was diagnosed as suffering from a number of mental problems, including schizophrenia and depression. In 1974, at the age of 14, he was convicted as a juvenile for killing a taxi driver during a robbery (a crime in which an older man was also involved). Medical specialists at the institution to which he was then confined recommended that he would require "long term in-patient hospitalization" under strict supervision and that he would benefit from a secure and controlled environment. However, he was released without supervision in 1976 because no state funding was available for further institutional care. Although Dalton Prejean was not examined for mental illness at the time of his trial, tests carried out in 1984 revealed that he suffered from organic brain damage, which impaired his abilities to control his impulses when under stress. Further, Dalton Prejean's youth was never mentioned as a

[2] The US Supreme Court ruled in 1986 that prosecutors may not exclude prospective jurors on the basis of their race, as appears to have occurred in this case, but later held this rule not retroactive to cases decided before 1986.

possible mitigating factor at the sentencing hearing. Nor was the jury given adequate information about other circumstances which might have affected the sentence imposed.

The Louisiana Board of Pardons and Paroles examined the case in November 1989 and recommended by three votes to two that the state governor commute the death sentence to life imprisonment without parole. The majority reported that they had been influenced by Dalton Prejean's childhood abuse, his mental deficiencies, his remorse and his good behaviour during his twelve years on death row. The board members reiterated their recommendation of clemency shortly before his execution date in May 1990, but the state governor refused to commute the death sentence.

RICKY BOGGS (Virginia): white, executed in Virginia on 19 July 1990 for the murder in January 1984 of an elderly white woman.

According to three separate psychologists' reports commissioned by Boggs' attorneys in July 1990, he was born with brain damage which was probably brought about by his mother's alcohol consumption during pregnancy. He began to consume alcohol and drugs at age ten and later experienced blackouts from drug abuse. In an appeal filed with the State Supreme Court in July 1990, Boggs' attorneys stated: "...Ricky Boggs has suffered all his life from severe organic brain damage significantly ...robbing him of the ability to control his impulses, to form judgments and to make moral choices." This mitigating evidence was not available to the jury at the sentencing phase of the trial.

GEORGE GILMORE (Missouri): executed 31 August 1990 in Missouri for the murders of four elderly people during 1979 and 1980. The Missouri Supreme Court gave only five days notice of his execution date, allowing insufficient time for his lawyer to lodge further appeals. Gilmore reportedly suffered from mental illness and was borderline mentally retarded. As a child he suffered regular physical abuse from his father, including being beaten on the head until he was unconscious, causing brain damage. Gilmore's older brother was also involved in the murder for Gilmore was sentenced to death; however, he had received a 30 year prison sentence in return for testifying for the state against his brother.

CHARLES COLEMAN (Oklahoma): executed in Oklahoma on 10 September 1990, the first execution in the state since 1966. Convicted in 1979 of the murder of an elderly couple during a robbery.

According to court documents, Charles Coleman had a history of chronic schizophrenia and organic brain damage first diagnosed in 1962 when he was aged 15. He also suffered from brain seizures from the age of 9 onwards.

Following his arrest for murder in 1979, Charles Coleman was admitted to an Oklahoma hospital for psychiatric evaluation. After four weeks the hospital's chief psychiatrist submitted a one-page letter to the court stating that Charles Coleman was mentally competent to stand trial. However, although the hospital had this information,

no record of Coleman's past mental history or details of the 1979 evaluation were disclosed to his lawyer or the trial court. Charles Coleman's history of mental illness was discovered only after his appeal lawyers requested the hospital records in 1987 - eight years after his conviction. Based on a detailed examination of his medical records and history, his lawyers challenged the reliability of the 1979 competency decision in an appeal supported by two experts, including a consultant forensic psychologist for the Oklahoma Department of Mental Health. His appeal on this ground was, however, denied.

Charles Coleman was one of seven surviving children of alcoholic parents who were migrant farm workers. He had a neglected and unsettled childhood, marked by poverty and alcohol-induced violence. His sisters recall that he was given "moonshine" (illegally distilled) whisky by his father at the age of seven and was drinking alcohol regularly by the age of 12. According to experts, Coleman's organic brain disorder could have resulted from foetal damage due to his mother's heavy drinking during pregnancy and from early neglect and malnutrition. (Five of his siblings had been still-born, two died in infancy and others, including Coleman, suffered ill-health from an early age). Coleman has also sustained a number of serious head injuries in childhood and adolescence and suffered badly from epileptic seizures throughout his life.

WILBERT LEE EVANS (Virginia): black, executed in Virginia on 17 October 1990 for the January 1981 murder of a deputy sheriff during an escape attempt from a city jail.

Wilbert Evans was sentenced to death in June 1981. However, his death sentence was later overturned because the prosecution had presented inaccurate information to the sentencing jury, exaggerating his prior criminal record. At the time of his trial, and during his initial appeals, Virginia law provided that a defendant whose death sentence was vacated through trial error could not be resentenced to death. However, the state refused to concede error in Evans' case until just after a new law had come into effect in March 1983. This new law allowed the state to re-seek a death sentence at a new sentencing hearing in cases where a defendant's original death sentence had been vacated through trial error. On the basis of this new law, Evans was resentenced to death in February 1984. Amnesty International believes that the circumstances in which Evans received his second death sentence contravened international standards regarding the retroactive application of penalty laws. (See attached letter from *Amnesty International to the Governor of Virginia* dated 10 October 1990).

One of the grounds for clemency presented by Evans' attorneys was the fact that he had taken action which may have saved the lives of guards and nurses taken hostage during an escape from prison in 1984. His attorneys argued that while he had been sentenced to death under the provision that the jury had considered him a future danger to society his actions during the escape proved otherwise. Instead of joining in the escape Evans helped guards to ensure that no-one was hurt and dissuaded escaping inmates from raping a nurse.

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AMR/51/23/90

10 October 1990

Dear Governor,

I am writing regarding the case of Wilbert Lee Evans who is scheduled to be executed by the Commonwealth of Virigina on 17 October 1990. As you know, Amnesty International opposes the death penalty unconditionally in all cases, believing it to be an extreme form of cruel, inhuman or degrading punishment and a violation of the right to life as enshrined in the Universal Declaration of Human Rights. We therefore respectfully appeal to you to commute the sentence to life imprisonment.

Amnesty International is additionally concerned by the circumstances in which the death sentence appears to have been imposed in this case. According to the information we have received, it appears that Wilbert Evans' sentence was imposed in contravention of the international standards referred to below.

Mr Evans was first sentenced to death in June 1981 for the January 1981 murder of a deputy sheriff during an escape attempt from a city jail. According to a federal habeas corpus petition, it subsequently emerged that the prosecution had presented erroneous information to the jury during the sentencing phase of Wilbert Evans' trial regarding his past criminal record. The prosecutor had, among other things, informed the jury that the defendant had a previous standing conviction for assaulting a police officer with a deadly weapon, which was not the case. This was one of several errors in which the prosecutor apparently exaggerated Wilbert Evans' prior criminal record to the jury. The errors were discovered by a lawyer handling Mr Evans' appeal and were first raised in a petition for habeas corpus in 1982. The Assistant Attorney General, Jerry Slonaker, contested the appeal on behalf of the state, denying that the prosecution had acted improperly during Wilbert Evans' trial. However, in January 1983, Mr Slonaker reportedly received official confirmation from another state that the records presented during Wilbert Evans' trial had, indeed, been erroneous.

We understand that Virginia law at that time provided that a defendant whose death sentence was overturned through trial error could not be re-sentenced to death. Had Wilbert Evans' death sentence been overturned at this point - or at any point during his appeals to that date - he would automatically have received a life sentence. However, the Commonwealth of Virginia took no action to rectify this position until nearly three months later. Meanwhile, on 28 March 1983, a new law came into effect which allowed a jury to re-sentence someone to death despite errors made at the original trial. It was apparently only after this became law that the Assistant Attorney General, in a letter to the trial court dated 12 April 1983, conceded that "misleading and erroneous" information had improperly been given to the jury in Wilbert Evans' case and moved to have the death sentence vacated. Wilbert

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Evan's death sentence was subsequently vacated by the court on 2 May 1983. The state then sought to have a new sentencing hearing in Evans' case under the provisions of the newly enacted law, and he was re-sentenced to death in February 1984.

It appears that, if the circumstances are as described, the second death sentence was imposed contrary to international standards, which provide that no-one should receive a heavier penalty than that existing at the time of the commission of the offence. Article 15 of the International Covenant on Civil and Political Rights, to which the United States is a signatory, states inter alia that:

> "...Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby."

Safeguards adopted by the UN Economic and Social Council in 1984 guaranteeing the protection of the rights of those facing the death penalty contain a similar provision (see Safeguard 2 of the ECOSOC guidelines 1984/50).

We understand that the provision requiring a person to be re-sentenced to life imprisonment if the original death sentence was vacated through sentencing error was first authoritatively construed in Patterson v Commonwealth 22.Va.653, a decision issued by the Virginia Supreme Court in October 1981. As this interpreted existing Virginia law, it could be held to apply to the law in force at the time of Wilbert Evans' crime. If, on the other hand, the Patterson decision created new law, then Mr Evans should still have benefitted under the second part of the Article 15 standard cited above, and, indeed, would have done under state law had his appeal been successful at this point.

If the facts are as described, it would further appear that the Commonwealth of Virginia delayed conceding sentencing error in Wilbert Evans case until such time as the March 1983 law was in force. To deprive Mr Evans of the benefit of a lesser sentence than the death penalty in such circumstances would appear to flout fundamental principles of fairness as well as internationally recognized standards. We urge in the interests of justice as well as on humanitarian grounds that Mr Evans' death sentence be commuted.

Yours sincerely,

Ian Martin
Secretary General