

UNITED STATES OF AMERICA

Robert Anthony Carter - Juvenile Offender scheduled to be executed in Texas

Robert Carter, a black mentally retarded, brain damaged juvenile offender is scheduled to be killed by the state of Texas on 18 May 1998. A final appeal is currently pending before the United States Supreme Court. If this appeal is denied, Carter's only hope of survival will lie with the Texas authorities to grant clemency. However, apart from a number of commutations granted in the 1980s as the result of two key court rulings, the Texas Board of Pardons and Paroles has never recommended clemency in any death penalty case in recent years. Amnesty International is additionally concerned that the Board is consistently reluctant to hold full clemency hearings in death penalty cases. Under Texas clemency rules the governor may commute a sentence of death only if he receives a favourable recommendation from a majority of the Board. Amnesty International is urging the Board to review the Robert Carter's case, with a view to recommending commutation of his death sentence.

All those sentenced to death in the USA have been convicted of involvement in a murder. While Amnesty International opposes the death penalty unconditionally as the ultimate cruel, inhuman and degrading punishment and a violation of the right to life, it does not argue that juvenile offenders¹ or others who have committed violent crimes should not be held criminally liable or subjected to severe penalties where appropriate. However, international standards and treaties forbidding the imposition of the death penalty on juvenile offenders were developed in recognition of the fact that the death

¹People who committed crimes under the age of 18.

penalty - which denies any possibility of rehabilitation or reform - is wholly inappropriate penalty for individuals who have not attained full physical or emotional maturity at the time of their actions.

In Robert Carter's case, in addition to its concerns that he is a juvenile offender, the organization is also concerned about the poor legal representation he received at trial; the fact that experts have diagnosed him as mentally retarded and seriously brain damaged; and that he was subjected to abuse and neglect as a child.

The use of the death penalty in the USA has been a long-standing concern for Amnesty International. The organization's research, among others', shows that factors such as race, poverty, adequacy of trial counsel and location may be more important in determining who is sentenced to death than the crime itself. Its application is continuously increasing with the number of executions reaching its highest number in 1997 for over four decades. By the end of 1997, a total of 74 people had been executed in 17 states, the highest annual total in the USA since 1955. One half of these executions (37) occurred in Texas. Between the resumption of executions in 1977 and the end of 1997, the USA put to death 432 prisoners nationwide, with Texas alone accounting for one-third of the total (144).²

Robert Carter

Robert Carter was sentenced to death on 10 March 1982 for the shooting murder of Sylvia Reyes, on 24 June 1981. He was 17-years and three months old at the time of the crime and had no previous criminal record. Carter's present attorneys have presented a petition to the US Supreme Court.

On his arrest, carter was kept in isolation during interrogation. He initially declined to make a statement but later confessed, both to

²For further information on the death penalty in Texas, see Amnesty International's report: *USA: The Death Penalty in Texas: Lethal injustice*, AI Index: AMR51/10/98, March 1998.

the shooting of Miss Reyes and to another murder. He waived his right to have a lawyer present.

In a remarkable development, one of the prosecution witnesses at the original trial transpired to be impersonating the person who actually claimed to have seen the crime, who, according to Carter's current attorneys, has signed a sworn statement that he did not testify at the trial.

Trial

The sentencing proceedings lasted only a few hours. Four witnesses for the prosecution testified about Carter's involvement in the other murder (which was still pending adjudication at the time). The prosecutor speculated to the jury that if Carter was sentenced to life imprisonment he would be released early on parole, and described life imprisonment as a "slap on the wrist".

Robert Carter's background

Robert Carter's upbringing was one of extreme poverty and neglect. One of six children, he was brutally abused throughout his childhood by his mother and stepfather who whipped and beat their children with wooden switches, belts and electric cords. Carter's mother would sometimes surprise them at night while they slept by pulling down the bed-covers and whipping them.

Carter received several serious head-injuries as a child. At the age of five he was hit on the head with a brick; on another occasion a dinner plate his mother threw at him smashed on impact with his head. At the age of ten he was hit so hard on the head with a baseball bat that the bat broke. He apparently received no medical attention for any of these injuries.

The family was one of the poorest in the neighbourhood and Carter was taunted and beaten by other children because he was so dirty and his clothes so ragged. Even so, he tried to overcome his environment. He held a series of jobs and his employers all described him as obedient, hard-working, cooperative and trustworthy. He used to help a frail, elderly neighbour who ran a local cafe by escorting her home each night with the day's takings (usually between \$500 and \$1000). He did this up until he was arrested for Reyes' murder.

Mental health

According to an examination of Robert Carter conducted in June 1986 by Dr. Dorothy Lewis, a psychiatrist at the New York University School of Medicine, hired by his appeal attorneys, Robert Carter is "significantly retarded" with a full-scale IQ of 74, and "seriously brain damaged" and suffered from mental retardation and brain damage. She found that Carter had suffered several severe head injuries as a child resulting from accidents and abuse. In one incident shortly before Sylvia Reyes' murder, Carter was shot in the head by his brother, the bullet lodging near his temple. He afterwards suffered

seizures and fainting spells, for which he did not receive medical treatment.

Dr Lewis found that Carter's mental disabilities limit his capacity to understand or reflect on what he or others are doing and, when confused, he displays poor judgment. Lewis described his thinking as "childlike". The brutal abuse he received as a child left him unusually subservient to and compliant with persons in authority. Yet no inquiry was ever conducted to determine whether Carter knowingly and voluntarily waived his right to a lawyer and his right not to incriminate himself following his arrest.

Inadequate defence at trial

Robert Carter was represented by two court-appointed lawyers who failed to properly investigate the case, talk to Carter before the trial, locate potential witnesses, present mitigating evidence, obtain Carter's medical records, or to investigate compelling evidence about his background. According to the petition currently before the US Supreme Court, there were at least 19 witnesses willing to testify whom they never contacted, and although his attorneys "had doubts about Carter's mental capabilities", they failed to investigate this or ask for a psychiatric examination which would have been provided at their own request. Defense counsel failed to object to numerous trial errors (for example, the prosecution's repeated references to the unadjudicated second murder); they did not challenge the validity of his confession even though they apparently suspected he might be

retarded; they failed to explore the precise nature of Carter's involvement in the crime as compared with other possible accomplices and they also failed to properly request all possible exculpatory or mitigating information from the prosecutor and were consequently unaware (thus the jury remained unaware) that several of the prosecution witnesses had failed to identify Carter in identity parades. Neither was the jury invited to consider as mitigating evidence Carter's age at the time of the crime. Some of their remarks to the jury were prejudicial to their client. In their closing arguments, they appealed to the jury to show mercy and give Carter consideration of life, "even though he doesn't deserve a great deal of consideration" and "you can go either way in this case and your consciences could be clear".

When the jury retired to consider the Texas sentencing questions (posed to all Texas juries considering a capital crime, they had just heard Carter's own counsel in closing argument state that Carter was "a person who has committed at least two tragic acts that we know of".

According to the petition, Carter's attorneys' failure to call character witnesses during the sentencing phase enabled the prosecutor to assert in his closing argument: "Doesn't it say a lot about Mr Carter's probability to do violence when nobody can come say a good word about him except his mother?" (The only other witness apart from a family friend called by the defence to testify on Carter's behalf).

Carter was sentenced to death after the jury had deliberated for just 10 minutes.

Present status

The present petition to the US Supreme Court has been filed on the basis that the prosecution presented an "imposter witness" (the appeal was denied by the Texas appeal courts which stated that "the State did not knowingly or intentionally present an 'imposter' witness", and that the presentation of this testimony was "cumulative" and Carter had not shown it to be "harmful" or that there was any reasonable likelihood that any false testimony concerning the witness' identity could have affected the jury's judgement". Lower federal courts also denied relief on this point without holding a hearing). The second ground for the appeal is based on the fact that Carter's trial counsel failed to prepare for or present evidence concerning his mental health. This was denied by the court of appeals who held that, because Carter had previously been found mentally competent to stand trial, his attorneys were not ineffective in not addressing his mental health. The court also rejected Carter's contentions with regard to defence counsel's closing arguments (see previous page), saying that they "fell within 'the wide range of reasonable professional assistance'". The petition alleges that the evidence that should have been presented at his sentencing hearing "would at least have given Carter a fighting chance. Without it, he was doomed". It also states that counsel's closing arguments "ensure[d] him the death penalty" and alleges that their failure to link their pleas for mercy with any mitigating evidence

relating to whether Carter was likely to constitute a future danger to society gave nothing of substance to the jury to consider regarding the question of future dangerousness. Rather, they apparently compared the question to that of a "horse bet", alluding to the unpredictability of the future. Following the question relating to the future dangerousness issue, Carter's attorney reportedly said to the jury: "Can we guess this man is forever doomed...after being under that discipline [of serving a life sentence in prison] for the first time in his life that he is then going to be probably a menace to society".

Robert Carter's case was highlighted in Amnesty International's 1991 report (see *United States of America: The Death Penalty and Juvenile Offenders*, published in October 1991 (AI index: AMR 51/23/91)). The report presented the organization's findings in the cases of 23 juveniles sentenced to death, and suggested that safeguards in US capital punishment law had not been met in many cases. The majority came from acutely deprived backgrounds, many suffered gross physical or sexual abuse as children, were of below average intelligence or suffered mental illness or brain damage. A disturbing number had inadequate legal representation at their trials.

In November 1997 a delegation from Amnesty International, including Pierre Sané, the Secretary General, met with Robert Carter and other death row inmates in Texas. After the visit, Pierre Sané spoke of this reaction to the "overwhelming and emotionally draining" conditions he had witnessed: "I had never before met a healthy human being who knew the exact date, time and way in which he would be killed in cold blood. We have witnessed how a deliberate policy aimed at dehumanizing prisoners is implemented coldly, professionally and heartlessly. The effect is such that it has also dehumanised their keepers. The condemned await their deaths in rows of

tiny cages reminiscent of the dark ages, their spirits are slowly broken. The conveyor belt of death in Texas must be stopped.”

BACKGROUND INFORMATION

Like most prisoners under sentence of death in Texas, Robert Carter was tried under a law which severely restricted the jury's opportunity to consider mitigating circumstances, including youth, at the sentencing phase of a capital trial. The Texas statute was changed in September 1991, and now allows for consideration of any mitigating circumstances. However, the new law does not apply retroactively to prisoners such as Robert Carter.

Execution of juvenile offenders worldwide

The USA accounts for the majority of known juvenile executions (nine since 1990) and it probably has more juvenile offenders on death row (at least 60, at the end of 1997 - 25 of these in Texas). *More than 72 countries that retain the death penalty in law have abolished it for juvenile offenders; the only other countries in which such executions are reported to have been carried out in the 1990s are: Iran, Pakistan, Saudi Arabia, Yemen and Nigeria. Twenty-four of the 36 US states with the death penalty have laws allowing the imposition of death sentences on juvenile offenders.*

Robert Carter's shocking and tragic case is an example of all that is wrong with the application of the death penalty in the USA. Amnesty International urges the Texas authorities to right this wrong and to grant clemency to Robert Carter and other juvenile offenders under sentence of death in Texas. As a minimum the organization urges that Robert Carter, Joseph Cannon (see below) and other juvenile offenders be given a review of their cases by the Board of Pardons and Paroles.

Execution of Joseph Cannon, scheduled for 22 April 1998

Joseph Cannon, also a juvenile offender, is scheduled to be executed in Texas on 22 April 1998. For further information on this case, see Urgent Action 60/98, AMR Index: 51/13/98, 26 February 1998. Amnesty International has also appealed to the Texas authorities to commute Joseph Cannon's death sentence.

International standards

The execution of people aged 18 at the time of the crime is expressly forbidden under international law, in recognition that the death penalty is wholly inappropriate for individuals who have not attained full maturity. Such treaties and standards include the International Covenant on Civil and Political Rights (ICCPR), the American Convention on Human Rights (ACHR), the United Nations (UN) Convention on the Rights of the Child (the USA remains one of only two countries not to have ratified this convention (the other is Somalia) , and the Safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the UN Economic and Social Council (ECOSOC) in 1984 (Resolution 1984/50). The US signed the ICCPR in 1977 and ratified it in April 1992. However, in ratifying the ICCPR, the US government reserved its right "subject to its Constitutional constraints" to impose capital punishment on persons below 18 years of age. In 1977, the USA signed the ACHR, but has not ratified it.

If Robert Carter's execution goes ahead as scheduled, it would also be in contravention of United Nations ECOSOC resolution 1989/64, adopted in May 1989, which recommends "eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence".

WHAT YOU CAN DO

Please write polite letters/faxes/express airmail letters in English if possible to the Texas Board of Pardons and Paroles and Governor Bush along the following lines:

To both:

- Say that you are writing to express deep concern that Robert Carter, a mentally retarded, brain damaged juvenile offender with an IQ of 74 is scheduled to be executed in Texas on 18 May 1998;
- express your opposition to the death penalty unconditionally. Say that you are not arguing that juvenile offenders, or others who have committed violent crimes should not be held criminally liable or subjected to sever penalties where appropriate. However, refer to international standards on the death penalty which prohibit the execution of juvenile offenders and the mentally retarded;
- express sympathy for the families and friends of the victims of violent crimes;
- acknowledge that an appeal is pending in Robert Carter's case before the US Supreme Court;
- express deep concern that Robert Carter was represented at trial by attorneys who failed to properly investigate the case, failing to present important mitigating evidence to the jury which sentenced him to death, including the fact that he was mentally retarded and brain damaged and his background of poverty and neglect;
- refer to the findings of Dorothy Lewis in 1986 that Carter is "significantly retarded", "seriously brain damaged" and mentally retarded;
- express deep concern that this evidence was not heard by the jury which sentenced him to death;
- express concern that Robert Carter's age was not considered as mitigating circumstance;
- express concern at information that testimony presented at Robert Carter's trial was perjured.

To the Board of Pardons

- urge the Board to hold a full and fair hearing and review Carter's case;
- urge them to recommend that Governor Bush grant clemency to Robert Carter by commuting his sentence of death;

To the Governor

- urge him to grant clemency to Robert Carter.

Addresses:**Write one letter to the members at each address:**

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