

USA (Texas) Charles Anthony Boyd, aged 39

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Charles Boyd, black, is scheduled for execution in Texas on 5 August 1999 despite evidence that he is mentally retarded. He was sentenced to death in November 1987 for the capital murder of Mary Milligan, white.

At Boyd's trial his defence lawyers failed to investigate and present evidence of his mental retardation because they did not recognize that he might have such a problem. Although a prison report was available which stated that in 1983 Boyd's IQ had been measured at 67 (an IQ under 70 is considered to signify retardation), both lawyers have since stated that they do not remember seeing this or other evidence that Boyd was suffering from retardation. As a result, they did not have Charles Boyd examined by any mental health professional. The appeal courts have ruled that this did not amount to ineffective defence representation.

In 1995 a federal court ordered a hearing into this claim of inadequate counsel. At the hearing, a magistrate heard evidence of Boyd's mental retardation, including expert testimony from a psychologist and a neuropsychologist who had conducted evaluations of Boyd, and interviews with his family members, in 1992. At the hearing the court heard that Charles Boyd had displayed signs of having learning difficulties from early childhood. His mother did not enroll him in Special Education Classes as advised because she was "embarrassed" to do so. Charles's nickname was "head" because he would regularly beat his head against walls and on the ground to receive attention. Charles was allegedly subjected to regular beatings by his stepfather and brother, often because the young boy was "slow" to respond to requests. It was only at the age of seven that it was discovered that he was deaf in one ear. Charles also suffered from seizures throughout childhood.

In the 1992 tests, the psychologist measured Charles Boyd's IQ at 64. At that time, as now, he was still largely incapable of reading, and could only write if the words were spelled out for him. Both experts concluded that Boyd was not faking his mental impairment. Given that intelligence is a stable trait once an individual reaches adulthood, they believed that he would have been functioning in the mentally retarded range at the time of the crime. Both believed that anyone who met Charles Boyd would recognize that he was mentally impaired. The neuropsychologist concluded that Boyd had significant memory deficiencies, did not have the ability to learn from his mistakes, and that his retardation affected his ability to think through his options and to control his impulses and behaviour.

At the hearing, the state did not present any experts to refute the defence testimony. However, the magistrate ruled that the defence had not proved that the trial lawyers had been ineffective by failing to discover and investigate evidence of Boyd's mental retardation (including a school report from 1980 measuring his IQ at 71).

**BACKGROUND INFORMATION**

In 1989, the US Supreme Court ruled, in *Penry v Lynaugh*, that retardation was a mitigating factor to be considered at a capital trial, but that it was not unconstitutional to execute the mentally retarded. The Court reached its decision after concluding that there was no "national consensus" against such executions given that, at the time, only one US state banned them. Since the

ruling at least 30 mentally retarded prisoners have been executed in the USA, including at least five in Texas.

In 1999 an emerging US consensus is reflected in the fact that 12 states - Arkansas, Colorado, Georgia, Indiana, Kansas, Kentucky, Maryland, Nebraska, New Mexico, New York, Tennessee and Washington - now forbid the execution of the mentally retarded. In Nebraska, for example, Clarence Victor was taken off death row on 30 June 1999 after tests placed his IQ at 65. Nebraska law makes it illegal to execute anyone with an IQ below 70. A bill in the Texas legislature, exempting inmates with an IQ of 65 or less from execution, failed to pass into law in late May 1999. Governor Bush reportedly opposed the bill. On 5 May an editorial in the *Dallas Morning News*, stated: "The moral sentiment behind such bans is simple: the state should not kill prisoners who cannot fully understand the concept of death. To use the ultimate punishment against people who cannot comprehend it is an act of vengeance, not an act of justice."

Governor Bush is currently out of state. Lieutenant Governor Perry will oversee Charles Boyd's case. He has the power to grant a 30-day reprieve without the recommendation of the Board of Pardons and Paroles, but cannot commute the sentence unless the Board recommends it. As well as seeking commutation, Boyd's lawyers are asking the Lt Governor for a 30-day reprieve so that they can complete forensic tests relating to the crime.

**RECOMMENDED ACTION: Please send faxes/express/airmail letters in English or your own language:**

- acknowledging the seriousness of the crime of which Charles Boyd was convicted and expressing sympathy for the family and friends of Mary Milligan;
- expressing deep concern that Charles Boyd is scheduled for execution despite strong evidence that he suffers from mental retardation;
- noting that 12 US states ban the execution of the mentally retarded, and that under a bill proposed by Texas Senator Rodney Ellis in 1999, Charles Boyd would have been exempted from execution;
- noting that it is 10 years since governments formally recognized that the death penalty was an inappropriate punishment for the mentally retarded (In resolution 1989/64, adopted in 1989, the UN Economic and Social Council recommended that UN member states eliminate the death penalty "for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution");
- + **Parole Board:** urging that the Board recommend clemency for Charles Boyd.
- + **Lt Governor:** urging that he accept a recommendation of clemency from the Board of Pardons and Paroles, or, at the very least, that he grant Charles Boyd a 30-day reprieve.

**APPEALS TO:**

Texas Board of Pardons and Paroles  
PO Box 13401, Austin, TX 78711-3401, USA

**Fax: +1 512 463 8120**

**Salutation: Dear Board Members**

Lt Governor Rick Perry  
San Jacinto Center  
Suite 900, 98 San Jacinto Boulevard  
Austin, TX 78711, USA

**Fax: +1 512 463 0039**

**Salutation: Dear Lt. Governor**

Please mark envelopes and faxes: "for the attention of: Mary Ann Wyle, General Counsel to Lt Governor Perry"

**COPIES TO:** diplomatic representatives of the USA accredited to your country.

You may also copy your appeals, or send brief letters (about 250 words) to the editor of *The Dallas Morning News*, PO Box 655237, Dallas, TX 75265, USA.  
**Fax: +1 972 263 0456. E-mail: [letterstoeditor@dallasnews.com](mailto:letterstoeditor@dallasnews.com)**

**PLEASE SEND APPEALS IMMEDIATELY.**