

UNITED STATES OF AMERICA

Another planned killing by the US Government – The imminent federal execution of Louis Jones

“Our nation was built on a promise of life and liberty for all citizens. Guided by a deep respect for human dignity, our Founding Fathers worked to secure these rights for future generations, and today we continue to seek to fulfil their promise in our laws and our society. On National Sanctity of Human Life Day, we reaffirm the value of human life...Through ethical policies and the compassion of Americans, we will continue to build a culture that respects life.” President George W. Bush, 14 January 2003¹

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### Introduction

Former soldier Louis Jones is scheduled to be executed on 18 March 2003 in the United States Penitentiary in Terre Haute, Indiana. He would be the third federal death row prisoner to be put to death there. Timothy McVeigh and Juan Raul Garza were killed by US Government executioners in June 2001 – the first federal executions in the USA in 38 years – after President George Bush refused to intervene. Amnesty International is calling on the President to take a different approach, one that respects human life and dignity, in the case of Louis Jones.

In the past quarter of a century, a period that has seen country after country turn away from judicial killing, more than 830 men and women have been put to death in the USA.<sup>2</sup> All but the executions of McVeigh and Garza were carried out by state-level authorities, in 32 states. In recent years, at the same time as the number of executions has risen – about 70 per cent of the USA’s 830-plus executions have been carried out since 1995 – national concern about the fairness and reliability of the capital justice system has grown. Evidence of arbitrariness, discrimination, and error has continued to mount.<sup>3</sup>

Louis Jones was the first person to be sentenced to death under a law which greatly expanded the federal death penalty and thereby contradicted international standards which seek to progressively limit the scope of capital punishment. He was selected for execution under a system tainted by still unexplained racial and geographic disparities revealed by the US Justice Department in 2000. He was condemned by a jury whose deliberations appear to have been thrown into confusion by an erroneous instruction from the trial judge. Post-conviction investigations have raised evidence, which the jury never heard because of the lack of medical knowledge at the time, that Louis Jones suffers from brain damage related to Gulf

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<sup>1</sup> National Sanctity of Human Life Day, 2003. By the President of the United States of America. A Proclamation, 14 January 2003.

<sup>2</sup> Today, some 111 countries are abolitionist in law or practice.

<sup>3</sup> See, for example, *USA: Arbitrary, discriminatory, and cruel: an aide-mémoire to 25 years of judicial killing* (AI Index: AMR 51/003/2002, 17 January 2002).

War Syndrome.<sup>4</sup> This, his clemency petition maintains, could help to explain how this recently retired soldier came to commit the crime for which he was sentenced to die, and is presented as an additional reason for commutation of Louis Jones's death sentence.

### **Sentenced under a law which contradicted international standards**

After the US Supreme Court halted executions in 1972 because of the arbitrary way in which the death penalty was being administered, a number of states moved quickly to rewrite their capital statutes in order to meet the Supreme Court's requirements. The Court lifted the moratorium in 1976, and state-level executions resumed the following year. The federal government proceeded more slowly. It was not until 18 November 1988 that the federal death penalty was reintroduced, when President Ronald Reagan signed into law the Anti-Drug Abuse Act of 1988. The new law contained the Drug Kingpin Act, which provided for the death penalty for people convicted of drug-related murders, including of law enforcement officers.

On 13 September 1994, President Bill Clinton signed into law the Federal Death Penalty Act. The legislation expanded the death penalty under federal civilian law to more than 50 offences. This massive expansion of the federal death penalty was contrary to international standards, which seek to progressively limit the scope of capital punishment, with a view to its abolition. For example, Article 4 of the American Convention on Human Rights (ACHR) states that "the application of [the death penalty] shall not be extended to crimes to which it does not presently apply" and "the death penalty shall not be re-established in states that have abolished it." The USA signed the ACHR in 1977, thereby binding itself not to undermine the object and purpose of the treaty, pending a decision on whether to ratify it.<sup>5</sup>

Louis Jones was the first person to be sentenced to death under the 1994 Federal Death Penalty Act. As such his case is symbolic of legislation which contravened the aspirations of the international community and the spirit or letter of treaties ratified or signed by the USA. The abolitionist outlook of international standards is reflected in numerous resolutions and statements from United Nations (UN) bodies and officials. For example:

- The UN General Assembly has stated that "the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment".<sup>6</sup>

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<sup>4</sup> This term has been widely used to describe a cluster of symptoms and disorders reported by Gulf War veterans. While the illnesses are real, there is argument about the extent to which they constitute a medical "syndrome".

<sup>5</sup> Article 18, Vienna Convention on the Law of Treaties.

<sup>6</sup> Resolution 32/61, adopted on 8 December 1977, Resolutions and Decisions adopted by the General Assembly, (A/32/45), 1978, at 136.

- The UN Human Rights Committee, the expert body established by the International Covenant on Civil and Political Rights (ICCPR) to oversee implementation of that treaty, has stated in its authoritative interpretation of Article 6 of the ICCPR that the article is abolitionist in outlook and that “all measures of abolition should be considered as progress in the enjoyment of the right to life”.<sup>7</sup> In its comments on the USA in 1995, referring to the Federal Death Penalty Act, the Committee “deplore[d] the recent expansion of the death penalty under federal law”.<sup>8</sup>
- In his report on the USA in 1998, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote that “the reintroduction of the death penalty and the extension of its scope, both at federal and at state level, contravene the spirit and purpose of article 6 of the ICCPR, as well as the international trend towards the progressive restriction of the number of offences for which the death penalty may be imposed”.
- In repeated resolutions, the UN Commission on Human Rights has called on all retentionist states “progressively to restrict the number of offences for which the death penalty may be imposed”, and “to establish a moratorium on executions, with a view to completely abolishing the death penalty”.

The execution of Louis Jones, a 52-year-old veteran of the 1990/91 Gulf War, is looming at a time when President Bush has threatened renewed military action against Iraq, berating its leadership for having shown “utter contempt for the United Nations, and for the opinion of the world”.<sup>9</sup> For its part, the USA has repeatedly ignored the UN and other international and regional bodies in relation to the death penalty.<sup>10</sup> President Bush, who told the UN General Assembly in September 2002 that his country wants “the United Nations to be effective, respected and successful”,<sup>11</sup> should stop the execution of Louis Jones, not least to show that the USA can and will move towards respect for international standards, UN resolutions, and world trends on this fundamental human rights issue.

## **Unexplained disparities in federal capital sentencing**

A decision by Illinois Governor George Ryan in January 2000 to halt executions in his state because of its record of wrongful convictions in capital cases caused a ripple effect of debate

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<sup>7</sup> General Comment 6, para 6. The USA ratified the ICCPR in 1992.

<sup>8</sup> CCPR/C/79/Add.50; A/50/40, para. 281. 3 October 1995

<sup>9</sup> State of the Union Address, 28 January 2003. Louis Jones’s 53<sup>rd</sup> birthday is on 4 March 2003.

<sup>10</sup> For example, UN bodies have repeatedly called for the USA to cease the execution of child offenders, (those under 18 at the time of their crimes), the mentally impaired, and foreign nationals denied their consular rights. Other bodies, too, such as the European Union, the Council of Europe, and the Inter-American Commission on Human Rights have had their recommendations and appeals ignored in capital cases. See also: *USA – Human rights v public relations* (AMR 51/140/2002, 24 August 2002).

<sup>11</sup> President’s remarks at the United Nations General Assembly. 12 September 2002.

across the country. Here was a pro-death penalty Republican politician expressing doubts about a punishment which all too often in the past two decades had been seen as a given of the US legal landscape. Three years later, in one of his final acts of office, Governor Ryan commuted the death sentences of all the prisoners on death row in the state. He had recognized that the capital justice system was “haunted by the demon of error, error in determining guilt, and error in determining who among the guilty deserves to die”.<sup>12</sup> Governor Ryan pointed to race and geography as unacceptable factors in capital sentencing in his state.

In 2002, Governor Parris Glendening of Maryland imposed a moratorium on executions pending the outcome of research into the fairness of capital sentencing in the state. Released in January 2003, the study pointed to racial and geographic bias in the system. On 29 January, the Attorney General of Maryland, J. Joseph Curran, called for abolition of the death penalty: “Despite everyone’s best efforts, as any trial lawyer or judge knows, our criminal justice system sometimes gets it wrong...The system is a human institution. It is administered by human beings subject to human fallibility. Unrecognized mistakes are inevitable... Executing an innocent person is a mistake for which there is no correction. Other troubling issues afflict the death penalty. Many people are raising serious questions about geographic and racial disparities in its application.”<sup>13</sup>

Racial and geographic disparities are also evident in the federal capital justice system. In September 2000, the US Justice Department released the findings of a review it had conducted into the federal death penalty.<sup>14</sup> It found widespread racial, ethnic and geographic disparities, although it was not within the scope of the review to seek to explain them.<sup>15</sup> The Justice Department’s statistics indicated, for example, that:

- 80 per cent of the defendants who faced federal capital charges since 1995 were members of racial or ethnic minorities. White capital defendants were far more likely than Hispanic and African American defendants to benefit from a plea bargain. Louis Jones is an African American man who was charged with killing a white woman;
- 66 per cent of those on death row or awaiting formal sentencing at that time had been prosecuted by federal prosecutors in three states. Federal prosecutors in Texas accounted for more than any other – 29 per cent. Louis Jones was prosecuted in Texas;
- In the Northern District of Texas, federal prosecutors had submitted a total of 10 cases to the US Justice Department, recommending pursuit of the death penalty in six of them. However, prosecutors recommended the death penalty for 25 per cent of the white defendants (one out of four), 75 per cent of the African American defendants

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<sup>12</sup> Governor George Ryan, Speech at Northwestern University College of Law, 11 January 2003.

<sup>13</sup> Open letter to the Governor, the Lt. Governor, and Members of the General Assembly. 29 January 2003.

<sup>14</sup> *Study of the federal death penalty system (1988-2000)*, US Department of Justice, 2000.

<sup>15</sup> See *USA: Memorandum to President Clinton. An appeal for human rights leadership as the first federal execution looms*. (AI Index: AMR 51/158/00, November 2000).

(three out of four), and 100 per cent of the Hispanic cases (two out of two). Louis Jones, black, was prosecuted in the Northern District of Texas;

- Six of the 21 prisoners on federal death row in 2000 were convicted of crimes against at least one victim of a different race or ethnicity. Five of these prisoners, including Louis Jones, were black, convicted of killing white victims;<sup>16</sup>
- Federal prosecutors appear to be influenced by the “culture” of the death penalty in the state in which their federal district falls. Between 1995 and 2000, federal prosecutors in the 12 abolitionist US states recommended pursuit of the death penalty in 15 per cent of the cases they submitted to the Justice Department. In the same period, federal prosecutors in the 12 states which had carried out the most executions at state-level, recommended pursuit of the death penalty in 43 per cent of cases which they forwarded to the Justice Department. Nearly 30 per cent of the death penalty recommendations from federal prosecutors came from districts in three states which accounted for more than half of state-level executions – Missouri, Virginia, and Texas. Texas, where Louis Jones was prosecuted, far and away leads the country in the number of executions carried out.<sup>17</sup>

Such disparities beg the question, if Louis Jones had been a white defendant accused of killing a black victim and/or had committed his crime in another federal jurisdiction, particularly one that lay in a state whose local culture was less supportive of the death penalty, would a death sentence have been sought, pursued, and imposed? To ask this question is not to deny the seriousness of the murder for which Louis Jones was sentenced to die (and for which he has accepted responsibility and long expressed his remorse). It is to recognize that many crimes of comparable seriousness have not resulted in a federal sentence of death, and to ask whether there was any arbitrariness in the way in which Louis Jones was selected for execution.

President Bill Clinton’s concern about the disparities led him to stay the execution of federal death row prisoner Juan Raul Garza for six months, “to allow the Justice Department time to gather and properly analyze” further information on its initial findings. On 6 June 2001, less than two weeks before Garza’s rescheduled execution date under newly elected President George Bush, the Justice Department released a follow-up report to its September 2000 survey.<sup>18</sup> The report was not an in-depth analysis, and made some sweeping conclusions without providing hard evidence to back them up.<sup>19</sup> The Chairman of the Senate Judiciary Committee, for example, said that the follow-up report fell “far short of what this

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<sup>16</sup> At state level, there have been more than 800 executions since 1977. In about 80 per cent of cases, the original murders had involved white victims. Blacks and whites are the victims of murder in the USA in approximately equal numbers. Studies have consistently shown that race, particularly race of victim, influences which murders result in a death sentence.

<sup>17</sup> See *Texas: In a world of its own as 300<sup>th</sup> execution looms* (AMR 51/010/2003, 23 January 2003).

<sup>18</sup> *The federal death penalty system: Supplementary data, analysis and revised protocols for capital case review*. US Department of Justice, 6 June 2001.

<sup>19</sup> See *USA: Open letter to the US Attorney General concerning the imminent execution of Juan Raul Garza* (AI Index: AMR 51/088/2001, 15 June 2001).

Committee was promised, and far short of what the American people deserve... I do not know if there is bias or prejudice in the application of the federal death penalty. There may be innocent explanations for the disparities identified in the September report. But the latest report makes little effort to determine the reasons for the racial disparities, and dismisses the geographic disparities as if they did not matter”.<sup>20</sup> Similarly, one of the USA’s leading experts on the subject stated that the supplementary report “utterly fails to convince me that there is no significant risk of racial unfairness and geographic arbitrariness in the administration of the federal death penalty”.<sup>21</sup>

For his part, Attorney General Ashcroft concluded from the Justice Department’s June 2001 supplementary report that there was “no racial bias in the way we are administering the death penalty in the federal system”.<sup>22</sup> He made no reference to the geographic disparities. At the same time, however, he announced that the National Institute of Justice (NIJ), the research, development and evaluation agency of the Department of Justice, would further study the federal death penalty system,<sup>23</sup> research that would apparently include issues “relating to the race and ethnicity of defendants and the location of the prosecution”.<sup>24</sup> In September 2002, the NIJ awarded two research grants to examine the federal death penalty system.<sup>25</sup>

Juan Raul Garza, a Hispanic who like Louis Jones was tried in federal court in Texas, was executed despite the failure of the US Government to explain the disparities in its capital sentencing.<sup>26</sup> Louis Jones is now facing the same fate.<sup>27</sup>

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<sup>20</sup> Statement of Senator Patrick Leahy, Chairman, Senate Judiciary Committee. Hearing on Racial and Geographic Disparities in the Federal Death Penalty System, 13 June 2001.

<sup>21</sup> David C. Baldus, Distinguished Professor of Law, University of Iowa. Memorandum to Senator Russell Feingold, 11 June 2001.

<sup>22</sup> Testimony of Attorney General John Ashcroft before the Committee on the Judiciary, US House of Representatives, 6 June 2001. As part of his confirmation process to the office of Attorney General, John Ashcroft had stated that he was “deeply troubled” by the evidence of racial disparities in federal capital sentencing raised by the September 2000 Justice Department statistics.

<sup>23</sup> *Id.*

<sup>24</sup> Testimony of Deputy Attorney General Larry Thompson before the Subcommittee on Constitution, Federalism, and Property Rights. Committee on the Judiciary, United States Senate. Concerning the enforcement of the federal death penalty, 13 June 2001.

<sup>25</sup> Justice Studies Inc. (Virginia) was awarded \$643,349 to study the manner in which federal and state prosecutors decide where to bring a capital case and when to seek the federal death penalty. RAND Corporation (California) was awarded \$1,332,979 to examine federal cases in which the federal death penalty could have been sought in order to identify the factors that contributed to the prosecutorial decision made in those cases.

<sup>26</sup> Juan Raul Garza was also executed despite a finding by the Inter-American Commission on Human Rights of the Organization of American States that he had been denied his fair trial rights. IACHR Report No. 52/01 Juan Raúl Garza. Case 12.243 (United States).

<sup>27</sup> In July 2002, it was reported that the racial disparities in federal capital sentencing were continuing under the Bush administration. Since John Ashcroft became Attorney General, the Justice Department had reportedly been three times more likely to seek death sentences for black defendants accused of killing whites than for blacks alleged to have killed non-whites. *Ashcroft aggressively pursues death*

## The crime and trial

Louis Jones was convicted of the kidnapping murder of a 19-year-old white woman, Tracie Joy McBride. Tracie McBride was abducted at gunpoint from the Goodfellow Air Force Base, San Angelo, Texas, on 18 February 1995. She was a US Army private assigned to the base for training.

The kidnapping remain unsolved until Louis Jones was arrested on 1 March 1995 after his ex-wife filed a sexual assault charge against him (which was subsequently dropped). In police custody, Jones was questioned about Tracie McBride's abduction. He gave a confession to the crime, and took investigators to where the body was located, about 20 miles outside San Angelo. The young woman had been bludgeoned to death. There was also evidence of sexual assault.

Because the crime began on a US military facility, it was prosecuted as a federal case. The kidnapping charge meant that the murder could be punishable by execution. Family members of Tracie McBride reportedly travelled to Washington DC to seek the Justice Department's approval of the federal prosecutor's recommendation that the death penalty be pursued. Louis Jones was tried in the US District Court for the Northern District of Texas in Lubbock. The trial venue had been changed from San Angelo, after thousands of residents reportedly signed petitions calling for the death penalty. The trial began on 16 October 1995, and the jury returned a guilty verdict on 23 October.

At the sentencing phase of the trial, the jurors were presented with mitigating evidence to weigh against the government's contention that the aggravating factors relating to the crime and the defendant should result in a death sentence.<sup>28</sup> As well as arguing that Louis Jones's lack of criminal record and his remorse were reasons for the jury to vote against execution, the defence also put forward the following mitigating evidence:

- *Childhood physical and sexual abuse.* Louis Jones was subjected to brutal beatings by his father. At the age of nine or 10, he was taken from the custody of his father by a stepgrandmother, who found that the child had cigarette burns all over his body. He went to live with his mother who had moved away. When the mother was working, her brother would look after the children. He allegedly raped and sexually and physically abused Louis.
- *Achievements during 22-year career in the army.* Louis Jones joined the military in 1971 at the age of 21 and flourished within a structured environment that had been absent in his home life. As a member of the US Army Airborne Rangers, he rose to the rank of Master Sergeant in 1991. He was awarded a Meritorious Service Award

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*penalty.* Washington Post, 1 July 2002. The paper's source for the evidence of continuing racial disparities was the Federal Death Penalty Resource Counsel Project.

<sup>28</sup> The jury found that the government had proved the existence of two statutory aggravating factors, namely that Louis Jones had caused the death of the victim during the commission of another crime (kidnapping), and that he had committed the offence in an "especially heinous, cruel, and depraved manner".

medal, and a Commendation Medal following his service in the Gulf War in 1990/91. He retired with an honourable discharge in 1993. The order for this reads: "The people of the United States express their thanks and gratitude for your faithful service. Your contributions to the defense of the United States of America are greatly appreciated."<sup>29</sup>

- *Possible post-traumatic stress disorder.* After serving in Operation Desert Storm/Desert Shield in Saudi Arabia in 1990 and 1991, Louis Jones displayed significant behavioural and personality changes. He lost his sense of humour, became dominating, possessive, rigid in his thinking, and began drinking to excess. He suffered from daily headaches. At the trial a psychologist testified that, in his opinion, Louis Jones' experience had intensified the post-traumatic stress disorder that he had suffered as a result of his involvement in the US invasion of Grenada in 1983, in which he had led his platoon in a dangerous parachute jump under hostile fire. Jones decided to retire from the army in 1993, and did a series of low paid jobs. His marriage broke down. Four US Supreme Court Justices noted that the murder of Tracie Joy McBride "followed Jones's precipitous decline in fortune and self-governance on termination of his 22-year Army career".<sup>30</sup>
- *Mental or emotional disturbance.* At the trial, a psychologist, a neurologist and a psychiatrist variously stated their opinion that on the night of the crime, Louis Jones was suffering from various mental problems, including a major depressive disorder, a dissociative disorder, post-traumatic stress disorder, cognitive disorder and alcohol intoxication.
- *Brain damage.* The neurologist testified that, in his opinion, Louis Jones had suffered brain damage, which made it difficult for him to control impulses.

In addition, nine of the 12 jurors found as a mitigating factor that Louis Jones's daughter would be harmed by the emotional trauma of her father's execution.

The jury weighed the aggravating and mitigating factors and on 3 November 1995 returned a unanimous verdict for death.

### **The jury's sentencing decision: death by confusion?**

Louis Jones had faced one of two sentences: a death sentence or life imprisonment without the possibility of parole. Because of the kidnapping charge, under federal law he would never be released if the jury voted for imprisonment. However, the judge instructed the jury

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<sup>29</sup> Department of the Army, Headquarters, US Army Air Defense Artillery Center, Fort Bliss, Texas. Orders 228-11, 2 December 1992. Effective Date: 31 March 1993.

<sup>30</sup> *Jones v United States*. No. 97-9361. 21 June 1999. Justice Ginsburg, dissenting.



that it could recommend death, life without the possibility of release, or a lesser sentence.<sup>31</sup> If they chose the latter, he, the judge, would decide its length. In addition, the judge told the jurors that they were “not to be concerned with” what the lesser sentence might be, as that was “a matter for the court to decide”.

The jury evidently did not reach its verdict easily. It took a day and a half to decide, during which time it rejected three of the aggravating factors alleged by the government, including that Jones posed a future danger to society and that his crime had involved substantial planning or premeditation. Nevertheless, it returned a unanimous vote for death.

After the trial, two jurors came forward to allege that there had been confusion and coercion in the jury room. They stated that after initial deliberations, the jury stood at eight votes to four in favour of death, but that several of the pro-death jurors had been willing to vote for life imprisonment without release. However, they said that the judge’s instruction had led some jurors to believe that if they could not reach a unanimous verdict either on death or life without the possibility of release, that the judge would impose a lesser sentence. The whole jury was agreed that they did not want this to happen.<sup>32</sup> After a while, the vote stood at 10 for death with two women (the two who came forward to allege the confusion) holding out for imprisonment. The majority pressed the two women to change their vote. One of them, the lone African American on the jury, was singled out after she began crying and saying that she could not impose a death sentence. The majority, the other woman claimed, began “getting on her” and “pushing her hard” until the black woman finally changed her vote. At that point the second woman changed her vote too.<sup>33</sup> In her affidavit, the African American juror stated: “I do not feel that the death sentence is the appropriate sentence in this case and I changed my vote because of the intense pressure from other jurors and the information that Mr Jones would get a sentence that would result in his release from prison if we had a hung jury.”<sup>34</sup>

In 1999, a sharply divided US Supreme Court upheld the death sentence by five votes to four. At the trial, the defence lawyer had requested an instruction that if the jury were not unanimous on either death or life, the result would be a sentence of life without the possibility of release. The trial judge refused to give it. The Supreme Court majority held that although the requested instruction was a correct statement of the law, it was not error for the trial judge to refuse to give it. The majority held that, although incorrect, the judge’s introduction of a third alternative of “some other lesser sentence”, could not have misled the jurors.

Four of the nine Supreme Court Justices dissented, concluding that Louis Jones should receive a new sentencing hearing, “one that would proceed with the accuracy that

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<sup>31</sup> Every appellate judge who has reviewed this case, three judges on the US Court of Appeals for the Fifth Circuit, and nine Justices on the US Supreme Court, have agreed that the trial judge’s instructions misstated the sentencing options available to Louis Jones’s jury.

<sup>32</sup> In fact, a non-unanimous jury at the sentencing would have resulted in a sentence of life imprisonment without the possibility of parole.

<sup>33</sup> Daniel Salazar (investigator for federal public defender). Affidavit, 28 December 1995.

<sup>34</sup> Cassandra Hastings. Affidavit signed on 19 January 1996.

superintendents of the Federal Death Penalty Act should demand.”<sup>35</sup> The dissenters believed that the jury had been misinformed by the trial judge’s instruction, and that there was, at least, “a reasonable likelihood” that this had “tainted the jury deliberations”. The dissenters noted that in an earlier decision, the Supreme Court had itself acknowledged that a jury may be swayed to vote for death if it believed that a defendant would serve a prison sentence with the possibility of parole.<sup>36</sup> They objected to the majority’s insistence that “it was just as likely that jurors not supporting death could have persuaded death-prone jurors to give way and vote for a life sentence”. Instead they suggested that “it should suffice that the potential to confuse existed, i.e., that the instructions could have tilted the jury toward death... Capital sentencing should not be a game of ‘chicken’, in which life or death turns on the happenstance of whether the particular ‘life’ jurors or ‘death’ jurors in each case will be the first to give in, in order to avoid a perceived third sentencing outcome unacceptable to either set of jurors”.

A number of prisoners in the USA have gone to their execution despite evidence that the jury’s deliberation over their sentences was tainted by confusion or coercion.

- Lonnie Weeks was executed in Virginia on 16 March 2000. In January 2000, a divided US Supreme Court had upheld his death sentence five votes to four. The four dissenting Justices said that it had been “a virtual certainty” that the jury had been confused, and had voted for death as a result of a misunderstanding of their duty under the law. Two jurors signed affidavits that this had been the case.
- Bobby Ramdass was executed in Virginia on 10 October 2000. His jury had asked the judge whether Ramdass would be ever be released if they spared his life. The answer was no, but the judge refused to say so. In June 2000, the US Supreme Court upheld the death sentence by five votes to four. The four dissenting judges protested at the “acute unfairness” of the case. Four jurors came forward to say that they would not have voted for death if they had been properly informed.
- James Chambers was executed in Missouri on 15 November 2000. In a post-conviction affidavit, the foreman of the jury which sentenced him to death admitted that he “harangued” an elderly juror into voting for death.<sup>37</sup>

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<sup>35</sup> *Jones v United States*. No. 97-9361. 21 June 1999. Justice Ginsburg, dissenting.

<sup>36</sup> In *Simmons v South Carolina*, 512 U.S. 154 (1994), the Court had stated: “In assessing future dangerousness, the actual duration of the defendant’s prison sentence is indisputably relevant. Holding all other factors constant, it is entirely reasonable for a sentencing jury to view a defendant who is eligible for parole as a greater threat to society than a defendant who is not. Indeed, there may be no greater assurance of a defendant’s future nondangerousness to the public than the fact that he never will be released on parole.”

<sup>37</sup> “During the penalty phase of the trial one of the jurors, an elderly woman whose name I do not recall, was steadfast for several hours in her opposition to voting for the death penalty. I harangued the juror until, nearly in tears, she agreed to vote in favor of Mr Chambers’ execution. Without my pressure I am confident the woman would not have done so.” Affidavit, Eric J. Chism, 25 October 1999.

- Alexander Williams came 48 hours from execution in Georgia in August 2000. Several of the original jurors opposed the execution; one recalled how a single holdout juror at the trial had been aggressively pressured into changing his vote.<sup>38</sup>
- William Hance, black, was executed in Georgia in 1994. The only African American juror on his jury later came forward to say that she had not voted for the death penalty, but that the rest of the jury had decided to tell the judge that they had reached a unanimous verdict for execution. She said that she had been too intimidated by the misconduct and racism in the juryroom to object.
- Louis Truesdale – like Louis Jones, a black man convicted of the murder of a white woman – was executed in South Carolina on 11 December 1998. The only African American on the jury which sentenced Truesdale to death later came forward to say that she had wanted to vote for life imprisonment, but had been intimidated by the racism prevailing in the juryroom into changing her vote to death.
- Walanzo Robinson is on death row in Oklahoma. He is African American. At his trial, there was only one African American on his jury. Post-conviction investigation revealed that because of this black juror's reluctance to vote for execution, she was subjected to physical and psychological intimidation by fellow jurors. She was allegedly referred to as "nigger" by some white jurors, and berated for failing to vote for death. After almost eight hours of intimidation, she voted, against her will, for a death sentence in order to avoid further abuse. At the time of writing Walanzo Robinson was scheduled to be executed on 18 March 2003, the same day as Louis Jones.

As the above examples suggest, clemency authorities have failed to prevent a number of executions despite evidence of juror misconduct or confusion. However, such acts of executive mercy are not unknown. In March 1999, Governor Huckabee of Arkansas commuted the death sentence of Bobby Ray Fretwell. The governor said that he had been swayed by an appeal from one of the trial jurors for the execution to be stopped. The juror wrote that he had been the only one of the 12 initially to vote for life, but had changed his vote to death because he felt intimidated and did not want to be shunned by his community.

In general, the rules of evidence do not allow courts to consider juror affidavits in post-conviction proceedings. Such rules do not apply to executive clemency, a power which exists in part to compensate for the rigidity of the judiciary. President Bush should follow Governor Huckabee, and at the same time lead other clemency authorities by example, by

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<sup>38</sup> "For years, I have harbored a silent regret over my role in that jury room, and that this juror had felt forced to sacrifice his convictions to a group which had lost its patience". See *Crying out for clemency: The case of Alexander Williams, mentally ill child offender facing execution* (AMR 51/139/00, September 2000). Alexander Williams was granted executive clemency in February 2002 after 15 years on death row, because of his serious mental illness. His sentence was commuted to life imprisonment without the possibility of parole. In November 2002, he was found dead in his cell, apparently as the result of suicide.

commuting the death sentence of Louis Jones. Amnesty International believes that he cannot, in good conscience, rely on the jury's sentencing verdict to allow the execution to proceed.

## **Post-conviction evidence, including of Gulf War Syndrome**

Louis Jones has petitioned President Bush for clemency. His clemency petition raises the claim that he suffers from brain damage as a result of Gulf War Syndrome, evidence which had not been raised at the 1995 trial due to the lack of scientific and medical knowledge on this subject at that time. The evidence is not raised as an attempt to excuse the murder of Tracie Joy McBride, for which Louis Jones accepts complete responsibility, but rather as a possible explanation of how Jones came to commit such a serious crime. The evidence of Gulf War Syndrome comes from an expert in this issue, Dr Robert W. Haley.<sup>39</sup> In December 2002, Dr Haley wrote:

“Psychiatrists and neurologists retained by both the defense and prosecution who examined Mr Jones in connection with his 1995 trial found unequivocal evidence of organic brain damage that they considered an important predisposing factor in his crime. The evidence of damage was presented to the jury, but not the explanation for how Mr Jones suffered that damage or how the specific damage relates to erratic and hostile behaviour...

...Mr Jones returned from the war with a noticeable change of personality, including irritability and hostility, and numerous neurological symptoms, including attention/concentration problems, balance disturbances and episodic vertigo, adult-onset stuttering, blurred vision, left-sided tremor, problems with visual pursuit and tracking, headaches, and chronic diarrhea. This combination of symptoms is characteristic of the most severe form of Gulf War syndrome... Gulf War veterans with this symptom complex have been found to have brain cell damage in deep brain structures...

In Mr Jones's 1995 trial his defense team argued that he was suffering from post-traumatic stress disorder (PTSD). At that time PTSD was the only known explanation for the neuropsychiatric symptoms resulting from combat situations. The evidence that such symptoms could be due to damage to deep brain structures...first appeared in 1997 and was corroborated by the first brain MR scanning studies in 1999. Consequently, the fact that he had brain damage possibly resulting from serving his country in the Gulf War was not considered at his 1995 trial.”

Dr Haley continued that during his Gulf War service, Louis Jones was believed to have been exposed to various chemicals and toxins (including “sarin [nerve gas] in fallout from Coalition bombing of Iraqi chemical weapons stores”) and that a “reliable and

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<sup>39</sup> Professor of Internal Medicine at the University of Texas Southwestern Medical Center at Dallas. Dr Haley is Holder of the US Armed Forces Veterans Distinguished Chair for Medical Research, Honoring America's Gulf War Veterans.

increasing body of scientific research has linked this combination of exposures to a subtle type of brain cell damage affecting deep brain structures...”. Dr Haley continues:

“The brain cell damage affecting deep brain structures found in those with Gulf War Syndrome, including Mr Jones, is quite similar to damage found in patients in the early stages of Huntington’s Disease (HD)... Extensive clinical experience and published research has demonstrated that patients in the early stages of HD show marked increases in irritability and disinhibited aggression, and violent behaviours such as assault, arson, and homicide are often found. In particular, HD patients often develop rigidity of thinking which causes them to perseverate relentlessly on a particular desire or idea, resulting in outbursts when perceived needs are not met...

In my opinion, Mr Jones’ Gulf War service involved chemical exposures that caused brain cell damage to deep brain structures...The site of the brain cell damage, the same as is found in HD, was responsible for the personality changes... that contributed significantly to the tragic events of his crime...

Had this likely link between Mr Jones’ crime and his brain cell injury from honourable service to his country in the Gulf War been known and presented at his trial, it is likely that he would not have received the death penalty.”<sup>40</sup>

Dr Haley recommended that blood testing on Louis Jones could offer further evidence that the prisoner has Gulf War Syndrome. This testing was carried out. On 14 January 2003, Dr Haley wrote:

“The results of the testing, as I expected demonstrate that Mr Jones has extremely low levels of the blood enzyme that allows the body to protect the brain from low levels of organophosphate nerve agents like sarin, soman, tabun and VX. The test results, along with the plethora of evidence previously discussed, provide extremely strong scientific evidence that Mr Jones was exposed to nerve agents during his Gulf War service, that Mr Jones has a genetically based absence of the enzyme that might have provide him some protection from those agents, and that Mr Jones suffers from the most severe form of Gulf War Syndrome...”<sup>41</sup>

In repeated resolutions adopted since 1997, the UN Commission on Human Rights has urged retentionist countries not to impose or carry out the death penalty on anyone suffering from any form of mental disorder.

At Louis Jones’s trial, the prosecution had claimed that one reason for the jury to vote for execution was that Jones “posed a future danger to the lives and safety of other persons”. The jury rejected this. According to the clemency petition seven years later, Louis Jones has been a model inmate “who is highly responsible and disciplined and always follows rules and

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<sup>40</sup> Letter to Louis Jones’s defence lawyer, dated 26 December 2002.

<sup>41</sup> Letter to Louis Jones’s defence lawyer, dated 14 January 2003.

regulations.” The petition states that his jailers report that “Mr Jones has been a positive influence on employees and inmates in the institutions where he has been confined”.<sup>42</sup>

A pastor who has been in contact with Louis Jones since 1995 has recalled the prisoner’s long-held remorse for his crime. In a letter in June 1995 in response to the pastor saying that his own 10-year-old daughter was praying for Jones, the latter wrote: “Please tell [your daughter] I am awfully sorry for what I did to Tracie Joy McBride. Tell her that there was something awfully bad in me that made me do that. Tell her that I am not normally a bad man. Tell her that after I did that to Tracie Joy McBride, it was very, very hard for me to talk to my own fourteen year old daughter because I had hurt, and killed some other mother’s daughter. I had hurt and killed some other father’s little girl, and I hurt so bad because something bad went wrong with me”.<sup>43</sup>

At his trial, Louis Jones apologized in court to the family of Tracie Joy McBride: “If I live from now until the end of eternity with the pain that I have, it would never scratch the surface of the pain that you have... I took a life that wasn’t mine”.<sup>44</sup> Seven years later, he has written to President Bush accepting his responsibility for the murder of Tracie Joy McBride and expressing his remorse:

“I am truly sorry for the terrible pain and suffering I have left with her family and friends, of which they continue to suffer... [O]n countless occasions, I dream of and think of the future that I deprived Specialist Fourth Class Tracie Joy McBride of; I think of her being married to the Marine she was engaged to. I think of the children she could have had. Her son could have discovered a cure for a disease of our time. Her daughter could have been loving parent who bore children that had children who could have been scientists or explorers to new worlds. Her children go on and on for generations and they could have touched millions and millions of lives. I have seen this dream many many times along with other dreams and thoughts of the wonderful life that this human being, this soldier, this father’s daughter could have had, had it not been for the evil acts I committed which ended her future”.

Louis Jones is not seeking exemption from punishment, but is asking only not to be killed by his government. He is seeking commutation of his death sentence to life imprisonment without parole, a sentence which as many as nine of the trial jurors may have favoured before they, wrongly, became convinced that a hung jury might lead to the “lesser sentence” erroneously referred to by the trial judge.<sup>45</sup>

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<sup>42</sup> Memorandum in support of petition for executive clemency in the matter of Louis Jones, Jr.

<sup>43</sup> Quoted in “A statement in support of clemency for Louis Jones”, 11 December 2002. The Rev. Dr. J. Jason Fry.

<sup>44</sup> *A war hero, a condemned killer*. Los Angeles Times, 14 January 2003.

<sup>45</sup> “...our initial vote was 8 to 4 for the death penalty. I was one of the jurors who did not want to impose a death sentence, but instead I favored Life without the possibility of release. Many of the other jurors were willing to vote to impose a Life without release sentence. In fact, it is my recollection that all but three jurors were willing to impose Life without release. However, the other three jurors were firm in their opposition to Life without release. It looked like we might have had a

## Leading by example

In 1928, a US Supreme Court Justice said that the federal government “teaches the whole people by its example”.<sup>46</sup> Today, with national concern about the death penalty probably greater than at any time in the past quarter of a century, the US President is faced with an opportunity to begin to lead his country away from this destructive punishment and into line with emerging standards of justice and decency in an increasingly abolitionist world. To do so would also be in line with some of his recent rhetoric.

Campaigning for the presidency in 2000, then Governor George Bush of Texas ran for the highest office in the land on a platform of “compassionate conservatism”. In his inaugural address on 20 January 2001, he promised to be a President who would “speak for greater justice and compassion”. In his State of the Union Address of 29 January 2002, the word “compassion” occurred three times. He spoke it another four times in the same address of 28 January 2003. Similarly, President Bush has spoken of the United States being a country that will “always stand firm for the non-negotiable demands of human dignity” and that will recognize the “dignity of every life”.<sup>47</sup> He has repeated this sentiment on numerous occasions.

The death penalty is incompatible with respect for human dignity and human life. As the UN Commission on Human Rights has stated in repeated resolutions since 1997, “abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights”.<sup>48</sup> Killing prisoners is not a compassionate response to crime, but rather a policy that extends the suffering and grief of the relatives of murder victims to another family, that of the condemned prisoner.

President Bush’s support for the death penalty is well known.<sup>49</sup> However, as former Governor Ryan of Illinois recently showed, change is always possible. As he continues to promote his country as a champion of human rights, Amnesty International is urging President Bush to choose a human rights approach, a compassionate approach, to the case of Louis Jones. Such an approach demands a decision in favour of clemency.

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hung jury. At this point we again discussed the effect of a hung jury...”. Affidavit, Cassandra Hastings, 19 January 1996. In another affidavit, an investigator with the federal public defender said that a second woman juror had come forward to say that “some of the pro death jurors would have been willing and were willing to go along with life without the possibility of release. She says that if the jury had known that if they were unable to reach a verdict between life without the possibility of release and death that the Judge would have imposed a life without possibility of release sentence then she would not have agreed to vote for a death sentence. She believed other jurors shared that view.” Affidavit, Daniel Salazar, 28 December 1995.

<sup>46</sup> *Olmstead v US*, 277 U.S. 438 (1928), Justice Brandeis, dissenting.

<sup>47</sup> State of the Union Address, 29 January 2002.

<sup>48</sup> See Commission on Human Rights resolution 2002/77.

<sup>49</sup> As well as refusing to intervene to stop the federal executions of Timothy McVeigh or Juan Raul Garza in 2001, his five-year governorship of Texas saw him fail to oppose 152 executions, about twice as many as any other state had conducted in two decades of judicial killing.

## **Take action for clemency**

*Please write appeals for presidential clemency for Louis Jones, using the following as a guide:*

- express sympathy for the family and friends of Tracie Joy McBride, and explaining that you are not seeking to excuse the manner of her death or the suffering it will have caused;
- note evidence that the jurors who sentenced Louis Jones to death came to their decision under an erroneous instruction which four Supreme Court Justices believed tainted the jury's deliberations and should have been cause for a new sentencing hearing;
- note evidence, not heard by the jury, that Louis Jones sustained brain damage as a result of exposure to toxins and chemicals during the 1990/91 Gulf War, and that a leading expert on Gulf War Syndrome has suggested that this could help to explain why this recently-retired soldier committed such a serious crime;
- note Louis Jones's long-held remorse, his model record in prison, and his lack of a prior criminal record, and that his clemency petition is seeking commutation to life imprisonment without parole;
- urge the Counsel to the President to recommend that President George W. Bush take a compassionate approach and one that respects human dignity, by commuting the death sentence of Louis Jones.

Alberto Gonzales, Counsel to the President

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**Salutation: Dear Mr Gonzales**