

# UNITED STATES OF AMERICA

## "A macabre assembly line of death"

### Death penalty developments in 1997<sup>1</sup>

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#### INTRODUCTION

*"...the death chambers in American prisons have resumed their sad work and the rhythm seems like that of a macabre assembly line..."*<sup>2</sup>

The triple execution which began the year heralded what was to become the highest annual judicial death toll in the USA in over four decades. The evening of 8 January 1997 at the Cummins Unit in Varner, Arkansas, also demonstrated the inescapable cruelty of the death penalty irrespective of the method used to end the life of the prisoner. Paul Ruiz, Earl Denton and Kirt Wainwright were killed by lethal injection, the supposedly "humane" method increasingly preferred in US death chambers. Denton was injected at around 7pm, followed about an hour later by Ruiz, with both executions said to have taken about four minutes. Then Kirt Wainwright spent over 45 minutes strapped down for execution with the needles already inserted in his arms, awaiting news on a last-minute appeal. The situation had forced prison officials to decide if it would be more cruel to take him back to his cell and then have to return him to the execution room if and when the appeal was rejected. When Kirt Wainwright subsequently received his lethal dose, it reportedly took some 12 minutes for him to die.

This was the second triple execution in the US in the 1990s - with Arkansas the executing state both times. On this occasion, officials reportedly said that executing all three prisoners on the same day would be cheaper and less traumatic than having three separate execution dates; a prison spokeswoman was quoted as saying that "the emotional toll is so high on everybody, the employees and the inmates". Amnesty International agrees: the death penalty is brutalizing to all involved in its application.

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. It brought the number of people executed across the country since 1977 to 432, of whom 312 have been executed in the 1990s. At the end of 1997, over 3,300 people remained on death row in 35 states, the highest death row population in the world.

Amnesty International opposes the death penalty unreservedly on the grounds that it is the ultimate cruel, inhuman and degrading punishment and a violation of the right to life as proclaimed in the Universal Declaration of Human Rights. In the 50 years since the adoption of that visionary text, the world has gradually been ridding itself of judicial executions, with over

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<sup>1</sup> This report covers 1997, but some 1998 details are given if available at time of writing.

<sup>2</sup> Vatican Radio, 9 January 1997, referring to Arkansas triple execution.

100 countries, more than half, now abolitionist in law or practice. The vast majority of executions worldwide are carried out in a small number of countries; 1997 saw the USA continue its move into this category of nations. Only China, Iran and Saudi Arabia are known to have executed more prisoners during the year.

Contrary to internationally-agreed safeguards and restrictions on the death penalty, the US continues to execute mentally ill or mentally retarded prisoners, and to use the death penalty against child offenders. Many of those on death row were sentenced after trials in which they did not receive the quality of legal representation expected under international standards. Fears are rising that such proceedings, coupled with the politicization of the death penalty and a narrowing of the opportunity for appeals, will increase the likelihood of death sentences against people innocent of the crimes for which they were convicted.

While it is a deeply disturbing thought that among those awaiting execution may be individuals wrongly convicted, the majority on death row in the USA have undeniably been involved in brutal crimes against their fellow citizens, crimes which have tragic ramifications for the families and loved ones of the victims. As an organization dedicated to the victims and survivors of human rights violations, Amnesty International would never seek to excuse or belittle the heinousness of these crimes and their impact on society. But central to fundamental human rights such as the rights to life and freedom from torture is that they are inalienable: they cannot be taken away even in the most extreme of circumstances or even if the person has committed the most atrocious of offences. The international community has recognized this and even ruled out resort to capital punishment for war crimes and crimes against humanity<sup>3</sup>. Amnesty International remains convinced that for the state to kill those it considers to have lost their right to live achieves nothing but the further brutalization of the society it seeks to protect.

The Eighth Amendment to the US Constitution, added in 1791, prohibits “cruel and unusual punishments”. In 1958 the US Supreme Court stated that the definition of ‘cruel and unusual punishments’ was not permanently fixed, but instead must draw its meaning from “the evolving standards of decency that mark the progress of a maturing society.”<sup>4</sup> In 1997, the US executed more people than in any other year since that statement.

The cruelty of the death penalty should mean it has no place in society today. The fact that fewer and fewer countries resort to its use means that, when viewed from a global perspective, it is becoming an increasingly “unusual” punishment. That it is becoming more, rather than less, common in the USA is a cause for great concern.

## **THE ULTIMATE CRUEL PUNISHMENT**

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<sup>3</sup> The United Nations Security Council, of which the USA is a permanent member, has excluded the use of the death penalty by the two international *ad hoc* tribunals created to deal with war crimes in former Yugoslavia and Rwanda.

<sup>4</sup> *Trop v. Dulles*, 356 U.S. 86, 1958

During the year, Amnesty International delegations, led by Secretary General Pierre Sané, witnessed first-hand the reality of death row in the USA. In October, in Ellis 1 Unit in Huntsville, Texas, which houses some 400 death row inmates, the delegation met three prisoners, Cesar Fierro, Kenneth Ransom and Robert Carter. On leaving the prison, Pierre Sané said: *"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 dehumanized their keepers. The condemned await their deaths in rows of tiny cages reminiscent of the dark ages, their spirits are slowly broken."*



AI Secretary General Pierre Sané outside Ellis 1 Unit, Huntsville, Texas, October 1997

Two Texas death row inmates who had spent the last two decades under such circumstances were executed earlier in 1997. **Billy**

**Woods**, executed on 14 April, and **Clarence Lackey**, executed on 20 May, were two of the longest-serving death row prisoners in the USA. In 1995 Lackey had appealed on the grounds that the length of time he had spent on death row, to the extent that it was due to delays for which the courts were responsible, constituted cruel and unusual punishment. In denying his appeal, the US Supreme Court did not rule on the merits of the case, but noted it as an important issue which had "potential for far-reaching consequences".

In November 1997, an Amnesty International delegation visiting State Correctional Institution Greene (SCI Greene) in Waynesburg, Pennsylvania, met with two death row prisoners, **Mumia Abu Jamal** and **Scott Blystone**. Blystone told the delegation of the intense strain of being imprisoned under the sentence of death and described the process he underwent when prepared for execution in 1995: *"They [the guards] come to your cell, you know you're getting a [death] warrant because they're real polite. They handcuff you, belt you and shackle your feet. It's silent, you can hear your heart beating. They take you to death watch - cells surrounded by plexiglass walls so sound can't get through. There's a camera at the front of the cell that watches you 24-hours a day. You're standing there alive and they're asking you where to send your body. After surviving a death warrant I felt like I'd lost my soul - it kills part of you."*

Pierre Sané described how *"death row in Pennsylvania looks and feels like a morgue. Everything is high-tech, and there is no human being in sight. From the moment that condemned prisoners arrive, the state tries to kill them slowly, mechanically and deliberately - first spiritually, and then physically."* Mumia Abu Jamal has been in SCI Greene since January 1995. He told the Amnesty International delegation that *"the intention is always to isolate people."* Amnesty International remains concerned about aspects of Mumia Abu Jamal's conviction in 1982 for the murder of a police officer.

## Methods of execution

*“From hanging to electric chair to lethal injection: how much prettier can you make it?  
Yet the prettier it becomes, the uglier it is.”<sup>5</sup>*

Ignoring the fact that forcing someone to live under sentence of death is cruel and inhuman treatment, some proponents of the death penalty suggest that the punishment can be made more acceptable by "modernizing" the method of carrying out the sentence. However, Amnesty International believes that executing a prisoner by any method is an unacceptable human rights violation which has no place in society today.

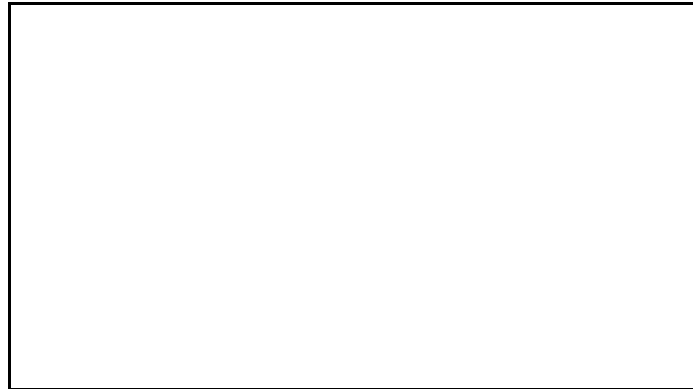
The tendency of some to view one execution method as acceptable and another as barbaric was illustrated in early 1998. Two members of Congress, a Republican from Florida and a New York Democrat, hosted - for members of the legislature, journalists and diplomats - the showing of a video depicting the execution of four people by stoning in 1992 in Iran. Saying that seven people had been executed in this way since President Khatami took office in August 1997, the two said that "...nothing has changed under Khatami's rule" and condemned executions by stoning as "savagery" and urged the US administration to bear this in mind in its relations with Iran. The two failed to comment on the fact that more than 250 people have been executed in the USA since President Clinton took office in 1992.

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<sup>5</sup> Death row prisoner Scott Blystone to Amnesty International delegation in SCI Greene in November 1997.

## Execution by electrocution

Four of the 74 executions in the USA in 1997 were carried out by electrocution. One was that of **Pedro Medina**, a Cuban refugee with a history of mental illness. As he was electrocuted in Florida on 25 March, bright orange and blue flames erupted from the mask covering his face and the chamber filled with dense smoke. Afterwards, state Attorney General Bob Butterworth appeared to suggest that such botched executions might serve as a deterrent when he was reported as saying "*People who wish to commit murder, they better not do it in the state of Florida because we may have a problem with the electric chair*". When asked whether lethal injection might be preferable, another Florida politician said "[lethal injection] *appears to be a medical procedure. A painless death is not a punishment.*"



In October, the Florida Supreme Court ruled by a 4-3 vote that the state's use of its 74-year-old electric chair is not

cruel and unusual punishment, but five of the justices urged that an alternative method of execution be passed into law. Two warned that if another court ever ruled against the use of the chair, current death sentences could be at risk of being overturned. They advised that a law allowing an alternative method of execution (lethal injection) could prevent that kind of "constitutional train wreck". Florida began re-using its electric chair in 1998, with the executions of **Gerald Stano**, **Leo Jones**, **Judy Buenoano** and **Daniel Remata** on 23, 24, 30 and 31 March respectively.

24 March 1998. Police waiting outside Florida's death row for the execution of Leo Jones, convicted of killing a Jacksonville policeman in 1981. The execution went ahead despite doubts over Jones' guilt.

## Execution by lethal injection - ramifications beyond US borders

The remaining 70 executions carried out in the USA during the year were carried out by lethal injection<sup>6</sup>, demonstrating how this method has now become the most favoured in death chambers across the country. However, the United States' experience in carrying out executions by lethal injection was not confined to within its borders during 1997. On 28 July the Deputy Interior Minister of Guatemala officially opened his country's new lethal injection chamber in Pavón Rehabilitation [sic] Prison, southeast of Guatemala City<sup>7</sup>. As a part of the

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<sup>6</sup> For further information on the use of lethal injection worldwide, see *Amnesty International: Lethal Injection: The medical technology of execution*. January 1998. AI Index: ACT 50/01/98

<sup>7</sup> The Guatemalan government's stated intention of introducing lethal injection is to make executions "more humane" and "modern", and followed a botched execution by firing squad in 1996, which was broadcast live on national television in Guatemala. On 10 February 1998, the Guatemalan

research and preparations for their change from firing squad to lethal injection, a delegation of Guatemalan prison officials were reported to have visited prisons in the USA in 1997 in order to inspect US lethal injection chambers.

Amnesty International also received unconfirmed reports that the Government of the Philippines, which at the time of writing was planning to execute its first prisoner since 1976, may have recently acquired unspecified equipment from the USA for its new lethal injection chamber. Furthermore a report in early 1997 quoted the Philippines Director of the Bureau of Corrections as saying that his government had rejected the use of the electric chair because it was a "very gory and very barbaric method" and that its executioners, who would now be using lethal injection, would "probably be sent to the United States for training"<sup>8</sup>. A non-governmental source in the Philippines told Amnesty International of his belief that the Director of the Bureau of Corrections had recently visited seven different states in the USA to look at their lethal injection equipment. In early 1998, a Philippines newspaper reported that the Director had disclosed that during his visit to the USA, he had "witnessed a "painless" execution by lethal injection in Texas last year and it looked as if the convict just fell asleep."<sup>9</sup>

Amnesty International is deeply concerned that the USA, a self-proclaimed leader in the protection of human rights, is not only expanding its own use of the death penalty, but appears to have assisted two other countries in learning how "best" to execute their prisoners.

Despite claims that it is a clinically efficient method to kill a human being, even a lethal injection may not go as smoothly as its proponents would wish. For example, the execution of **Michael Elkins** in South Carolina on 13 June 1997 was delayed for 40 minutes while numerous attempts were made to insert intravenous needles. Because of Elkins' poor physical condition, the first needle was finally inserted in his neck (attempts to use his arms, legs, and feet, were not successful) and the second needle was not used.

**Scott Carpenter**, a young native American, was executed in Oklahoma on 8 May. Two minutes after the lethal chemicals began flowing he began to make noises, his stomach and chest began pulsing, and his jaw clenched. In total, his body made 18 violent convulsions, followed by eight milder ones. He was pronounced dead 11 minutes after the injection began. At 22 years old, he was the youngest person executed in the USA since the death penalty was reinstated in 1976. He had waived his appeals and consented to his execution.

### **Consent under cruelty - prisoners who drop their appeals**

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authorities carried out the first execution in their new lethal injection chamber. Witnesses described how the executioners had difficulty finding a vein into which to insert the lethal liquid. Once the lethal injection was administered, the condemned man took 18 minutes to die. The Human Rights Procurator said: "*I think we all have the obligation to tell what happened: his arms were bleeding heavily, I think everyone who was there was suffering.*" The entire execution was broadcast live on radio and television.

<sup>8</sup> *Agence France Presse*, 28 February 1997

<sup>9</sup> *Philippine Daily Inquirer*, 28 February 1998

“Consensual” executions, like that of Carpenter, appear to be a growing phenomenon on death row in the USA, with at least 50 of those executed since 1977 having given up their appeals. Amnesty International believes that the execution of prisoners who have chosen to abandon their appeals does not relieve the state of its responsibility in taking the life of one of its citizens. Consensual executions are not the product of a prisoner’s freely taken decision to end their own life, but may be a refusal to face the appalling strains of living under sentence of death, often in harsh conditions and under almost total isolation. A prisoner may decide to drop their appeals after recognizing the magnitude of their crime. To kill someone who is genuinely repentant reinforces the state’s denial, inherent in its resort to the death penalty, that there is any possibility of rehabilitation for offenders.

**Harry Charles Moore** was executed on 16 May 1997. He had been sentenced to death in July 1993 for the murder of his parents-in-law, a crime he said he committed because he feared they would take his wife and infant daughter to Las Vegas where the child might fall into a life of drugs and prostitution. Moore chose to abandon his appeals and allow the State of Oregon to carry out his execution. Although two psychiatrists who examined Moore determined that he met the legal standard for sanity, reports received by Amnesty International indicated that he was delusional, claiming to have been a child film star, an FBI informer and a KGB agent. Moore had reportedly threatened to sue anyone who tried to stop his execution. His was the second consensual execution in Oregon within 12 months, prior to which there had been no execution in Oregon since 1962.

**Benjamin Stone** was executed in Texas on 25 September 1997. He had spent 17 months on death row after being convicted of killing his ex-wife and stepdaughter in a fit of rage in July 1995. He refused to appeal his death sentence, saying “as far as I’m concerned, its the only way I’ll find peace of mind”.

At the time of writing, there had already been several “consensual” executions in 1998. **Robert Smith** was executed on 29 January in Indiana for the murder of a fellow prisoner in 1995. He pleaded guilty to the murder following a guarantee that he would receive a death sentence. Prior to this, the District Attorney prosecuting the case had had no plans to request the death penalty, but had offered him a 50-year prison term in return for a guilty plea. **Ricky Lee Sanderson** was executed by cyanide gas in North Carolina on 30 January. He said he had confessed to the crime, and dropped his appeals, after he converted to Christianity while in prison. **Steven Renfro** was executed in Texas on 9 February. He had been convicted and sentenced to death less than 10 months previously. He had asked that no appeals be pursued and that his execution be carried out as soon as possible. **Michael Edward Long** was executed on 20 February in Oklahoma. He waived the remainder of his appeals after spending 10 years under sentence of death. Since 1991 death row inmates in Oklahoma have been housed in the State Penitentiary’s H-Unit. Amnesty International has described the conditions under which death row prisoners are held in H-Unit as amounting to “cruel, inhuman or degrading treatment”, in violation of international standards.<sup>10</sup>

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<sup>10</sup> *Amnesty International: United States of America: Conditions for death row prisoners in H-Unit, Oklahoma State Penitentiary.* May 1994. AI Index: AMR 51/34/94.

## THE UNUSUAL WORLDWIDE BECOMING ROUTINE IN THE USA

US society's belief in the death penalty as an appropriate response to certain violent crimes remains firm, according to opinion polls, and politicians continue to use capital punishment in their electoral campaigning as a means of drumming up public support for their cause. For example, when Al Checchi announced his candidacy for the Governorship of California in September 1997, he proposed that the death penalty be more strongly enforced and also be extended to apply to serial rapists and repeat child abusers. A criminal law professor at Stanford University accused Checchi of engaging in "pure demagoguery".

A prosecutor seeking the death penalty during a trial in North Carolina in 1997 highlighted the trend towards severe sentencing in the US. The trial of **Thomas Richard Jones** is believed to be the first in the USA to have considered imposing a death sentence for a drink-driving offence. In May, he was convicted of first-degree murder for killing two 19-year-old female students while driving recklessly under the influence of alcohol and painkillers. The District Attorney sought the death penalty, the jury convicted Jones of capital murder, but at the sentencing phase he was given life imprisonment without parole. The sentence is believed to have set a US precedent for a traffic offence.

In 1997, Texas confirmed its status as the principal death penalty state within the USA when it accounted for half (37) of the executions carried out during the year<sup>11</sup>. However, other states made moves during the year to renew or reaffirm their use of the death penalty.

In early 1997, Kentucky reportedly spent \$32,600 to upgrade and rewire its electric chair, in preparation for its resumption of executions after a 35-year gap. **Harold McQueen** was electrocuted on 1 July, the first execution in the state since 1962. The jury which had sentenced him to death was unaware of mitigating evidence in his case, including evidence of brain damage.

The execution of **Gary Lee Davis** on 13 October was the first in Colorado since 1967. In his denial of Davis' clemency petition, Governor Roy Romer acknowledged that *"there undoubtedly has been some remorse that has grown into his soul, into his heart. And there undoubtedly has been some rehabilitation of his character and his demeanor."* But, the Governor continued: *"I do not believe that whatever remorse or rehabilitation that is displayed here justifies reaching that extraordinary event that would cause this governor to give him clemency..."* In September, leaders of the 13-denomination Colorado Council of Churches had met with Governor Romer to appeal for clemency.

1997 saw the first "non-consensual" execution in Maryland in over 36 years when **Flint Gregory Hunt** was executed on 2 July. Three years earlier John Thanos had become the first person to be executed in the state since 1961, after choosing to abandon his legal appeals.

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<sup>11</sup> The use of the death penalty in Texas remains a cause for very particular concern. For further information see: *Amnesty International: The death penalty in Texas: Lethal Injustice*, AI Index: AMR 51/10/98, March 1998.

In August, a jury recommended a death sentence for **Gary Kleypas**. When the judge confirmed the sentence on 20 March 1998, Kleypas became the first person sentenced to death in Kansas since the death penalty was reinstated there in 1994. The last execution in the state was in 1965. As there is currently no death chamber in Kansas, officials began making preparations for the construction of one after the jury made its recommendation. A spokesperson was reported as saying that the Kansas authorities would visit some lethal injection chambers around the country, and had already talked to their counterparts in Texas about their experience with carrying out executions.

### **Individual state moves to reintroduce the death penalty**

In Iowa a bill proposing the reintroduction of the death penalty looked set to be debated in the state legislature in early 1997. However, concern that the punishment could be imminently reintroduced subsided when the deadline for voting in the state's House of Representatives was missed. On 12 February 1998, proponents of the death penalty in Iowa decided to drop their plans for a full debate because of lack of support. The issue will not be raised again during 1998. Public hearings were dominated by opponents of the death penalty. The Governor of Iowa described opposition to the death penalty as "strong and organised" but stated that reintroduction was "...a matter of time." The last execution in Iowa was in 1963; the state abolished the death penalty in 1965.

Fifty years after the last execution in Massachusetts, a bill to reinstate the death penalty there failed by the narrowest of margins in the state's House of Representatives. One representative, John Slattery, changed his mind at the eleventh hour and voted against reinstatement after talking to constituents about the case of Louise Woodward, a British nanny convicted the week before of the murder of an infant in her care. Slattery said that the conversations had left him with a "*deeply unsettling conviction about the possibility of executing the wrong person*". His change of heart resulted in a tied vote, meaning the bill was defeated. In the lead-up to November's vote, one of the bill's opponents, Attorney General Scott Harshbarger, had said "*There is not a shred of credible evidence that the death penalty lowers the murder rate. In fact, without the death penalty the murder rate in Massachusetts is about half the national average. Maybe other states should be learning something from us.*" The last execution in Massachusetts was in 1947.

### **USA AND THE DEATH PENALTY: INTERNATIONAL CONCERN GROWS**

International concern about the application of the death penalty in the USA continues to grow. 1996 had seen the publication of a report on the death penalty in the US by the International Commission of Jurists (ICJ)<sup>12</sup>, an independent organization which takes no position on the death penalty *per se*. The ICJ concluded that "*the administration of the death penalty in the United States will remain arbitrary, and racially discriminatory, and prospects of a fair hearing for capital offenders cannot (and will not) be assured*" without substantial remedial

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<sup>12</sup> International Commission of Jurists: *Administration of the death penalty in the United States. Report of a Mission*. June 1996

steps, such as controlling prosecutorial discretion in seeking a death sentence, ensuring jury selection is free of race and class bias, and providing adequate legal representation. It went on to argue that *“so long as trial and appellate courts are presided over by judges whose term of office depends on periodic and partisan elections, the tendency and temptation to respond to and assuage public opinion will continue to influence the handling of capital cases. Given that public opinion at present is avowedly in favour of the death penalty, the guarantee of a trial by an independent tribunal is at risk.”*<sup>13</sup>

## **U N   S p e c i a l R a p p o r t e u r ’ s   v i s i t   t o t h e   U S A**

From 21 September to 8 October 1997, a United Nations team, led by Waly Bacre Ndiaye, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, conducted a mission to the USA to investigate, among other human rights issues, the country’s use of the death penalty. The Special Rapporteur met with various federal and state officials, prison authorities, death row inmates, and non-governmental organizations.

Despite the fact that he had been invited by the US Government, with the dates of his visit agreed in advance, serious difficulties arose in the organization of official meetings. On 18 September, when none

### **Special Rapporteur’s report on his mission to the USA, 1997**

The Special Rapporteur reiterated the view of the UN Human Rights Committee that the reservation on the use of the death penalty against juveniles which the USA made when it ratified the International Covenant on Civil and Political Rights (ICCPR) is "incompatible with the object and purpose" of the treaty and should be considered void. He concluded that the US practice of imposing the death penalty on juveniles violates international law, and that "the reintroduction of the death penalty and the extension of its scope, both at federal and at state level, contravenes the spirit and purpose of article 6 of the ICCPR." He was also concerned by the execution of mentally retarded persons in contravention of international standards.

The report said that the "lack of adequate counsel and legal representation for many capital defendants is disturbing", and observed that the imposition of death sentences in the USA seems to continue to be marked by arbitrariness. He wrote that "race, ethnic origin and economic status appear to be key determinants of who will, and who will not, receive a death sentence."

The rapporteur went on to raise doubts about the objectivity of the imposition of the death penalty given its politicization in the USA, "particularly during election campaigns". He also wrote that "the discretionary power of the prosecutor as to whether or not to seek the death penalty raises serious concern regarding the fairness of its administration." The Special Rapporteur acknowledged that polls continue to demonstrate an apparently high level of public support for the death penalty, but that this "cannot justify the lack of respect for the restrictions and safeguards surrounding its use. In many countries, mob killings and lynchings enjoy public support as a way to deal with violent crime and are often portrayed as ‘popular justice’. Yet they are not acceptable in any civilized society."

The report acknowledged the difficult struggle against violent crime, but suggested that the "inherent cruelty of executions might only lead to the perpetuation of a culture of violence" and that alternatives solutions to the death penalty be sought. He also expressed concern at the current approach to victims’ rights, and while agreeing that "victims are entitled to respect and compassion, access to justice and prompt redress, these rights should not be implemented at the expense of those of the accused. Courts should not become a forum for retaliation."

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<sup>13</sup> For further information on the death penalty as a political tool, see *Amnesty International: USA: Death penalty developments in 1996*. March 1997, AI Index: AMR 51/01/97

of the high-level meetings he had requested at the federal level had been arranged, he wrote to the UN High Commissioner for Human Rights expressing concern at the obstacles his mission was facing.

During the mission there was some hostility from within US political circles. In a letter to the US ambassador to the UN, dated 6 October, Jesse Helms, chairman of the Senate Foreign Relations Committee, asked "Is this man confusing the United States with some other country, or is this an intentional insult to the US and our nation's legal system?" Helms characterized the UN mission as "a perfect example of why the United Nations is looked upon with such disdain by the American people" and urged the ambassador to "reverse all State Department cooperation with this absurd UN charade." A spokesperson from Helms' office, is reported to have said "sounds like its none of his (Waly Bacre Ndiaye's) business. And what's it like on death row in Senegal, I'd like to know." This was presumably said because the Special Rapporteur is a Senegalese national (a fact which is irrelevant to his role as a UN official). It should be noted that Senegal is abolitionist in practice, having not used the death penalty since 1967.

On 3 April 1998, the Special Rapporteur released his mission report on the USA to the UN Commission on Human Rights in Geneva<sup>14</sup> (see box). Among other recommendations, he urged that the USA establish a moratorium on executions. At the time of writing the US administration had not commented on the report, but some other politicians were reported to have voiced their opinions. A spokesman for Jesse Helms responded: "With all the abuses in places like Burma, China, Cuba and Iraq, to be wasting time and money to be investigating the freest country in the world shows what a strange and distant planet the United Nations inhabits." Republic National Committee Chairman Jim Nicholson called on the "Clinton administration and UN Ambassador Bill Richardson to clearly and publicly renounce this report." He urged that money owed to the UN by the USA should not be paid "until the report is formally withdrawn and apologized for".

### **No reply to Amnesty International's letter to federal authorities**

On 21 August 1997, Amnesty International wrote to the federal authorities<sup>15</sup> to reiterate its concern about the arbitrary application of the death penalty in the US and about measures at federal and state level to restrict appeals. While the organization welcomed the US government's stated commitment to ensuring competent counsel for those facing the death penalty, it pointed out that this was inconsistent with its removal of funding in 1996 for the Post-Conviction Defender Organizations (PCDOs). It gave the example of **Exzavious Gibson**, a Georgia death row inmate with an Intelligence Quotient (IQ) of between 76 and 81, who in late 1996 was forced to go to Augusta Circuit Superior Court for a state *habeas corpus* hearing without legal counsel, in clear breach of international standards.

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<sup>14</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr Bacre Waly Ndiaye, submitted pursuant to Commission resolution 1997/61. Addendum: Mission to the United States of America. E/CN.4/1998/68/Add. 3. 22 January 1998.

<sup>15</sup> Amnesty International's communication was in response to the letter received from the US government at the end of 1996. See *Amnesty International: USA: Death penalty developments in 1996*, March 1997, AI Index: AMR 51/01/97

Amnesty International reiterated its belief that the death penalty in the USA is disproportionately imposed on the basis of race<sup>16</sup>. It noted that President Clinton remained concerned with issues surrounding race in the USA and had appointed a seven-person advisory board to look at ways of improving race relations. However Amnesty International expressed its dismay about a report that the President had stated that the board's remit would not extend to racial disparities in death sentences as "the US Supreme Court has made a decision there, and the overwhelming majorities of all racial groups favor capital punishment."

In its letter, Amnesty International expressed extreme concern that President Clinton should cite public support as a justification for a human rights violation and as an excuse not to investigate racial disparities in the administration of the death penalty, disparities which would be in clear violation of the US Constitution. In 1987 the US Supreme Court went on record as being willing to tolerate racism. In its majority ruling in *McCleskey v Kemp*, the Court stated "...the Baldus study indicates a discrepancy that appears to correlate with race. Apparent disparities in sentencing are an **inevitable** part of our criminal justice system." (emphasis added). It is therefore not enough to rely on the US criminal justice system to provide adequate remedy to correct racism in death penalty cases.

To date, Amnesty International has received no response from the federal authorities.

The death penalty in the USA became the focus for worldwide public concern from late 1997 when **Karla Faye**

**Tucker**, sentenced to death in 1984, was scheduled for execution in Texas on 3 February 1998. In early December, in an unprecedented move, the chair of the Texas Board of Pardons and Paroles interviewed Tucker. However, the Board voted 16-0 to deny clemency and Governor Bush refused to intervene. Tucker became the first woman to be executed in the USA since 1984 and the first in Texas since 1863. Among those who had supported her plea for clemency was the US television evangelist Pat Robertson, a supporter of the death penalty, who reportedly said "*This thing is vengeance, it makes no sense. This is not the same woman who committed those crimes*". While on death row, Tucker had educated herself and become deeply religious. She never denied her involvement in the two murders for which she was convicted, and spoke of her desire to help others learn from her experience. The execution sparked off a wave of outrage around the world. The UN High Commissioner for Human



**Execution of Karla Faye Tucker: demonstrators outside the prison**

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<sup>16</sup> Of the 74 people (41 white, 26 black, four Latinos and two Native Americans) executed in 1997, nearly 84% had been convicted of the murder of a white victim, even though ethnic minorities in the USA are murder victims in almost equal numbers as whites.

Rights, Mary Robinson, said that the increasing use of the death penalty in the USA was of great concern and ran counter to the world trend towards abolition. The front pages of many national newspapers around the world were devoted to the execution.

## **NON-COMPLIANCE WITH INTERNATIONALLY-AGREED RESTRICTIONS**

International human rights standards encourage abolition, but recognizing that the move towards such a goal worldwide is inevitably gradual and piecemeal, such standards seek to at least limit the scope of capital punishment for those countries which retain it. Pregnant women, juvenile offenders (those who commit offences when under the age of 18), the insane, and the mentally ill or retarded are specifically protected. Of these groups of defendants, the USA continues to use the death penalty against both juvenile offenders and the mentally ill or retarded.

### **Death penalty against juvenile offenders<sup>17</sup>**

Article 6(5) of the International Covenant on Civil and Political Rights (ICCPR) prohibits the sentencing to death of people who were under 18 years old at the time of the crime. However, when the USA ratified the ICCPR in 1992, it reserved the right to impose the death penalty on juvenile offenders. The UN Convention on the Rights of the Child states: "Neither capital punishment nor life imprisonment without the possibility of parole shall be imposed for crimes committed by persons below 18 years of age." The USA remains one of only two countries not to have ratified this convention (the other is Somalia). Only six countries have executed child offenders in the 1990s (USA, Iran, Nigeria, Pakistan, Saudi Arabia and Yemen); the USA accounts for the majority of known juvenile executions (six since 1990). There are currently over 60 juvenile offenders on death row in the USA.

While no juvenile offenders were executed in the USA during 1997, five such offenders were sent to death row. **Keith M. Brennan** (Florida), **Chauncey Jackson** (Virginia) and **Marcus Pressley**, were sentenced to death for crimes committed when aged 16, and **Mark Arthur** (Texas) and **David Snipes** (Florida) received death sentences for crimes committed when they were 17 years old. At the time of writing, at least two other juvenile offenders had been sentenced to death in 1998, **Randy Arroyo** (Texas, aged 17 at time of crime) and **Roderick Ferrell** (Florida, aged 17 at crime).

Amnesty International took urgent action on the case of 17-year-old **Azikiwe Kambule**, who was facing a possible death sentence in Mississippi for his role in the murder of social worker Pam McGill. Far from displaying any tendency to adhere to international restrictions on the use of the death penalty against juveniles, the case showed the lengths to which a prosecutor was willing to go to obtain a death sentence.

According to reports, Kambule was travelling in a car with Santonio Berry, aged 21, on 25 January 1997, when Berry spotted Pam McGill in a red sports car and decided to follow her in order to steal the car. When McGill stopped outside her home Berry forced her at gunpoint

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<sup>17</sup> See *Amnesty International: Juveniles and the Death Penalty - Executions Worldwide since 1985*. AI Index: ACT 50/02/98, January 1998.

to get back into the car and told Kambule to get in the back seat. He then drove to a secluded wood, told Kambule to wait, and forced McGill to walk into the woods where he shot her. Kambule claims that he was unaware that Berry intended to steal a car until it happened and was also unaware that Berry intended to murder McGill.

As the crime began in Hinds County, but the murder actually took place in Madison County, either District Attorney could have tried the case. However, the District Attorney for Hinds County, Ed Peters, requested that the trial take place in Madison County because *“The family [of the victim] from the beginning has expressed a desire that the people charged get the death penalty and the best way to do that is to send it to another county. The jurors in Hinds County have a reputation for refusing to vote for the death penalty. Certain judges in Hinds County have gotten so prejudiced against the prosecution that they won’t even allow confessions to be entered as evidence.”*

The case against Kambule, a South African national, provoked widespread interest in South Africa, which abolished the death penalty for ordinary crimes in 1995. Quoted in a South African newspaper in February, Madison County District Attorney John Kitchens said that he would continue to seek the death penalty, despite appeals for him not to, on the grounds that it is a deterrent. *“It’s just a bunch of these anti-death penalty zealots mouthing off. I want to see how they would react to their children being murdered. The death penalty is the only deterrent we have in this country to stop these senseless murders going on.”* No research has ever shown the death penalty to be a uniquely effective deterrent.<sup>18</sup>

In the event, Berry accepted a plea-bargain from the Madison County District Attorney of life imprisonment without parole in return for a guilty plea and testimony against Kambule. As part of the plea-bargain, Berry also admitted to shooting McGill. The District Attorney also offered Kambule a plea-bargain of life imprisonment without parole which, asserting his innocence, Kambule refused.

In pre-trial proceedings, the judge ruled that the prosecution team could not seek the death penalty for Kambule when the triggerman, Berry, received a life sentence without parole after pleading guilty. Despite this ruling, the District Attorney could have continued with the charge of capital murder in order to gain a sentence of life imprisonment without parole. Mindful of this, Kambule agreed to plead guilty to aiding and abetting car-jacking and assisting in the attempt to sell the stolen car in return for the charge of capital murder being dropped. At the sentencing, Kambule received the maximum sentence of 35 years’ imprisonment.

In a reply to an Amnesty International member who had appealed for the death sentence not to be sought, the office of the Governor of Mississippi wrote *“I realize that this matter is important to you, but I regret that you are less concerned about the murdered victim, Pamela McGill, that you are about the man [sic] who was involved in her murder. I should add - because I doubt Amnesty International told you - that Ms. McGill happened*

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<sup>18</sup> According to US Bureau of Justice Statistics, the national US murder rate in 1996 was 7.4 murders per 100,000 of population. The South had the highest rate at 9 per 100,000, yet the southern states execute by far the largest number of people. The murder rate was 5.4 in the Northeast, the region with fewest executions. In the District of Columbia, which does not have the death penalty, homicides reportedly fell by 25% in the first half of 1997 compared with the same period in 1996.

*to be an African-American who spent her life working to improve the lives of the poor in Mississippi.”* This not only implies that Amnesty International deceives its activists, but also seems to suggest that the decision as to whether to seek the death penalty in any particular case should be influenced by references to the victim’s character. The murder of Pamela McGill, irrespective of her activities when she was alive, was a tragedy; killing those responsible would compound the brutality.

At the time of writing, Texas had scheduled the execution of two juvenile offenders, **Joseph John Cannon** on 22 April, and **Robert Anthony Carter** on 18 May 1998.

Cannon was sentenced to death for the murder of Anne Walsh in 1977. He was 17 years old at the time of the crime. The jury who sentenced him were unaware of his serious mental health problems and his profoundly disturbed childhood. One psychologist has described Cannon's case history as "exceptional" in terms of the brutality and abuse he had been subjected to as a child. Such was the "depravity and oppressiveness" of his upbringing that Cannon has thrived better on death row than he ever did in his home environment. He has learned to read and write on death row.<sup>19</sup>

Robert Carter, who an Amnesty International delegation met during 1997, was sentenced in 1982 for the murder of Sylvia Reyes in 1981, when Carter was 17. Due to his inadequate legal representation, the jury was not invited to consider as mitigating evidence Carter’s age at the time of the crime, the fact that he was mentally retarded, brain damaged, and had suffered brutal physical abuse as a child.<sup>20</sup>

### **Executions of the mentally ill or mentally retarded**

United Nations Economic and Social Council (ECOSOC) resolution 1989/64, adopted in May 1989, recommends "eliminating the death penalty for persons suffering from mental retardation or extremely limited mental competence".

**Terry Washington**, sentenced to death for the murder of a college student in 1987, was executed in Texas on 6 May 1997. Psychological testing following his sentencing indicated that he had the mental age of seven, and in two IQ tests he scored 58 and 69, below the threshold for significant mental retardation. On appeal, a federal court agreed that he suffered from organic brain damage attributed to fetal alcoholic syndrome, which was exacerbated by years of appalling poverty, physical abuse and constant seizures. Terry Washington’s jury knew none of these facts because his defence failed to present any mitigating evidence.

Washington’s lawyer made no attempt to explore his client’s mental capabilities or his background. His trial attorney later conceded that he was unaware of a US Supreme Court decision that allows funding for defence attorneys to hire mental health experts for conducting

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<sup>19</sup> Amnesty International Urgent Action 60/98, AI Index: AMR 51/13/98, 26 February 1998

<sup>20</sup> See *Amnesty International: United States of America: Robert Anthony Carter: Juvenile Offender Scheduled to be Executed in Texas*. April 1998, AI Index: AMR 51/24/98

pre-trial examinations. Medical evaluations conducted after Washington's trial concluded that he would have been unable to assist in his own defence and that he was totally unaware of his surroundings during trial.

In a double execution on 19 November in Illinois, **Durlyn Eddmonds** and **Walter Stewart**, were put to death by lethal injection. Durlyn Eddmonds had been sentenced to death in 1980 for the 1977 murder of nine-year-old Richard Miller. Eddmonds was diagnosed as schizophrenic in 1973 and strong doubts were expressed regarding his competence to stand trial between 1977 and 1980, during which time he was diagnosed with schizophrenia on six occasions. Two psychiatrists concluded that Eddmonds was under the influence of extreme mental and emotional disturbance at the time of the murder.

Eddmonds's court-appointed lawyer failed to investigate and present the evidence concerning Eddmonds's mental illness at his trial believing that a competency hearing to determine whether he was fit to stand trial had already taken place.

**Tony Mackall** was executed in Virginia on 10 February 1998, despite evidence that he was mentally retarded and had suffered head injuries as a child. According to his attorney, the jury who sentenced him to death were unaware of this mitigating evidence.

## INCREASING CONCERN ABOUT FAIRNESS IN CAPITAL CASES

Amnesty International's concerns about the USA's failure to meet minimum standards for trials in capital cases continued in 1997 and were strongly echoed from within the US legal community, whose members come into close contact with the application of the death penalty across the country.

On 3 February, the American Bar Association (ABA), which does not oppose the death penalty *per se*, called for an immediate moratorium on executions in the USA until the procedures used in capital cases meet basic principles of fairness and reliability. The ABA's resolution stemmed from its concerns about: 1) inadequate and underfunded legal representation, often conducted by lawyers unfamiliar with the complexity of capital cases; 2) barriers to appeals lodged on the

*"My thirty years' experience on this court have compelled me to conclude that the imposition of the death penalty is arbitrary and capricious...I am not convinced that we have in place adequate legal procedures to ensure that capital sentences are not handed down in violation of the law. Recent changes in our federal habeas corpus rules have only compounded the difficulty of the federal courts to adjudicate federal claims in capital cases. As a result of this complex legal morass, many persons sentenced to death have legitimate constitutional claims that will never be addressed on the merits by any court...The problems are inherent in the enterprise itself. Because I am confident that no death penalty system can ever be administered in a rational and consistent manner, I do not explore at this time whether the death penalty itself (in some "perfect" application) violates the Eighth Amendment's intrinsic worth of the men and women whom the state puts to death"* Eighth Circuit Senior Judge Gerald Heaney, March 1997 (*Singleton v. Norris*).

grounds that a death sentence violated the Constitution or federal law. This has been compounded by the recently enacted restrictions on *habeas corpus* appeals under the Anti-Terrorism and Effective Death Penalty Act<sup>21</sup>; and 3) failure to confront the fact that racial bias and poverty continue to play an unacceptable role in determining who is sentenced to death. The ABA, which represents almost 400,000 across the USA, also reiterated its opposition to the execution of mentally retarded people and juvenile offenders.

Other US bar associations followed the example set by the ABA and adopted their own resolutions during 1997. The Chicago Council of Lawyers called for a moratorium on executions in Illinois, saying that the reliability of the state's legal system was in doubt given that seven death row inmates had been found to have been wrongly convicted in the past three years. The Council drafted a legislative bill providing for a one-year moratorium on executions.

On 31 October the Pennsylvania Bar Association, which represents 27,000 lawyers, called for a moratorium on executions "until such time as the fair and impartial administration of the death penalty can be ensured." A spokesman at the office of the Attorney General of Pennsylvania is reported to have responded to the resolution by saying that the Bar Association was "out of touch with the people of Pennsylvania". While it is true that US public opinion, as conducted in polls, is often shown to be strongly in support of the death penalty, it is unlikely that the US public would show the same support for its arbitrary, discriminatory and unreliable application.

The Pennsylvania vote was followed on 25 November by the passing of a resolution by the Philadelphia Bar Association calling for a moratorium on executions in Pennsylvania "until such time as the fair and impartial administration of the death penalty can be ensured and the risk that innocent persons may be executed is minimized." Amnesty International's Secretary General, Pierre Sané, in Philadelphia at the time (see above), was present at this meeting and spoke in favour of the resolution. Pennsylvania has the fourth largest death row in the USA, with over 200 inmates.

Two senior judges have recently voiced their opinion that alternatives to the death penalty should be considered purely on the grounds that capital cases are too time-consuming. At the end of 1997, Superior Court Judge Gordon Battle of North Carolina, retiring after 20 years as a judge, was reported as saying: "*We'd be better off if we didn't have the death penalty. Our Superior Court spends half its time hearing death penalty cases. It doesn't seem worth it.*" Florida's Chief Justice Gerald Kogan, who is not opposed to the death penalty *per se*, reportedly said that alternatives to the death penalty in Florida should be considered as it monopolizes too much of the Supreme Court's time.

At the end of the year, John J. DiIulio, a professor at Princeton University and a well-known advocate of a tough approach to crime, wrote: "*The death penalty as it has been administered, is administered, and will likely continue to be administered is arbitrary and capricious. As a political matter, that's not likely to change. This who-shall-live lottery*

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<sup>21</sup> See *Amnesty International: USA: Death Penalty Developments in 1996*, AI Index: AMR 51/01/97, March 1997

*is unjust both as a matter of Judeo-Christian ethics and as a matter of American citizenship. Since we can't apply it fairly, we ought to consider abolishing it."*<sup>22</sup>

## CASES IN 1997 ILLUSTRATING CONCERNS IN CAPITAL PROCEEDINGS

*"All defendants facing the imposition of capital punishment must benefit from the services of a competent defence counsel at every stage of the proceedings"*<sup>23</sup>

A case which received widespread attention in 1997 was that of **Alan Jeffrey ("A J") Bannister**, whose clemency petition stated that he had received "woefully inadequate defense". His court-appointed attorney, who met with him only three or four times prior to the trial, did little or no investigation of the facts surrounding the case, and presented "absolutely no defense" during either the verdict or sentencing phases of the trial. The trial lasted just three days and the jury convicted him in March 1983 after less than an hour of deliberation.

Bannister was convicted of the murder-for-hire killing of Darrell Ruestman in August 1982. At the trial, the prosecution's theory was that Bannister was a hired "hit man", which was not refuted by his attorney. However, investigations conducted since 1991 suggest that Bannister was not hired to kill Ruestman, but was instead persuaded that the latter wanted to kill him because of a mix-up over a drugs deal. Bannister visited Ruestman's home and shot him, allegedly during a struggle.

A J Bannister's subsequent attorneys argued that his execution would be disproportionate to the nature of the crime, and a clear miscarriage of justice. They urged Governor Carnahan to order an inquiry to establish the facts of the crime, and to consider the issue of Bannister's inadequate legal defence. The police officer responsible for arresting Bannister issued statements supporting his application for clemency on the grounds that the punishment of death was not appropriate to the crime, that Bannister was ineffectively represented at the trial, and that his police colleagues "embellished" statements made by Bannister after his arrest.

Bannister's appeal was denied by the 8th Circuit Court of Appeals. However, in a dissenting opinion Judge Bright stated: "*These roadblocks* [to allowing Bannister's appeal] *I*

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<sup>22</sup> The Wall Street Journal, 15 December 1997

<sup>23</sup> *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur...*, UN document No. E/CN.4/1997/60, 24 December 1996, paragraph 81.

*emphasize, are procedural and in no way reflect on the merits of Bannister's claims. If these issues remain unaddressed Missouri may execute a man without offering him a fair trial or competent legal representation. Because this court cannot address those issues on their merits, we must rely on other authorities - either the United States Supreme Court or, if not, the Governor of Missouri - to review the record and address Bannister's contentions."*

In August Governor Carnahan had stayed the execution of another death row prisoner, **William Boliek**, on the grounds that he may have received inadequate legal representation at his original trial. However no such stay was forthcoming for A J Bannister, and he was executed by lethal injection on 22 October, despite an international campaign to save his life. Web sites were posted on the Internet concerning his case and supporters flooded state officials with letters, faxes, and e-mails from around the world. The State Attorney General's office stated that many letters were still pouring in on the day of the execution, and that the attention that his case had received was unprecedented in Missouri. Hollywood stars such as Sean Penn, Harry Belafonte, Gregory Peck and Ed Asner, as well as the police officer who originally arrested him, had all made appeals on his behalf. Asner had travelled to Missouri's capital the day before Bannister's execution to plead on his behalf.

**Thomas Thompson**, scheduled to be executed in California on 5 August 1997 for the 1981 rape and murder of Ginger Fleischli, had his death sentence overturned by the 9th US Circuit Court of Appeal shortly before he was due to die.

On 3 August, the Court voted 7-4 to overturn Thompson's rape conviction, thereby rendering the death sentence invalid as it had been based on his conviction for murder during a felony (rape). In its ruling the Court stated that Thompson's trial lawyer had provided him with inadequate defence, and that the prosecution's use of conflicting theories of the murder in the separate trials of Thompson and his co-defendant (who was sentenced to 15 years' imprisonment) violated Thompson's right to due process of law.

There was a degree of anger against the Court's decision, illustrating the pressure for the death penalty in some quarters. The prosecution appealed the decision to the US Supreme Court stating that it believed the Court's decision "cuts against the very nature of the death penalty reforms that were enacted by the Congress and the president a year ago to prevent these types of successive appeals." This was a reference to the Anti-terrorism and Effective Death Penalty Act signed into law by President Clinton in April 1996.

The 9th US Circuit Court's decision was criticised by California's governor, Pete Wilson, who said it was the decision of a "coterie of liberal judges". California Attorney General Dan Lungren, in an apparent attempt to influence, via public pressure, the US Supreme Court's decision, described the decision as "inexplicable...it sends a message to the victims that justice delayed is tough luck for you" and said that he hoped the US Supreme Court would put an end to the "9th Circuit circus".

Prison officials continued with preparations for Thompson's execution in case the US Supreme Court ruled to reinstate the rape conviction. Thompson had said goodbye to visiting friends and relatives and was about to be moved to the deathwatch cell on the evening of 4

August, a few hours before his execution, when notification that the US Supreme Court had upheld the stay came through.

Earlier in the year seven former California prosecutors, all supporters of the death penalty, issued an *Amici Curiae* (friends of the court) brief in support of Thompson because they had doubts about his conviction. They detailed their concerns about the case, including the many different versions of events presented at different times by the prosecution. The brief stated: “*If certiorari (the appeal) is denied, and Thompson is executed, the message that will be conveyed is that carrying out death sentences is more important than ensuring that criminal prosecutions in the name of the People do not involve the manipulation of facts, and witnesses, and ultimately, the truth, and that defense lawyers competently represent capital clients so that the jury’s verdicts are a result of a fair and reliable adversarial process. In addition, should evidence later be uncovered demonstrating Thompson’s innocence or lesser culpability, it will be tragically too late for justice to prevail.*”

***“Defendants must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence”.***<sup>24</sup>

**Joseph Stanley Faulder**, a Canadian national, and **Cesar Fierro**, a Mexican national, scheduled to die in Texas during the year, received indefinite stays late on in the appeal process.<sup>25</sup> In both their cases, the proceedings leading up to their death sentences suggested that conviction at any cost outweighed the need to maintain the highest standards of evidence and legal process.

Joseph Faulder’s stay was based on evidence presented by his attorneys that the two key prosecution witnesses at the original trial lied to the jury, that the prosecution knew they were lying and that crucial evidence implicating an uncharged accomplice was suppressed. The trial court has been ordered to hold a hearing to examine the issue of prosecutorial misconduct in the case. The granting of a stay of execution at such a late stage of the appeal process is extremely rare.

Cesar Fierro received an indefinite stay of execution from the Fifth Circuit Court of Appeals and was granted a full hearing. It is also extremely rare for US Federal courts to grant a full hearing for a *habeas corpus* appeal at such a late stage in the proceedings.

Fierro was sentenced to death in 1980 for the murder of taxi driver Nicolas Castanon in El Paso a year earlier. Fierro was convicted on the testimony of a juvenile eyewitness, allegedly mentally-impaired, given some five months after the murder, and his own testimony which, it later emerged, was obtained under duress by US police.

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<sup>24</sup> UN Special Rapporteur... See note 23 above

<sup>25</sup> The right of consular access for both men was violated by the arresting authorities. Canadian officials remained unaware of Faulder’s plight for 15 years, and the Mexican authorities believe that had they been informed of Fierro’s arrest, they could have prevented his forced confession. See section on "Rights of Foreign Nationals Violated" below.

In 1994, an El Paso district judge had recommended that Cesar Fierro be given a new trial. In 1996, however, the Texas Court of Criminal Appeals refused to follow the recommendation after creating a new “harmless error” rule. This enabled the Court to dismiss the appeal by stating that the police misconduct did not require the conviction to be overturned.

In an opinion dissenting from the majority, Judge Oversheet stated: *“One can have eyewitness testimonial evidence, circumstantial evidence, scientific evidence, and even videotaped evidence; but a confession explicitly admitting guilt signed by the defendant is the most powerful piece of evidence that can ever be introduced against him and will surely serve as the key that will lock the jail-house door and provide the juice to power the electric chair; and in these more civilized times, the juice for the needle. Because the majority finds that the perjurious testimony which paved the way for the erroneous admission of applicant's involuntary coerced confession was immaterial, i.e. not harmful, I strongly dissent with principle.”*

*“...all mitigating factors must be taken into account.”*<sup>26</sup>

By the time **Kenneth Ransom** was nine years old, he had suffered prolonged physical and emotional abuse at the hands of his mother and brothers. He was taken into care by the Texan authorities, where the records of the Harris County Child Welfare agency show that the abuse had included whippings with electrical cord and hot wires. Social workers who examined the child noted that the wounds and burns covered almost his entire body.

When he was 20, Kenneth Ransom was arrested for his part in the murder of four employees at a Houston amusement centre during a robbery. At the sentencing phase of the trial, when the jury would choose between life and death for the defendant, the jurors were left unaware of the abuse Ransom suffered as a child. This was despite the fact that his lawyers knew of his appalling childhood, as one of them had represented his mother when the state removed her children from her care. One of the lawyers, who has since been suspended from practising law due to his unprofessional behaviour in another case, presented no mitigating evidence and made only a brief, rambling statement requesting a life sentence. He opened with an apology for his lack of personal hygiene: *“I'm going to stand a little further back from you than I did yesterday and the reason for that is I got my water cut off twice yesterday. Figuratively and literally. I got home yesterday evening and the plumber had come but he couldn't solve the situation so I didn't have any water last night and I didn't get to take a bath”*. Kenneth Ransom was sentenced to death.

On 9 October 1997, Ransom met with an Amnesty International delegation visiting Ellis-1 Unit where he was being held. He acknowledged his guilt, but not of capital murder: *“When*

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<sup>26</sup> UN Special Rapporteur... See note 23 above

*this crime took place, I was at the dumbest point of my life. I wanted to meet with guys who I thought were cool. I never had a male figure to look up to and associate with. Now I have advanced beyond that stage... I have so much to offer the world and society..."* He said that he had grown up in poverty, but *"I'm not using that as an excuse, but when you grow up in those surroundings your outlook is bleak. Now I know that even the poorest man can have the richest inner life. I didn't know that before. I didn't know that you could be rich and poor at the same time."*

Kenneth Ransom was executed by lethal injection on 28 October. The execution went ahead despite a new statement from the only surviving defendant in the case, James Randle, who is serving a life sentence, that Ransom had not killed any of the four victims.

Less than a month later, on 20 November, **Gary Burris**, was executed by lethal injection in Indiana. Burris had never known the date and place of his birth, but he knew precisely when and where he would die.

Gary Burris was abandoned as an infant and was raised believing he had been found in a rubbish bin by a man called Newland, who worked as a pimp. Newland raised Burris in an environment of crime; they lived above a club, operated by Newland, which was frequently raided by police for prostitution, the illegal sale of alcohol and drugs and gambling. Newland involved Burris in many of the illegal activities taking place around the club; these included being a courier for drugs and alcohol and knocking on prostitutes' doors when their clients' time was up. When Burris was 13, Newland was convicted of manslaughter and sent to prison. The authorities then placed Burris in a foster home. His foster mother reportedly remembers that when she asked him once what he wanted for Christmas, he requested a birth certificate or some information as to who he was.

Burris was sentenced to death in February 1981 for the robbery and murder of taxi driver Kenneth Chambers. Two other men involved in the crime were sentenced to prison terms. During his trial, Burris' attorneys had described him as an "insignificant, snivelly little street person" before the jury and failed to present mitigating evidence in support of a sentence less than death. Finding that this legal representation had been incompetent, the Indiana Supreme Court reversed the death sentence.

At a new sentencing hearing in 1992, the jury was unable to agree on whether or not to impose a death sentence; the trial judge chose to impose a death sentence. The Indiana Attorney General's office, in its brief to the Indiana Supreme Court, conceded that a sentence less than death would have been reasonable in Burris' case. Despite this, the Indiana Supreme Court confirmed the death sentence.

Gary Burris reportedly had an "outstanding" prison record. He was selected by Department of Corrections staff to work as a porter, a position awarded to an inmate who is trusted and liked. In 1986, Burris refused to participate in a hostage incident where other death row inmates threatened to take the life of a member of the prison staff. He made an effort to improve himself through reading and obtaining a GED (the equivalent of a high school diploma). Several Department of Corrections staff testified on Burris' behalf in support of a sentence less than death.

## **Life or death? The question of “future dangerousness”**

On 20 October 1997, in its ruling in *Brown v. Texas*, the US Supreme Court voted by 5-4 to reject a challenge to a Texas rule that bars the jury from being told when a defendant will be eligible for parole if given a sentence other than the death penalty. In Texas, a sentencing jury is asked to take into account a defendant’s “future dangerousness” before deciding between a sentence of death or life. In the case in question, the defendant, Arthur Brown, was prevented from telling the jury that a life sentence for him meant 35 years before becoming eligible for parole. For the dissenting Justices, Justice Stevens wrote that “the Texas rule unquestionably tips the scales in favor of a death sentence that a fully informed jury might not impose.” Justice Stevens cited evidence from polls that full information provided to a jury would affect its sentencing. The data shows that support for the death penalty decreases when imprisonment of at least 25 years was presented as an alternative.

Joseph O’Dell’s execution in Virginia on 23 July went ahead after the US Supreme Court denied his appeal on 19 June, also by a 5-4 vote (see section on Risk of Executing the Innocent below). O’Dell’s appeal argued that he was entitled to a new sentencing hearing because of instructions to the jury during the sentencing phase of his original trial in 1988. The prosecution had argued that O’Dell was a “future threat to society” and should therefore be put to death. However the jurors were kept unaware that O’Dell would be sentenced to life imprisonment without parole if they spared his life.

In 1994, the US Supreme Court ruled in *Simmons v. South Carolina* that a defendant facing a death sentence who had been described as a future threat to society, had a legal right to have the jury know that he will never get out of prison if the jury spares his life. However the Court ruled that this decision did not apply retroactively to O’Dell’s case. It invoked its principle that a “new rule” of constitutional law should not be available to state prison inmates who are seeking Federal court review through petitions for a writ of *habeas corpus*. The Court had adopted that position in a 1989 case, *Teague v. Lane*, as part of its effort to make *habeas corpus* relief less available to state inmates.

In a dissenting opinion, Justice John Paul Stevens said the “right to respond to an inaccurate or misleading argument [that O’Dell would present a continuing threat to society] is surely a bedrock procedural element of a full and fair hearing.” The *New York Times* described the majority opinion in the O’Dell case as a “cruel absurdity” which placed a “docket-clearing technicality” above a man’s life.

## **RIGHTS OF FOREIGN NATIONALS VIOLATED<sup>27</sup>**

There are more than 60 foreign citizens, representing 22 nationalities, on death row in the USA. In virtually every case the arresting authorities failed to notify the foreign nationals of their rights under Article 36 of the Vienna Convention on Consular Relations, a multilateral treaty ratified by the USA in 1969. Article 36 requires the authorities to promptly inform arrested foreign

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<sup>27</sup> For further information, see *Amnesty International: United States of America: Violation of the Rights of Foreign Nationals Under Sentence of Death*, AI Index: AMR 51/01/98, January 1998

nationals of their right to consular assistance. The cases of two Mexican nationals executed in 1997 illustrates the potentially vital importance of such intervention and the utter failure of the US authorities to meet their obligations under international law.

On 18 June 1997, Texas executed **Irineo Tristán Montoya**, a Mexican national sentenced to death in 1986. Following his arrest, Montoya had undergone a lengthy police interrogation without the presence of an attorney or the assistance of the Mexican Consulate. He then signed a four-page confession written in English, a language that he did not read, speak or understand. Although only 18-years-old at the time and despite his secondary involvement in the crime (he was charged as an accessory to the murder), Montoya was condemned to death. The actual killer received a prison sentence.

The Texas authorities were fully aware of Montoya's nationality but failed to inform him of his right to consular access. Shortly before the execution, the US State Department contacted the Governor of Texas, in a belated attempt to determine the circumstances surrounding the breach of Article 36. However, in a remarkable reply that showed the Texas authorities' misunderstanding of, or contempt for, international treaties, the officials refused to investigate the violation or to assess its possible impact, on the grounds that Texas was not a signatory to the Vienna Convention. A final appeal to the US Supreme Court on the treaty violation was dismissed without comment.

**Mario Benjamin Murphy** was executed in Virginia on 17 September 1997. Murphy was one of six people charged with the 1991 'murder-for-hire' of a US Navy petty officer. Murphy cooperated fully with the police and was clearly not the most culpable individual. He was the only defendant not offered a plea bargain by the prosecution and the only one sentenced to death. He was also the only foreign national.

Mario Murphy finally learned of his consular rights in 1996; however, both the prison warden and the Virginia Attorney General refused his request that they contact the Mexican Consulate on his behalf. A District Court judge later criticised Virginia officials for their "defiant and continuing disregard" of the Vienna Convention. During a hearing at the Fourth Circuit Court of Appeal, the Virginia Assistant Attorney General and two of the panel judges admitted that they had never heard of the Vienna Convention prior to the Murphy case.

The Mexican Consulate filed an *amicus curiae* brief outlining the "flexible and far-reaching assistance to avoid imposition of the death penalty" which its officials would have provided, including efforts to obtain a plea bargain and the gathering of mitigating evidence. Ignoring the obvious misconduct of state officials, the US courts ruled that the issue was "procedurally defaulted" because Murphy had failed to raise the claim at an earlier stage.

On 10 September 1997, the Mexican authorities wrote to Governor Allen expressing their concerns about Murphy's treatment stating that they had been "unable to discover a satisfactory reason why our citizen should have been singled out among his codefendants for the especially harsh penalty of death. Our experience in such matters also leads us to believe that if our consul had been involved in Mr Murphy's defense in a timely way...he would not have received the death penalty."

In an interview prior to the execution, the trial prosecutor, Robert Humphreys showed contempt for Virginia's treaty violation: "*I mean, what is the remedy? I suppose Mexico could declare war on us...To me, it's a completely ridiculous issue*". The day after the execution, the US State Department sent a formal apology to the Mexican Embassy for the failure of Virginia officials to provide Murphy with the required notification of his right to consular assistance.

In contrast, as far as its own citizens arrested abroad are concerned, the US State Department appears to consider Article 36 to be a matter of the highest importance. An *amicus curiae* brief in early 1998 for a Paraguayan national<sup>28</sup> scheduled for execution in Virginia on 14 April 1998, notes that the US State Department has on several occasions taken action in response to other nations' failure to comply with Article 36 or other treaty provisions pertaining to consular notification. For example, in chastising the Syrian government for failing to notify the US embassy in Damascus of two US nationals, the US State Department noted: "*The right of governments, through their consular officials, to be informed promptly of the detention of their nationals in foreign states, and to be allowed prompt access to those nationals, is well established in the practice of civilized nations... Detained foreign nationals are inevitably distressed by the prospect of securing and preserving their rights in a legal system with whose institutions and rules they are not familiar . . . . The consul, while fully complying with the law of the detaining state, is able to assist these nationals in securing and preserving their rights, often by helping them to obtain local counsel...*"

## **EXTRADITION IN CAPITAL CASES**

As in the case of violations of the Vienna Convention, requests for extradition in potentially capital cases can also lead to tensions between retentionist and abolitionist states.

On 30 June 1997, in the case of *United States of America v. Burns and Rafay*, the British Columbia Court of Appeal overruled the decision of the Canadian Minister of Justice to allow extradition of two Canadian nationals facing a capital trial in the USA, without seeking an assurance that the death penalty would not be imposed. Glen Burns and Atif Rafay have been charged with a brutal triple murder in the US in 1994, when they were both 18. However, writing for the majority opinion, Justice Donald said that their extradition would violate section 6(1) of the Canadian Charter of Rights and Freedoms, which states: "Every citizen of Canada has the right to enter, remain in and leave Canada." According to Justice Donald, extradition of Burns and Rafay followed by their execution would clearly violate this right upon completion of their sentence (as they would be dead), in a way that extradition for non-capital offences would not.

Article VI of the Extradition Treaty between Canada and the USA, which provides for the refusal of an extradition request in the absence of sufficient assurances concerning the death penalty, was inserted into the treaty at the request of the US authorities. At the time, 1974, the death penalty had been *de facto* abolished by the US Supreme Court, while Canada still retained

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<sup>28</sup> For further information, see: *Amnesty International: United States of America: Angel Francisco Breard: Facing death in a foreign land*. March 1998. AI Index: AMR 51/14/98

the punishment. Since then (1976), Canada has abolished the death penalty whereas the US has returned to its use. It is a sad irony that the original purpose of Article VI was to protect US citizens from the death penalty in Canada.

In October 1997 it was reported that the Mexican authorities had decided not to extradite a US national charged with the killings of four people in California in 1996, but would prosecute him themselves. Mexico has a treaty with the USA that bans the extradition of suspects who could face the death penalty if returned<sup>29</sup>. Mexican officials had said that they would only extradite David Alvarez if they received assurances that the death penalty would not be sought. The prosecuting District Attorney in Los Angeles reportedly refused to provide such assurances.

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<sup>29</sup> Mexico, abolitionist for ordinary crimes, has not carried out an execution for over 60 years.

## THE RISK OF EXECUTING THE INNOCENT

*“The appeals process in America is so lengthy that it is almost 99.999% impossible to execute an innocent person”*<sup>30</sup>

*“Despite the high court’s 1972 charge to the states to overhaul their death penalty laws to make them fairer and less arbitrary, innocent people are still being sentenced to death”*<sup>31</sup>

For many people, whether in favour of capital punishment or not, one of the factors most disturbing about the death penalty is the risk of this most irrevocable of punishments being inflicted on the wrongly convicted. Because of this risk, international standards are unequivocal in their insistence on the highest quality of judicial proceedings in capital cases. However, with the poor quality of legal representation for many capital defendants, illustrated by many of the cases above, and with the use of the death penalty continuing to be expanded in the US, and the appeals process restricted, fears are growing that more people will be sentenced to death and executed for crimes they did not commit. In July 1997 the Death Penalty Information Center published a report<sup>32</sup> detailing how, of the 69 wrongly convicted people released from death row in the USA since 1973, 17 have been released since 1993 alone (see box).

In July the Death Penalty Information Center (DPIC) in Washington issued a report which examined *“the dramatic narrowing of the opportunity to appeal and to raise newly discovered evidence of one’s innocence. The federal funding for the death penalty resource centers, which helped discover and vindicate several of the innocent people cited in this report, has been completely withdrawn. Some courts have now taken the position that it is permissible for executions to go forward even in the face of considerable doubt about the defendant’s guilt. The current emphasis on faster executions, less resources for the defense, and an expansion in the number of death cases mean that the execution of innocent people is inevitable.”*

Bill McCollum, Republican head of the House of Representatives’ Judiciary Committee, was reported as responding that “justice is not perfect”, but that the margin of error suggested by the DPIC report (about 1%) represented an acceptable level of risk.

Thirty-five-year-old Mexican national **Ricardo Aldape Guerra**, who was on death row in Texas for nearly 14 years, and who came within three hours of execution in 1992, was released in April 1997. He had been convicted in October 1982 of shooting a police officer

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<sup>30</sup> Representative Jack Critcher, State of Arkansas House of Representatives, in a letter to an Amnesty International member, dated 26 August 1997.

<sup>31</sup> Benjamin Civiletti, former Attorney General of the United States, in *“The death penalty system is still seriously flawed”*, The Christian Science Monitor, 1 August 1997.

<sup>32</sup> *Innocence and the Death Penalty: The Increasing Danger of Executing the Innocent*. July 1997, Death Penalty Information Center, 1320 18th St. NW, 5th Fl., Washington, DC 20036

during a routine traffic stop in July of that year. He was sentenced to death, but maintained his innocence of the murder charge, saying that another man in his car, who was later that day killed in a shoot-out with police, had shot the officer. In 1994 a US District Judge threw out the conviction and ordered a new trial because of police and prosecutorial misconduct. The judge stated that police and prosecutors had intimidated witnesses into accusing Aldape Guerra and had manipulated evidence to ensure a conviction. His ruling was upheld in August 1996 by the US Fifth Circuit Court of Appeals and Aldape Guerra was moved from death row in Huntsville to Harris County Jail to await a new trial. However, when at pre-trial hearings the trial judge ruled that six key prosecution witnesses could not testify because their testimony had been influenced by police, and said that there was “overwhelming evidence” that Adalpe Guerra was not the gunman, the Harris Country District Attorney dropped the prosecution.

Guerra’s case had become a *cause celebre* in Mexico, and the Mexican government had intervened directly on his behalf. After his release Guerra returned to his home in Monterrey, Mexico, but in a tragic turn of events, he was killed in a car accident in August 1997.

On 2 October 1997 **Randall Padgett** was found not guilty by a court in Marshall County, Alabama, and released. He had been sentenced to death in 1992 for the rape and murder of his estranged wife. He spent the next three years on death row, before winning an appeal in 1995 against his conviction and the right to a new trial.

On 11 November 1997 in Texas, **Kerry Max Cook** was released on bail pending his fourth trial. Cook was convicted in 1978 for the murder of Linda Jo Edwards in 1977, and in 1988 he came within 11 days of execution. In 1991 his conviction was overturned. His second trial in 1992 ended in a hung jury. In 1993, a state district judge ruled that prosecutors had suppressed key evidence. At his third trial in 1994, he was again sentenced to death. On 6 November 1996, the Texas Court of Criminal Appeals reversed his conviction, saying that “prosecutorial and police misconduct has tainted this entire matter from the outset.”

**Joseph Roger O’Dell** was executed in Virginia on 23 July 1997, despite doubts over his guilt. O’Dell had been sentenced to death in November 1986 for the murder of Helen Schartner, who was raped and murdered after leaving a nightclub on 4 February 1985.

O’Dell was convicted on the testimony of a prosecution witness who later signed an affidavit saying he lied when he testified at trial that O’Dell had confessed the murder to him in jail. The prosecution witness reportedly made his statement about O’Dell's confession because he thought he himself was facing possible life imprisonment for breaking and entering and arson and thought he might be able to make a deal for a lighter sentence. The witness was reported as saying "*I don't want an innocent man's death on my shoulders...I feel better now, I feel relieved. I knew I didn't have to lie anymore*".

Results of later DNA tests on blood found on O’Dell's clothes contradicted serology tests carried out by the prosecution at trial which linked O’Dell to the crime. About an hour before O’Dell’s execution, the Supreme Court turned down an appeal by his lawyers to stay the execution by refusing to allow new DNA tests. A few days before, the European Parliament had adopted a resolution calling on the Virginia authorities to allow such tests. Governor Allen was said to have received appeals for clemency from a wide range of non-governmental

organizations and government authorities. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, who in 1996 had noted reports that O'Dell had "extraordinary proof of innocence which could not be considered because the law of the State of Virginia does not allow new evidence into court 21 days after conviction", sent a special appeal for clemency, as did Pope John Paul II and Mother Teresa, among others.

At the time of writing there had been two more releases in 1998. **Robert Lee Miller Jr.** was released from prison in Oklahoma on 22 January. He had been on death row from 1988 to 1995. In February 1997, an Oklahoma judge dismissed the murder charges against him saying there was not enough evidence to justify his continued imprisonment. However the prosecution appealed the ruling and Miller remained in prison. Miller was convicted in 1988 of the rape and murder of two elderly women after his blood type had been found to match evidence at the scene of the crime. However, subsequent DNA tests proved there was no match, and incriminated another man, Ronald Lott, already imprisoned on similar charges. Miller's original conviction was overturned in 1995, and he was granted a new trial. Lott has now been charged with the crime.

**Curtis Kyles** was released from death row in Louisiana in February after the state dropped all charges against him. He had been in prison for 14 years and came within 36 hours of execution in November 1988, and within seven days in November 1990. In total he was subjected to five capital trials, four of which had resulted in hung juries. The one trial, his second, which had resulted in a conviction and the death sentence lasted two days. After he had lost all his appeals to state courts, he presented a federal *habeas corpus* petition, and on 19 April 1995 the US Supreme Court ruled by a vote of 5-4 that the verdict was unsafe as the prosecution had withheld crucial evidence about the unreliability of eyewitness testimony and important information about a paid informant who may have been the actual murderer. The conviction was reversed and Kyles was remanded for his third trial. This was held 17 months after the Supreme Court decision and resulted in a hung jury (10-2 for acquittal). After his next two trials resulted in hung juries also, the state dropped the charges.

According to the Death Penalty Information Center, Curtis Kyles is the 75th person to be cleared of charges and released from death row since the death penalty was reinstated. Some politicians say that such releases are the sign of a justice system working. In 1997, a spokesman for Governor Edgar of Illinois said this when he urged the public not to be alarmed by the fact that seven death row inmates in Illinois had been found to have been wrongly convicted in the past three years. In doing so he seemed to be implying that it is acceptable for a justice system to force a human being to endure for years the knowledge that one day the state will take his or her life as punishment for an offence they did not commit. Amnesty International believes that to place anyone under sentence of death constitutes cruel, inhuman and degrading treatment. In the case of two of the death row prisoners freed in Illinois in 1996, luck seems to have played more a role in their release than a well functioning justice system. Much of the investigative work which led to their release was carried out by three journalism students who happened to work on their case as a project on possible miscarriages of justice.

## **WHAT THE PUBLIC WANT?**

***“I must carry out the will of the people...”*** Governor Patton of Kentucky<sup>33</sup>

Support for the death penalty, in any country, can be born of anger and fear - anger at violent crime, fear of the social chaos such crimes seem to point to, and fear for one's own safety and the safety of others. Promises by politicians to adopt or expand the death penalty may seem to offer a palliative to these emotions and as a result some lawmakers may become unwilling to offer the leadership necessary to explore alternative responses to violent crime. But it should be possible to draw courage from the experience of those countries which have abandoned the death penalty and discovered that such a move does not result in a descent into social disorder.

In the USA, according to opinion polls, support for the death penalty remains solid and is often used by politicians to justify its retention. For example, in a letter to an Amnesty International member, dated 1 July 1997, Senator Mike Everett of the Arkansas Senate wrote: *“77% of Arkansas people favor it [the death penalty]. That is enough said. If 77% of Arkansas people want it, they will have it.”*

It is now 40 years since the US Supreme Court stated that the “evolving standards of decency” in US society must determine the meaning of “cruel and unusual punishments”. This raises the question of how much more time will pass before this phrase is interpreted to outlaw in the USA what much of the world has come to see as an unacceptable form of punishment.

In his letter to the Amnesty International member, Senator Everett of Arkansas, gave one view when he wrote: *“What is moral and what is legal is often a matter of perspective. Nations, like humans, evolve. America is not so far removed from the frontier as Austria [where the AI member he was writing to lives]. Your country is much older, its culture more developed, more ethnically and socially unified, further from its history of uncivilization, than ours. From our perspective, the death penalty is both moral and legal. From your perspective, it is not. The day will come when our acceptance of the death penalty will change, but it is still decades, and probably centuries, away. Our attitude toward the death penalty will change when our attitudes toward gun control, racial differences, religion, poverty, and other fundamental values, change.”*

"Decades" or "centuries" is too long to wait for the abolition of the death penalty. The world has already seen 50 years pass since the adoption of the Universal Declaration of Human Rights, at the heart of which is the vision of a world where every person has the right to life and freedom from cruelty. Abolition of the death penalty was promoted during the drafting of the

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<sup>33</sup> From the death warrant for Harold McQueen signed by Governor Patton on 11 June 1997. McQueen's subsequent execution on 1 July was the first in Kentucky for 35 years.

Universal Declaration<sup>34</sup> and subsequent international human rights standards have sought to progressively restrict its scope with a view to abolition.

*"It was fitting" proclaimed President Clinton on the occasion of Human Rights Day 1997, "that a great American, Eleanor Roosevelt, played a pivotal role in the development of the Universal Declaration of Human Rights... As Chair of the U.N. Commission on Human Rights, she led the efforts of its 18 members to define basic rights and freedoms and to draft the international affirmation of rights that was ultimately adopted by the General Assembly". Amnesty International believes that five decades on, the increasing use of the death penalty in the USA contravenes the pioneering spirit of those who drew up the Universal Declaration.*

Also in December 1997, President Clinton said, *"And in this 50th anniversary year, Amnesty International has asked world leaders to affirm that we will do all we can to uphold the principles of the Universal Declaration. I make that pledge today."*

The death penalty violates fundamental human rights. It is time for the United States of America to consign it to history.

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<sup>34</sup> Death penalty scholar, William Schabas, writes: *"The models on which the Declaration were based all recognized the death penalty as an explicit exception to the right to life. The Universal Declaration went one step further, removing any reference to the death penalty essentially because, in the words of Eleanor Roosevelt, there was a movement underway in some States to abolish capital punishment... There was even an attempt [in the debate over the meaning of right to life] to make the declaration overtly abolitionist. But in the end prudence dictated a less precise statement... In this way it accurately served the purpose of the Declaration, which was to be a manifesto whose scope could evolve over time..."* Schabas goes on to draw the *"inescapable conclusion"* that *"article 3 of the Universal Declaration is indeed abolitionist in outlook."* pp. 42-44 William A. Schabas, *Abolition of the Death Penalty in International Law*, Second Edition, Cambridge University Press, 1997

**SELECTED STATISTICS (up to end of 1997 unless stated) <sup>35</sup>**

Total executions since the resumption of executions in 1977

77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97  
 1 0 2 0 1 2 5 21 18 18 25 11 16 23 14 31 38 31 56 45 74

<b>RACE OF DEFENDANTS EXECUTED</b>	<b>TOTAL NUMBER: 432</b>
White	242 (56.02%)
Black	161 (37.27%)
Latino	23 (5.32%)
Native American	4 (.93%)
Asian	2 (.46%)

<b>RACE OF VICTIMS</b>	<b>TOTAL NUMBER: 583</b>
White	482 (82.68%)
Black	72 (12.35%)
Latino	20 (3.43%)
Asian	9 (1.54%)

**EXECUTION BY STATE**

1. Texas	144	16. Utah	5
2. Virginia	46	17. Mississippi	4
3. Florida	39	18. California	4
4. Missouri	29	19. Indiana	5
5. Louisiana	24	20. Nebraska	3
6. Georgia	22	21. Washington	2
7. Alabama	16	22. Pennsylvania	2
8. Arkansas	16	23. Maryland	2
9. South Carolina	13	24. Oregon	2
10. Illinois	10	25. Idaho	1
11. Oklahoma	9	26. Wyoming	1
12. Delaware	8	27. Montana	1
13. North Carolina	8	28. Colorado	1
14. Arizona	6	29. Kentucky	1
15. Nevada	6		

**EXECUTIONS BY METHODS USED**

Lethal injection	287	Hanging	3
Electrocution	131	Firing Squad	2
Gas Chamber	9		

**JURISDICTIONS WITH DEATH PENALTY STATUTES: 38 STATES AND 2 FEDERAL**

Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas (first death sentence confirmed 3/98), Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North

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<sup>35</sup> Source: Legal Defence and Education Fund, New York

Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming, US Government, US Military.  
*(underlined states have death penalty statutes but no death sentences imposed)*

JURISDICTIONS WITHOUT CAPITAL PUNISHMENT: 12 STATES AND 1 FEDERAL

Alaska, District of Columbia (Federal), Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, Wisconsin.

JUVENILE OFFENDERS EXECUTED SINCE 1977      TOTAL NUMBER: 9

Charles Rumbaugh (Texas, 11/9/85)	Curtis Harris (Texas, 1/7/93)
James Terry Roach (South Carolina, 10/1/86)	Frederick Lashley (Missouri, 28/7/93)
Jay Pinkerton (Texas, 15/5/86)	Ruben Cantu (Texas, 24/8/93)
Dalton Prejean (Louisiana, 18/5/90)	Christopher Burger (Georgia, 7/12/93)
Johnny Frank Garrett (Texas, 11/2/92)	<i>(all were aged 17 at the time of the offence)</i>

JUVENILE OFFENDERS ON DEATH ROW: 62 in 15 states (as of 30 June 1997)<sup>36</sup>

Alabama (7); Arizona (2); Arkansas (1); Florida (6); Georgia (2); Kentucky (1); Louisiana (1); Mississippi (4); Missouri (3); Nevada (1); Oklahoma (1); Pennsylvania (2); South Carolina (2); Texas (25); Virginia (4).

DEFENDANT-VICTIM RACIAL COMBINATIONS

White defendant and:	White victim	337 (57.80%)
	Black victim	7 (1.20%)
	Asian victim	2 (0.34%)
	Latino victim	8 (1.37%)
Black defendant and	White victim	130 (22.30%)
	Black victim	63 (10.81%)
	Asian victim	23 (.52%)
	Latino victim	2 (.34%)

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<sup>36</sup> Source: *The Juvenile death penalty today: Present death row inmates under juvenile death sentences and death sentences and executions for juvenile crimes, January 1, 1973, to June 30, 1997* by Victor L. Streib, Dean and Professor of Law, Ohio Northern University. 18 August 1997