
amnesty international

UNITED STATES OF AMERICA To err is human; to abolish is demanded

4 July 2002

AI INDEX: AMR 51/110/2002

“They stole my father’s life and no amount of money can change that.” Mervyn Mattan¹

It took nearly half a century to clear Mahmood Mattan’s name, but by then it was too late for him. This 28-year-old Somali sailor was hanged in the United Kingdom in September 1952. After a long campaign by relatives and others to prove his innocence, his murder conviction was overturned by an appeal court in 1998.

In 1998 in the USA, the State of Illinois came 48 hours from executing Anthony Porter for a crime he did not commit. Unlike Mahmood Mattan, who had been under sentence of death for two months when he was killed, Porter had been on death row for 16 years without his wrongful conviction coming to light. By chance, a group of journalism students investigated his case as part of their university course and proved Anthony Porter’s innocence.

This case – one of 13 in Illinois and over 100 nationwide – is one of the reasons behind the current moratorium on executions in Illinois. The 14-member Commission appointed by the governor two years ago to examine the state’s capital justice system, recently reported that it was “unanimous in the belief that no system, given human nature and frailties, could ever be devised or constructed that would work perfectly and guarantee absolutely that no innocent person is ever again sentenced to death”.²

Now, 50 years to the month after a court in Wales condemned Mahmood Mattan to death, a judge in New York has reached much the same conclusion. In a judicial opinion on 1 July, he wrote what abolitionists have long believed, namely that the death penalty carries with it the unacceptable risk of turning human error into irrevocable tragedy. In his ruling, US District Court Judge Jed Rakoff found that “on the one hand, innocent people are sentenced to death with materially greater frequency than was previously supposed and that, on the other hand, convincing proof of their innocence often does not emerge until long after their convictions. It is therefore fully foreseeable that in enforcing the death penalty, a meaningful number of innocent people will be executed who otherwise would eventually be able to prove their innocence”. Under these circumstances, Judge Rakoff said, the death penalty “is tantamount

¹ £1.4m award for family of wrongfully hanged man. Guardian, 14 May 2001.

² Report of the Governor’s Commission on Capital Punishment. Illinois, April 2002.

to foreseeable, state-sponsored murder of innocent human beings”.³ He concluded that the death penalty should not be an option at the forthcoming federal murder trial of Alan Quinones and Diego Rodriguez.

The government had attempted to argue that the advent of DNA testing had reduced the risk of wrongful conviction. Judge Rakoff suggested that this missed the point: “What DNA testing has proved, beyond cavil, is the remarkable degree of fallibility in the basic fact-finding processes on which we rely in criminal cases”. And anyway, as Judge Rakoff rightly pointed out, DNA testing is available in only a minority of cases.

Science has its limits. Regrettably, so too it seems, does human rights leadership in the United States. In the past decade and a half, a period which has seen around 40 more countries abolish the death penalty in law or practice, the US Government has reinstated, expanded, and carried out the federal death penalty.⁴ Even as racial disparities in federal capital sentencing remains unexplained, Attorney General John Ashcroft has adopted an aggressive pursuit of judicial killing.⁵ Since taking office in 2001, he has reportedly ordered federal prosecutors to seek death sentences in a dozen cases where they recommended against doing so.⁶ One of them was the case of Alan Quinones and Diego Rodriguez, the case at the centre of Judge Rakoff’s ruling. The Attorney General should reflect on the ruling, and reconsider his support for the death penalty.

“Nothing”, wrote US Supreme Court Justice Harry Blackmun in 1993 is “more shocking to the conscience, than to execute a person who is actually innocent”.⁷ In the same opinion, Chief Justice William Rehnquist suggested that the power of executive clemency serves as the failsafe to protect against the “unalterable fact that our judicial system, like the human beings who administer it, is fallible.” But that same human fallibility also extends to the individuals invested with the power of executive clemency. Just as that power failed to prevent the execution of Mahmood Mattan, it has not stopped the execution in the USA of a number of prisoners whose guilt remained in serious doubt. Once abolition comes in the United States, as it did in the UK in 1969, efforts can be turned from current to past cases. At that stage, perhaps one of these executed people will, like Mahmood Mattan, be shown to have been innocent.

Chief Justice Rehnquist noted in the 1993 opinion that the US Constitution “adopts the British model and gives to the President the ‘Power to grant Reprieves and Pardons for Offences against the United States’.” Under this power of reprieve, President Bush should declare a moratorium on federal executions with a view to leading his country towards abolition. Human fallibility demands it.

³ *USA v Quinones*, US District Court, Southern District of New York, S3 00 Cr. 761, 1 July 2002.

⁴ The federal death penalty was reintroduced under President Ronald Reagan in 1988, and expanded under President Clinton in 1994 when he signed into law the Federal Death Penalty Act. President Bush allowed federal executions to resume in 2001 after nearly 40 years without them.

⁵ See *Memorandum to President Clinton: An appeal for human rights leadership as the first federal execution looms* (November 2000, AMR 51/158/2000), and *Open letter to the US Attorney General concerning the imminent execution of Juan Raul Garza* (AMR 51/088/2001, 15 June 2001).

⁶ *Ashcroft aggressively pursues death penalty*. Washington Post, 1 July 2002.

⁷ *Herrera v. Collins*, 506 U.S. 390 (1993), Justice Blackmun dissenting.

WHAT YOU CAN DO

Please write to President Bush urging him to lead the individual US states by example by declaring a moratorium on federal executions.

George W. Bush
The President
The White House, Office of the President
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Fax: +1 202 456 2461. Email: president@whitehouse.gov
Salutation: Dear Mr President

Please also write to Attorney General Ashcroft expressing concern at his continuing pursuit of the death penalty, and urging him to reflect upon Judge Rakoff's ruling and the growing national concern on the reliability and fairness of the capital justice system, and to support efforts for a moratorium on federal executions.

The Honourable John Ashcroft
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Salutation: Dear Attorney General