

ON THE WRONG SIDE OF HISTORY: CHILDREN AND THE DEATH PENALTY IN THE USA

"When a society starts killing its children, something is wrong, something is deadly wrong." Joseph Green Brown, death row survivor, May 1998¹

AI Index: AMR 51/58/98

Public

Distr: SC/CC/CO/DP

October 1998

CONTENTS

INTRODUCTION	1
WRONG FOR ALL: A PUNISHMENT WHOSE TIME HAS PASSED	2
BREAKING THE CONSENSUS, BREAKING THE LAW	3
Manipulating the International Covenant on Civil and Political Rights	3
Ignoring the Convention on the Rights of the Child	6
It is agreed - 18 is the minimum age in capital cases	7
AN INDECENT ATTACHMENT TO "THE OBSOLETE"	8
BACK TO THE FUTURE?	11
WHY PROTECT CHILDREN WHO COMMIT VIOLENT "ADULT" CRIMES?	14
ILLUSTRATIVE CASES	17
Where there's life, there's hope - Paula Cooper, Indiana	17
Lost in a foreign land - Azikiwe Kambule, Mississippi	17
Wrong on all counts? - Shareef Cousin, Louisiana	20
A mind to kill - Sean Sellers, Oklahoma	22
Time for mercy - Kevin Hughes, Pennsylvania	24
Brutal lives, brutal deaths - Joseph Cannon and Robert Carter, Texas	26
At death's door - Dwayne Wright, Virginia	29
A STEP IN THE RIGHTS DIRECTION	30
RECOMMENDATIONS	31
TABLE 1 - JUVENILE OFFENDERS EXECUTED, USA 1977 - 1998	31
TABLE 2 - JUVENILE OFFENDERS ON DEATH ROW, USA - JUNE 1998	32

Cover photo: Charlie (left) and Charles Williams. The two brothers from New Orleans have lost an uncle and a great aunt to murder. Their grandmother, Eloise Williams, has set up a support group for relatives of murder victims. (Photo: AI - 1998)

ON THE WRONG SIDE OF HISTORY

Children and the Death Penalty in the USA

INTRODUCTION

"We are the indispensable nation. We stand tall and we see further than other countries into the future..."
Madeleine Albright, US Secretary of State, 19 February 1998²

Fifty years after the adoption of the Universal Declaration of Human Rights, with its vision of universal freedom from state cruelty, more than half the countries of the world have abolished the death penalty in law or practice. Of the diminishing number of retentionist nations, the vast majority respect international human rights law by restricting capital punishment to adult offenders. It is ironic, then, that the country which repeatedly proclaims itself to be the world's most progressive force for human rights, in fact heads a tiny circle of nations with a far less distinguished claim to fame - the execution of people for crimes they committed as children.

The USA makes no secret of its determination to perpetrate this particular human rights violation. The federal government has explicitly reserved the right to defy the international ban on the use of the death penalty against those who commit crimes when under 18 years old, and state authorities pursue this practice apparently unconcerned about world opinion. As a result, some 70 juvenile offenders await their deaths at the hands of US officials.³ Eight such prisoners have been executed in the USA in the 1990s. In the same period, only five other countries - Iran, Nigeria, Pakistan, Saudi Arabia and Yemen - are known to have executed juvenile offenders, killing a total of nine such prisoners between them.

In 1642 Thomas Graunger was executed in Plymouth Colony, Massachusetts, for a crime he committed when he was a 16-year-old boy. He became the first recorded person in what was to become the USA to be executed for an offence committed when under 18.⁴ More than 350 years later, years which have seen the USA develop into the most powerful economy in the world, the US authorities maintain their link through history to Thomas Graunger. In mid-1998 they sent Joseph Cannon and Robert Carter to the same fate. Both were executed for crimes they committed when they were 17. At the time of their crimes, both were emerging from profoundly abused and deprived childhoods. By the time they were executed, each had undergone substantial change in prison. When their lives were extinguished by lethal injection, the hope raised by their efforts towards rehabilitation was killed too.

But for some in the USA, this calculated and brutal response to violent juvenile crime is not enough. As the rest of the world withdraws from using the death penalty against its children, some politicians in the USA are calling for their state legislatures to lower the age for capital defendants even below the current minimum of 16 set by the US Supreme Court.

Is this the action of a political leadership which "sees further into the future" than other countries, or one which still clings to one of the unacceptable practices from its past?

WRONG FOR ALL: A PUNISHMENT WHOSE TIME HAS PASSED

"I don't think age matters when it comes to the death penalty. It is wrong for everybody. It would be selfish of me to say that just because I was under 18 when I was sentenced to die, my life would be more important than the older guys in here". Napoleon Beazley, Texas death row, 1998⁵

About one in 50 of the more than 3,400 individuals on death row in the USA were convicted of crimes committed when they were under 18. As this report will illustrate, there are specific reasons, backed by an overwhelming international consensus, to oppose their death sentences. But it should not be forgotten that the use of the death penalty against *anyone* is a human rights violation of premeditated cruelty which denies the right to life proclaimed in the Universal Declaration of Human Rights. Stopping the execution of juvenile offenders, while being a major objective in itself, is just one step on the road to total abolition.

The cases of juvenile offenders on US death rows continue to reflect more than just the specific concerns raised by their youth at the time of the crime. They also illustrate the wider characteristics of a punishment whose time has passed: its inherent cruelty; its failure as a deterrent; its use against the mentally impaired; the risk of wrongful conviction; inadequate legal representation, particularly for poor defendants; and arbitrariness in sentencing as a result of politics, prejudice, and the power of state prosecutors to choose who will face a capital trial.⁶

Children and the death penalty

"Usually, I don't like talking about what it's like in prison. But when young kids write to me, that's what they always ask and I try my best to answer. I tell them to envision themselves being locked in their room for over three years (I've been here a little over three years now). No school is allowed, no cassettes or CDs, no computer so definitely no e-mail. And imagine your mom lets you out in the backyard to play for two hours every day, but afterwards it's back to the bedroom. Picture that and that's what it's like in prison. Throw 400-plus guys in there with you and add fights, killings, stabbings, and while you're at it you can add the fact that the system is all eager to stick some poison in your arm to kill you - that's prison.

Now, the reason I don't like to tell people about life in prison is that, when I tell you about my life, you can imagine it. Through my eyes, I'm bringing them in here. I'm locking them up, if only in mind. But I don't want to be here and I don't want them to be either. Prison is not a place you want to be in mind, spirit or body.

In the beginning they used to call me Youngster. But the other day, when I was on the basketball court, I heard someone call Youngster and I turned around. But he was talking to a new guy, even younger than me. So I'm already old in here and I'm barely 21.

Napoleon Beazley, juvenile offender, Texas death row, 1998

Those convicted and sentenced to death for crimes committed when they were under 18 are not the only children affected by the death penalty. Violent crime scars the young family members of its victims, but the brutal and brutalizing effects of the death penalty are also felt by children beyond death row. A child who has a family member executed becomes yet another victim in the cycle of violence; but all society's children, along with its adults, receive the message carried by the death penalty that killing is an effective and appropriate response to killing. How can this teach children to value life?

In June 1998 death row survivor Sonia Jacobs said: *"Now more and more we have little children picking up guns and killing each other as a solution to their problems. I truly believe that that's because of the example we have set for them."* Sonia Jacobs' daughter lost her father to violent death when she was 15. He was executed despite serious doubts over his guilt (see box, page 27). His wife Sonia Jacobs, who was found to have been wrongly convicted and was saved from the electric chair, does not accept the claim, popular in the USA, that a retributive execution is the only way the loved ones of a murder victim can find peace. And she asks: *"Whose death will help me heal? Whose death will help my daughter heal? ... Perhaps it will take the death of the death penalty to help us heal. The end of this violence."*⁷

BREAKING THE CONSENSUS, BREAKING THE LAW

"Under Nevada's interpretation of the treaty, the United States will be joining hands with such countries as Iran, Iraq, Bangladesh, Nigeria and Pakistan in approving death sentences for children. I withhold my approval." Chief Justice Springer, Supreme Court of Nevada, 1998⁸

On 31 July 1998 Chief Justice Springer dissented from the majority opinion of the Supreme Court of Nevada when it confirmed the death sentence against Michael Domingues, convicted in 1994 for the murder of his next door neighbour and her four-year-old son in their home in Las Vegas in 1993. The crime took place when Michael Domingues was 16 years old. His appeal to the state Supreme Court had raised one issue: the illegality of his death sentence under international law.

There is now an almost global consensus that people who commit crimes when under 18 should not be subjected to the death penalty. This is not an attempt to excuse violent juvenile crime, or belittle the suffering of its victims and their families, but a recognition that children are not yet fully mature - hence not fully responsible for their actions - and that the possibilities for rehabilitation of a child or adolescent are greater than for adults. Indeed, international standards see the ban on the death penalty against people who were under 18 at the time of the offence to be such a fundamental safeguard that it may never be suspended, even in times of war or internal conflict⁹. However, the US authorities seem to believe that juveniles in the USA are different from their counterparts in the rest of the world and should be denied this human right.

Manipulating the International Covenant on Civil and Political Rights

Principal among the human rights standards which seek to protect juvenile offenders from the death penalty, and the one cited in Michael Domingues' appeal, is Article 6(5) of the International Covenant on Civil and Political Rights (ICCPR), which states that "sentence of death shall not be imposed for crimes committed by persons below eighteen years of age...". The ICCPR came into force on 23 March 1976, coincidentally just a few weeks before the US Supreme Court ruled that US states could begin executing again under their new capital statutes.¹⁰ Executions resumed in January 1977. Since then, the number of crimes punishable by death and the number of executions have relentlessly increased in the USA, just as the list of countries which use the death penalty has been steadily shrinking. The USA has been even further out of step with the rest of the world as far as the death penalty for juvenile offenders is concerned.

Children and the death penalty

"By the time the state gets around to executing these people, the kid who committed the crime no longer exists. It is almost as if in some nightmarish procedure the state has arbitrarily substituted one person for another prior to the execution." Lawyer representing Joseph Hudgins, juvenile offender on death row, South Carolina. *Time* magazine, 19 January 1998.

The vast majority of juvenile offenders executed in the USA before 1972 were sentenced to death and executed while still teenagers. The current application of the death penalty in the USA means that most juvenile offenders will be well into their adult years by the time they come to be executed. Perhaps the fact that it is not actually a child who is strapped down and killed makes it easier for society to stomach this human rights violation. The fact remains, however, that such prisoners are being put to death for something they did when they were children.

The USA signed the ICCPR in October 1977 - thereby binding itself not to do anything which would defeat the object and purpose of the treaty, pending a decision whether to ratify it¹¹. In the time between signature and eventual ratification in June 1992, the US authorities executed Charles Rumbaugh, James Terry Roach, Jay Pinkerton, Dalton Prejean and Johnny Garrett for crimes committed when they were 17. More than 70 juvenile offenders were sentenced to death during this period.

When it ratified the ICCPR, the US government made clear its intention to continue this practice by explicitly reserving the right to impose the death penalty for crimes committed by those under 18.¹² Since ratification, the US authorities have put their words into lethal action six times against juvenile offenders, with the execution of Curtis Harris, Frederick Lashley, Ruben Cantu, Chris Burger, Joseph Cannon and Robert Carter. More than 50 juvenile offenders have been sent to death row during this period, including Michael Domingues.

Michael Domingues' 1998 appeal argued that the US reservation is invalid, and that the international ban on the use of the death penalty against juvenile offenders takes priority over domestic law. This claim has widespread support. Eleven countries have voiced their objection to

the USA's reservation to Article 6(5) on the grounds that it is incompatible with the article's purpose and intent.¹³ In 1995 the UN Human Rights Committee, the body of experts set up to monitor compliance with the ICCPR, also said that the US reservation to Article 6(5) was incompatible with the object and purpose of the ICCPR and should be withdrawn. The US Senate reacted by proposing a legislative amendment to restrict any funding related to the reporting procedure to the Committee until the latter accepted the validity of the US approach to the ICCPR.¹⁴ The amendment was adopted by Congress but vetoed by President Clinton.

In 1998, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, whose mandate includes countries' use of the death penalty, reiterated that the US reservation should be considered void. In the report of his 1997 mission to the USA, the Special Rapporteur wrote that the use of the death penalty against juvenile offenders in the USA violates international law and called for the practice to be discontinued. A matter of weeks after his report was presented to the UN Commission on Human Rights in Geneva, two juvenile offenders, Joseph Cannon and Robert Carter, were executed in Texas.

The two executions followed a clear signal from within federal political circles that neither the Special Rapporteur's mission nor his subsequent report had to be taken seriously. The Chair of the Senate Foreign Relations Committee had characterized the mission as "a perfect example of why the United Nations is looked upon with such disdain by the American people" and urged the US Ambassador to the UN to "reverse all cooperation with this absurd UN charade." The Ambassador was reported to have replied that the Special Rapporteur's report would only "gather dust". On publication of the report, the Republican National Committee Chairman called on the US administration to "publicly renounce" it and ensure that none of the US debts to the UN were paid until the report was "formally withdrawn and apologized for."

The federal government is the authority ultimately responsible for ensuring that **all** US officials comply with their international obligations. The fact that it has set 18 as the minimum age of eligibility for federal death row does not absolve it from its responsibility to ensure that state governments do the same. The US Constitution expressly establishes that powers to sign and ratify treaties reside with the federal authorities and not with the individual states. Furthermore, there is a long-standing principle of international jurisprudence that the nation state is the subject of international law, regardless of whether its system is unitary, decentralized or federal, and is responsible for ensuring that all government authorities in the country abide by international law. However, as the UN Special Rapporteur noted in his 1998 report on the USA,

Children and the death penalty

"My personal pain has been learning how much my kids suffer... Of my nine-year-old wishing his mother had enough money to get me out. Of my 17-year-old daughter wanting to know what I remembered and like about her. My 11-year-old son's courageous stance against the insults, fights and isolation due to his father's crime." Nelson Mitchell, death row, Georgia, November 1997.

"a serious gap exists between federal and state governments, concerning implementation of international obligations undertaken by the United States Government." It is the responsibility of the federal government to remedy this.

In Nevada on 31 July 1998, the state Supreme Court voted that the US reservation to Article 6(5) of the ICCPR was valid and that the death sentence against Michael Domingues was legal. It reached this conclusion by looking to other US states rather than by examining international opinion or practice: *"Many of our sister jurisdictions have laws authorizing the death penalty for criminal offenders under the age of eighteen, and such laws have withstood Constitutional scrutiny."* It ignored the fact that a majority US jurisdictions do **not** allow the death penalty to be used for crimes committed by under 18-year-olds, either because they have legislated to exempt such offenders from the death penalty, or because they do not allow it against anyone of any age. In 1998, 14 states and two federal jurisdictions (civilian and military) have legislation enforcing 18 as the minimum age, and 12 US states and the District of Columbia do not allow the death penalty at all¹⁵. Twenty-four states allow for the use of the death penalty against those under 18, 15 of which had juvenile offenders on death row in June¹⁶.

The Nevada Supreme Court also ignored the recognized principle of international law that states may not invoke domestic laws to avoid complying with their commitments under international treaties, expressly provided by the Vienna Convention on the Law of Treaties. In his dissenting opinion, Chief Justice Springer wrote that international treaties ordinarily become the "supreme law of the land", pointing out that under the Court's majority interpretation of the ICCPR, *"the United States, at least with regard to executing children, is a 'party' to the treaty, while at the same time rejecting one of its most vital terms."*

The Court denied Michael Domingues' appeal and he remains on death row. A few days later Nevada prosecutors announced that they would be seeking the death penalty against Kenshawn Maxey, a 17-year-old accused of double murder during a robbery in Las Vegas in May 1998. His trial was scheduled for 16 November.

Ignoring the Convention on the Rights of the Child

The US authorities are also choosing to ignore a more recent international standard which protects juvenile offenders from the death penalty. Article 37(a) of the Convention on the Rights of the Child (CRC) states that *"neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age"*. The USA is one of only two countries in the world which have not ratified the CRC. The other is Somalia - a collapsed state with no recognized government.

Of the 192 countries which have ratified the Convention, all have done so without specific reservation to Article 37(a), further demonstrating the almost global acceptance of the prohibition against the use of the death penalty against those under 18 at the time of the crime.¹⁷ Although



Felicia Draughon (see box below) © AI

Myanmar initially made a reservation to Article 37(a) when it ratified the Convention, it withdrew this in 1993 after Germany, Ireland and Portugal lodged objections.

The USA, on the other hand, made it clear during the drafting of the Convention that it maintained its right to formulate a reservation on Article 37(a), should it ever ratify. Amnesty International opposed this at the time, and continues to press the US government to ratify the CRC without any such reservation. Since the USA signed the CRC in February 1995, it has executed two juvenile offenders and sentenced over 20 others to death.

The increasingly isolated stance of the USA on this issue was emphasised by a development in 1997 in China, which has the world's highest annual judicial death toll. Until then the Criminal Law of China stipulated that the death penalty, with suspension of execution for two years, could be applied to minors aged between 16 and 18. In 1996 the Committee on the Rights of the Child, the body which oversees compliance with the CRC, had ruled that this practice was "incompatible with the provisions of the Convention", which China had ratified in 1992. In March 1997 the Chinese authorities amended the Criminal Law to abolish the death penalty for offenders under 18 at the time of the crime.

It is agreed - 18 is the minimum age in capital cases

A minimum age of 18 years at the time of the capital offence was established half a century ago. Article 68 of the Fourth Geneva Convention of 12 August 1949 Relative to the Protection of Civilian Persons in Time of War states that "...the death penalty may not be pronounced on a protected person who was under eighteen years of age at the time of the offence." When it ratified the Convention in 1955, the USA made no reservation to this particular paragraph. It has thus agreed for over four decades that, in the event of war or other armed conflict in which it may be involved, it will protect all civilian juvenile offenders in occupied countries from the death penalty. This is precisely the protection it refuses to offer children within its own borders in peacetime.

Since 1949 the ICCPR, CRC and various other international and regional human rights instruments have come into force setting 18 as the minimum age at which people can become eligible for the death penalty.¹⁸ In 1987 the Inter-American Commission on Human Rights declared that the USA had violated Article 1 of the American Declaration of the Rights and Duties of Man by executing two juvenile offenders, James Terry Roach and Jay Pinkerton.¹⁹ The Commission referred to the emerging principle of customary international law prohibiting such executions. In the 11 years since the ruling, the USA has executed eight more juvenile offenders, despite the fact that this "emerging" principle of customary international law has been even further strengthened by the almost global recognition of Article 37(a) of the CRC.

Children and the death penalty

"I was 16 when it happened... The last time I touched my brother I happened to just brush his back where he was sitting during the trial... I was a character witness at his sentencing... That'll probably be the last time I touch my brother before he's executed.... It's been almost 12 years now, its just now sinking in... I've just now started to have the nightmares... I woke up crying because I was dreaming of my brother's execution.. I'm paying his funeral payment right now each month, you know, its pretty sick and depressing..."

Felicia Draughon, interview with Amnesty International, Dallas, June 1998. She was 16 when she testified for her brother Martin's life. He remains on death row in Texas.

For any country to adopt a selective approach to its international human rights obligations can serve only to undermine respect for the system as a whole and to diminish the prospect for human rights for all. That the USA sentences to death and executes juvenile offenders in violation of international law should be a matter of deep concern to all inside and outside the country concerned with human progress.

AN INDECENT ATTACHMENT TO "THE OBSOLETE"

"...there is some age below which a juvenile's crimes can never be constitutionally punished by death... our precedents require us to locate this age in light of the 'evolving standards of decency that mark the progress of a maturing society.'" Justice Sandra Day O'Connor, US Supreme Court²⁰

Rather than recognize the primacy of international law, as they should, the US authorities continue to look to the US Supreme Court, as interpreter of the Constitution, to set the minimum age at which people in the USA can become eligible for the death penalty. The Court has done this via the Constitution's Eighth Amendment, which bans "cruel and unusual punishments".

The Eighth Amendment was added to the US Constitution in 1791. In 1910 the Supreme Court stated that the Amendment "*is progressive and does not prohibit merely the cruel and unusual punishments known in 1689 and 1787, but may acquire wider meaning as public opinion becomes enlightened by humane justice*"²¹. In 1958 the Court took up this theme when it said 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.*" In 1998 the Court's opinion of US

"decency" is such that it continues to allow US authorities to sentence to death and execute juvenile offenders, in violation of international law.

Children and the death penalty

"Concerning the claim of justice for the victim's family, I say there is no amount of retaliatory deaths that would compensate to me the inestimable value of my daughter's life, nor would they restore her to my arms. To say that the death of any person would be just retribution is to insult the immeasurable worth of our loved ones who are victims. We cannot put a price on their lives." Marietta Jaeger, 1997, whose seven-year-old daughter was kidnapped, raped and murdered. Marietta Jaeger is a member of Murder Victims Families for Reconciliation, a US organization comprising relatives of murder victims who campaign against the death penalty.

The Court made its ruling in 1989, when five of its nine Justices voted that the execution of offenders aged 16 or 17 at the time of their crimes did not violate the Eighth Amendment.²² Justice Antonin Scalia, appointed by President Ronald Reagan 18 months earlier, wrote for the majority opinion that US society had not formed a consensus that the execution of such offenders constituted cruel and unusual punishment. He emphasized that the five reached their decision after looking to US conceptions of decency - not the practice of other countries - in determining what

constituted "evolving standards of decency". The five determined that the death penalty against 16 and 17-year-olds was acceptable to US society because not only did the laws of various states allow for its use against such offenders, but juries and prosecutors applied those laws.

Amnesty International believes that the Court was wrong to have relied on this "objective evidence" to set a rule of constitutional law, as well as being wrong to have ignored universal "standards of decency" reflected in international human rights instruments. For it presupposed a society fully informed about the death penalty, and a capital justice system fully representative of society's views in which the decision-making of legislators, prosecutors and juries was free from prejudice and politics. However, the death penalty in the USA is, as it was in 1989, a politicized punishment, used disproportionately against racial and ethnic minorities and the poor; the debate over its use takes place in a highly-charged and emotional climate of opinion, with large parts of US society ill-informed about its effectiveness and alternatives, or their country's international obligations. In the case of juvenile offenders, many have been sentenced to death by juries which were not in a position to fully consider the mitigating aspects of the youth and backgrounds of the defendants. Also the Supreme Court ignored the fact that a majority of states did not allow the death penalty to be used against those under 18 at

Children and the death penalty

Jose Martinez High was sentenced to death in 1978 in Georgia for his part in the kidnapping of a man and his 11-year-old stepson, and the murder of the boy. On the way to where the killing took place, Jose Martinez High repeatedly asked the boy "are you ready to die? Do you want to die? Well, you're going to die." The two captives were then made to lie face down on the ground and shot in the head. The stepfather survived.

On appeal, the Supreme Court of Georgia found that "the serious psychological abuse by the appellant to the victim before death, especially in view of the victim's young age... supports beyond a reasonable doubt the jury's finding of torture and depravity of mind... There is no doubt that the kidnapping and murder were of the type universally condemned by civilized societies...".

That the crime was atrocious is not in question. What is in question is the punishment. For the past 20 years the State of Georgia has been subjecting Jose Martinez High to a prolonged version of the psychological cruelty that it condemned him to die for. As US Supreme Court Justice Brennan wrote in *Furman v. Georgia* in 1972: "we know that mental pain is an inseparable part of our practice of punishing criminals by death, for the prospect of pending execution exacts a frightful toll during the inevitable long wait between the imposition of sentence and the actual infliction of death".

The execution of juvenile offenders is now almost "universally condemned" outside of the USA. But the Georgia authorities still plan to execute Jose Martinez High for a crime committed when he was 17. Their belief that this punishment has a constructive role to play in dealing with juvenile crime seems set. In August 1998, a Georgia District Attorney said he would seek the death penalty against Santana Cicero Perkinson, a 17-year-old charged in the abduction and murder of a 16-year-old boy earlier in the year.

the time of the offence. All these factors render the basis of the Court's ruling as unreliable as if it had looked to public opinion polls. It had rejected the latter as "too uncertain a foundation" for matters of constitutional law.

A year earlier in *Thompson v. Oklahoma*, the Supreme Court had voted 5-4 that the execution of the appellant, who was 15 at the time of the crime, was unconstitutional. However, only four of the judges found that the execution of such an offender would be cruel and unusual in **all** cases. A fifth judge, Justice O'Connor, agreed with their decision to overturn William Wayne Thompson's death sentence, but only because Oklahoma's death penalty statute set no minimum age limit at which the death penalty could be imposed. She found that the sentencing of a 15-year-old to death under this type of statute failed to meet the standard for special care and deliberation required in all capital cases.

The result of this marginal ruling is that it is currently unconstitutional for someone who commits a crime when aged 15 or younger to be executed in a state whose death penalty statute does not specify a minimum age. Since 1988 courts in Alabama, Louisiana and Indiana have ruled that such an execution would violate the *Thompson* ruling. It is conceivable, however, that a state could introduce legislation specifying a minimum age of less than 16 for capital defendants. If that state's appeals courts subsequently upheld a death sentence imposed on a juvenile offender who was under 16 at the time of the crime, the question of whether it is constitutional to execute such an offender could once again come before the US Supreme Court.

In 1996 the International Commission of Jurists reported on the US death penalty.²³ It noted that the USA's ratification of international standards such as the ICCPR represents "an important milestone in the progress of a maturing US society", and means that US authorities must no longer confine their definition of "standards of decency" to national criteria and opinion. Instead they must look to global standards, as articulated by international human rights instruments.

Human rights have no borders. The Universal Declaration of Human Rights spoke of the universal dimension of humanity when it recognized that "the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world". Fifty years on, it is time for the USA to take a fresh look at what constitutes "standards of decency" today, and to redefine the Eighth Amendment ban on "cruel and unusual punishments" in line with international standards. Nearly 90 years have passed since the US Supreme Court said that the amendment was "*not fastened to the obsolete, but may acquire meaning as public opinion becomes more enlightened.*"²⁴ It is 40 years since the Court noted that "*if the word 'unusual' is to have any meaning apart from the word 'cruel' ... the meaning should be the ordinary one, signifying something different from that which is generally done*"²⁵. At the end of the 1990s, the use of the death penalty against juvenile offenders is so *unusual* as to be almost unknown outside of the USA. Its *cruelty* against anyone is undeniable.

It is time for US political leaders to loosen their grip on "the obsolete" and prohibit the use of the death penalty against **all** juvenile offenders, as defined by international standards, as a first step towards total abolition.

BACK TO THE FUTURE?

***Old enough to kill, old enough to die* - Slogan in support of juvenile death penalty, USA, 1940s**

***Do an adult crime, do adult time* - Slogan for harsher juvenile sentencing, California, 1998**

On 16 June 1944 George Junius Stinney was executed in South Carolina. He was 14 - the youngest person to be executed in the USA this century. Over 50 years later some US politicians and prosecutors are calling for the death penalty to be once again applicable to 14-year-old or even younger offenders. In doing so, they seem to be saying that US "standards of decency" on this issue could retreat deeper into the past and diverge even further from the global norm.

In 1996, over 100 years after New Mexico last executed a juvenile offender, the state governor said at a press conference that he favoured the death penalty for juveniles as young as 13. The Governor of California has indicated personal support for the death penalty against 14-year-old children, and in 1997 a Los Angeles District Attorney said that he favoured the death penalty for children "no matter what their age"²⁶. The last execution of a juvenile offender in California was in 1923. In mid-1998 a member of the Texas House of Representatives planned to introduce legislation under which 11-year-olds who commit murder could be sentenced to death. His proposal was later shelved. It is unclear if it will be reintiated.

George Stinney, executed in 1944, aged 14. Some US officials want to send even younger children to death row today. Photo: NCADP

Ten years after the US Supreme Court set the minimum age for death penalty eligibility in the USA when it ruled that Oklahoma could not execute William Wayne Thompson for a crime he committed when he was 15, prosecutors in Oklahoma are still looking to undermine the decision. In late 1996, a District Attorney sought to pursue a death sentence in the retrial of Adriel Simpson, who was 15 years and three months old at the time of the offence. The District Attorney said that the "evolving standards of decency" in Oklahoma have changed since *Thompson v. Oklahoma*. He argued that this is demonstrated by the change in state law in 1995 to allow prosecutors to charge 13, 14, or 15-year-olds with first degree murder and try them as adults, without going to a juvenile court first, as was the case in 1988. In January 1997, the state Court of Criminal Appeals

intervened and stopped the prosecutor's quest for the death penalty and Adriel Simpson was sentenced to life without parole (in breach of Article 73(a) of the Convention on the Rights of the Child). Following the appeal court ruling, the District Attorney's Office dropped their bid for the death penalty against another 15-year-old offender in February 1997. However, in August 1998 a prosecutor from the same District Attorney's Office was reported to have said that he would "research the case law" to determine whether he could seek the death penalty against 15-year-old Dylan Shanks, charged with three murders committed on 7 August.

It is considered unlikely that any state or federal courts would allow an offender younger than 16 at the time of the crime to remain under sentence of death or be executed, suggesting that the officials above are engaging in a degree of demagoguery. Their attempts to appeal to the more punitive side of the US electorate show the extent to which the death penalty has become a political tool in the USA, and illustrate the lack of informed debate about the reality of the death penalty and alternatives to it. While politicians are busy competing with each other over who can be toughest on crime, including juvenile crime, they are failing society's need to find constructive solutions to the problem.

Children and the death penalty

"Six months later, this teenager from a local high school came to the police and said "I know who did this" and turned him in. It was this kid who lived a few blocks away, he was 16 when he did it... So he wasn't eligible for the death penalty because Illinois, unlike other states, doesn't allow juveniles to be executed..."

After he was convicted and sentenced, the first question [the press] asked me was "Well, aren't you disappointed that he didn't get the death penalty." That staggered me; that was the first time that I spoke out against the death penalty, publicly, after my sister's murder. I said 'no' - I mean she loved life, she believed in it, she valued it.... she would never want her memorial to be the death of another human being, she would never want more bloodshed to be the thing by which we honoured her life.

Beyond that I really feel that I wouldn't inflict on my worst enemy the grief that was inflicted on us by him... I can't imagine saying 'your son took my sister's life' - he had a brother and a sister, perfectly normal kids - 'so now I'll take your son's or your brother's life as my revenge'. I don't see the point of that except widening the circle of grief to include them.

I also don't want anything in common with him. I just think how cold he must have been to commit the murders and I think that's the kind of mercilessness that we're showing by executing people. You know, by saying 'at such-and-such a time, on such-and-such a day, we're going to end your life, we're going to strap you down to a table and inject your veins with poison and kill you.'"

Jeanne Bishop, interview with Amnesty International, Chicago, 29 May 1998. Jeanne Bishop's 25-year-old pregnant sister Nancy and her husband Richard were taken captive and murdered in the basement of their home in April 1990 by a 16-year-old boy.

Other politicians have sought to lower the age for death penalty eligibility, but within the 16 to 18 age band allowed by the US Supreme Court. In 1997, members of US Congress in Washington DC put forward a proposal to reduce from 18 to 16 the minimum age under federal capital statutes, as part of a broader legislative package on juvenile justice. The proposal was later shelved after opposition from human rights organizations, but it could be reinitiated. At a press conference in New York City in July 1998, following the death in hospital of a police officer who had been shot a few days earlier, allegedly by a 17-year-old youth, the city's Mayor called for tougher laws for juvenile offenders. He said it would be "appropriate" in some cases to make 17-year-old murderers eligible for the death penalty. The minimum age in New York state is currently 18. In 1996, the Georgia House of Representatives Judiciary Committee approved a bill to reduce from 17 to 16 the age at which the death penalty could be imposed. As part of their deliberations, the committee heard testimony from a man whose son had been killed by a 16-year-old boy two months earlier. In his emotional testimony, the grieving father said that if the 16-year-old defendant was "man enough to kill someone, then he ought to be man enough to take the punishment." By passing the bill onto the full legislature, the Committee encouraged the myths that the death penalty can heal all those who lose loved ones to murder, and that it is an effective deterrent against violent juvenile crime. The legislature did not pass the bill into law.

In 1994 Florida's Supreme Court overturned the death sentence of Jerome Allen, ruling that the state's constitutional ban on cruel or unusual punishment forbids the execution of an offender who was 15 at the time of the crime.²⁷ Prior to the ruling, Florida's legislators were debating a bill to make the death penalty applicable to 14-year-olds, and in late 1993 a state prosecutor had planned to seek the death penalty for four boys aged 13, 14 and 16.²⁸ In September 1998, having earlier in the year heard an appeal on behalf of death row inmate Keith Brennan, the Court was due to rule on whether it is acceptable under Florida's constitution to execute a prisoner for a crime committed at 16. At the appeal hearing, the Assistant Attorney General argued that, because the death penalty had been used against other 16-year-old offenders in Florida, society supported the execution of such prisoners. Apart from Keith Brennan, three such offenders have been sent to Florida's death row in the 1990s, two of whom have since had their death sentences reversed. Florida has not executed a prisoner for a crime committed at 16 since 1954.

Even abolitionist jurisdictions have seen some of their political leaders supporting the death penalty against juvenile offenders. At a press conference outside a juvenile detention centre in Rhode Island in August 1998, for example, one of the candidates for state Attorney General said that the case of two boys in Arkansas, recently convicted of murder committed when they were 11 and 13, was the type in which he might recommend the death penalty. After this drew criticism from his campaign opponents, he issued a news release to "clarify" his position saying that he in fact did not "support" capital punishment for juvenile offenders, but believes that a case of a 17-year-old who commits a heinous crime would "merit consideration of capital punishment". Rhode Island carried out its last execution in 1845, and has never executed a juvenile offender.

Many of these calls for a lowering of the age of death penalty eligibility are made in response to particular high-profile juvenile crimes, such as the spate of school shootings which

occurred across the USA between October 1997 and May 1998. In this period, 11 pupils and a teacher were killed by children between the ages of 11 and 17 in Mississippi, Kentucky, Arkansas and Oregon. In Mississippi, Senate Bill 2868 was passed into law in mid-1998 following the killing of a pupil in a 1997 school shooting in the state. While it does not lower the age of death penalty eligibility below 16, it expands capital offences to include "murder which is perpetrated on educational property."

In general, the pressure for the death penalty to be applicable to younger defendants is part of the shift away from the goal of rehabilitation for juvenile offenders to a more punitive approach. The death penalty now resides at the extreme end of what is becoming a continuum of harsher sentencing against juveniles, including life imprisonment without the possibility of parole, itself a violation of the Convention on the Rights of the Child. In California, for example, the minimum age for the death penalty has remained at 18, despite the governor's support for its use against those as young as 14. However, in August 1998 there were 14 people in Californian prisons serving sentences of life without parole for crimes committed when they were 16 or 17. As with the death penalty, the state seems to be saying that such juvenile offenders are beyond redemption.

WHY PROTECT CHILDREN WHO COMMIT VIOLENT "ADULT" CRIMES?

"We should not punish our children by execution. We call them adults but they are not. They are children... We don't kill our children." Beth Davis, lawyer, Missouri, August 1998

Defence lawyer Beth Davis was pleading for the life of DeShun Washington at the sentencing phase of his trial in Missouri on 31 August 1998. The jury had found him guilty of first-degree murder two days earlier. DeShun Washington was 16 at the time of the crime.

Thirty-five years ago, US Supreme Court Justice Frankfurter observed that "*children have a very special place in life which law should reflect*"²⁹. Today this universal truth has been reflected in the almost worldwide acceptance of the principle that juvenile offenders should be excluded from the death penalty. The need to consider the "best interests of the child", as expressed by Article 3 of the Convention on the Rights of the Child, can never be fulfilled by sending juvenile offenders to death row or killing them.³⁰

Within the USA, as elsewhere, there has been long-standing and widespread recognition that children are different in the eyes of the law. For example, a Presidential Commission reporting on youth crime in the 1970s observed that "*[c]rimes committed by youths may be just as harmful to victims as those committed by older persons, but they deserve less punishment because adolescents may have less capacity to control their conduct and to think in long-range terms than adults. Moreover, youth crime as such is not exclusively the offender's fault; offenses by the young also represent a failure of family, school, and the social system, which share responsibility for the development of America's youth.*"³¹ On average, it costs some two and a half million US dollars to prosecute, keep on death row and execute a single individual. Surely

this money, not to mention the human energy involved, could be put to better use in preventive efforts to remedy the sorts of failure referred to by the Commission.

In the early 1980s, the Section of Criminal Justice of the American Bar Association (ABA) conducted a two-year study which concluded that the death penalty was an inappropriate punishment for juvenile offenders and that *"the spectacle of our society seeking legal vengeance through the execution of a child should not be countenanced..."*. In 1983, the ABA adopted a resolution opposing "the imposition of capital punishment upon any person for an offense committed while under the age of 18." This was the first time that the ABA had taken a position on any aspect of the death penalty. In 1997, it reiterated its outright opposition to the execution of juvenile offenders when it called for a moratorium on the death penalty in the USA.

In *Thompson v. Oklahoma* in 1988, the US Supreme Court said that *"Youth is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage."* In 1993, the Court pointed to the greater scope for the rehabilitation of a young offender. It said that *"the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside"*³². The Court described the unique mitigating aspects of youth: *"A lack of maturity and an underdeveloped sense of responsibility are found in youth*

Children and the death penalty

In 1946, after six harsh days in police custody, 17-year-old Chicago student William Heirens was offered a choice. Confess to three murders committed when he was 16 and 17, or face a capital trial. His lawyers advised him that adverse and inflammatory publicity in Chicago newspapers involved in a circulation war had jeopardized his prospects of a fair trial. The threat of the electric chair loomed very real over the teenager as pressure on police and politicians to get a conviction mounted. He chose to confess and plead guilty, thereby avoiding trial and the possibility of the death penalty. On 6 September 1946 he was sentenced to three consecutive life sentences.

William Heirens, 70 years old in November 1998, is still in prison. During the past half century, he became the first Illinois inmate to earn a university degree. Through his efforts, the library and educational systems in the state's prisons were greatly improved. He served as secretary to the chaplain of the prison where he was held until recently. Over the years he has become a competent watercolour artist. One prominent psychiatrist has stated that he is "rehabilitated by any measure we can use."

Serious doubts have been raised about William Heirens' guilt. He has always maintained his innocence, claiming that he had to plead guilty in 1946 in order to live. But one fact is irrefutable: his hard work towards self-improvement while in prison and his contribution to the lives of other inmates would not have been possible if he had been executed.

The greater scope for rehabilitation of juvenile offenders is one reason why the world has agreed to consign their execution to history. For many people, the risk to the innocent is reason enough to abandon the death penalty altogether.

more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions. A sentencer in a capital case must be allowed to consider the mitigating qualities of youth in the course of its deliberations over the appropriate sentence." However, not all capital juries have been in a position to fully consider the defendant's youth as a mitigating factor, due to improper or ineffective guidance from prosecutors or defence lawyers.

The Supreme Court has noted that abusive and deprived childhoods, as well as age, must be taken into account at sentencing: "*...just as the chronological age of a minor is itself a relevant mitigating factor of great weight, so must the background and mental and emotional development of a youthful defendant be duly considered in sentencing.*"³³ This principle has also not been universally followed in capital trials. In 1991 Amnesty International found that of 23 juvenile offenders sentenced to death, the majority came from acutely deprived backgrounds; over half had been seriously physically or sexually abused; 10 were known to have been regularly taking drugs or alcohol from an early age; in many cases, the parents had histories of alcoholism, mental illness or drug abuse; at least 14 of the prisoners suffered from mental illness or brain damage; and most were of below-average intelligence.³⁴ The organization's research continues to indicate that many adult and juvenile offenders on death row had deprived or abusive childhoods. In the case of the young offenders, however, their behaviour may be more amenable to reform than in an older offender: "*The 30-year-old has been out of the house for 10 years. He's had time to form a new life. Almost all teenage offenders are still living at home. The damage done to them emotionally and mentally is not so far removed.*"³⁵

A photo that would have been impossible if its subject, William Heirens, had been sentenced to death and executed. Seen here holding a 1946 newspaper picture of him as a teenager charged with murder. See box on page 15.

It is commonly agreed that the death penalty's would-be goals of either retribution or deterrence are especially inapplicable in the case of young people. In 1989, citing the findings of the report by its Section on Criminal Justice, the ABA said "*...in light of the characteristics associated with childhood - impulsiveness, lack of self control, poor judgement, feelings of invincibility - the deterrent value of the juvenile death penalty is likely of little consequence...*"³⁶.

The goal of retribution, which presupposes exact like-for-like punishment, cannot be achieved by killing someone who may not have been fully responsible for their actions. In

Thompson v. Oklahoma, the US Supreme Court stated that "given the lesser culpability of the juvenile offender, the teenager's capacity for growth, and society's fiduciary [protective] obligations to its children" the goal of retribution is inapplicable to the execution of 15-year-old offenders. Its refusal to apply this ruling to 16 and 17-year-olds contravenes the principle that the state should assume the role of protector for all its children and youth. Politicians who call for younger children to be eligible for the death penalty are putting pressure on the state to absolve itself even further from its protective role.

On 31 August 1998 in Missouri, the jury decided that DeShun Washington should be sentenced to life in prison without parole.

ILLUSTRATIVE CASES

Where there's life, there's hope - Paula Cooper, Indiana

"Killing her would be two wrongs and that doesn't make a right." Bill Pelke, March 1987

It is now more than a dozen years since Paula Cooper was sentenced to death for a murder she committed when she was 15. Her death sentence was set aside by the Indiana Supreme Court in 1989 and she was given a 60-year prison sentence instead. She must serve half this sentence before becoming eligible for parole. In the years since she was sentenced at the age of 16, Paula Cooper has made substantial progress towards rehabilitation. She has obtained her high school certificate through correspondence, and is continuing her studies via correspondence courses from prison.

Paula Cooper's crime was atrocious - the multiple stabbing of 78-year-old Ruth Pelke at her home. Again, this is the sort of crime which many people say is beyond rehabilitation or forgiveness and for which the death penalty is the only possible response. Ruth Pelke's grandson, Bill Pelke, favoured the death sentence at first. But he became convinced that his grandmother would not have wanted the death penalty against Paula Cooper, and he realised that he did not want it either. He began to communicate with Paula Cooper by letter and the two of them have written to each other since. He has visited her about 10 times in prison since 1994.

Paula Cooper was abused as a child. Her father beat her with belts and electric cables. She and her older sister were forced to watch him beating and raping their mother. On one occasion the mother attempted to kill herself and her two daughters. Paula Cooper spent periods of time in foster homes and juvenile centres. She says that if there had been someone like Bill Pelke in her childhood, she would never have committed murder, and that it is now her aim to help other children from falling into crime. Bill Pelke continues to speak out against the death penalty.

Lost in a foreign land - Azikiwe Kambule, Mississippi

"Once we'd campaign for Nelson Mandela not to face the death penalty in South Africa. Now, here, in the land of the free and the home of the brave, we have a child facing the possibility of the death penalty." Dennis Brutus, former South African political prisoner, 1997³⁷

Azikiwe Kambule left his native South Africa in 1994 after his mother won a scholarship to study in Mississippi. He was 15. The following year his own country abolished the death penalty as part of its continuing efforts to escape its history of racial and social conflict. A year after that, Azi Kambule was facing the possibility of a death sentence in the USA.

Born and raised in the black township of Soweto, Azi Kambule missed many days of education as a young boy because of the school boycotts in protest at apartheid. Academically he settled well into his new school in Jackson, Mississippi, but socially he found it more difficult to fit in. His peers made fun of his foreign accent and cultural differences. He fell in with a group of older youths who spent little time at school.

On 25 January 1996 Azi Kambule, then 17, was with 21-year-old Santonio Berry when the latter saw Pam McGill, a local black social worker, in a sports car. Azi Kambule says that Santonio Berry decided to steal the car and forced Pam McGill at gunpoint into the passenger seat, telling Azi Kambule to get in the back. He then drove to a wood, told Azi Kambule to wait, took Pam McGill into the woods and shot her. Azi Kambule, who had no criminal record or history of violence, says he was unaware that Santonio Berry intended to steal a car or commit murder.

As the case developed, two prosecutors demonstrated the lengths to which they were willing to go to obtain a death sentence. 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 Hinds County official requested that the trial take place in Madison County because "*The family [of the victim] from the*

Children and the death penalty

"The shame of America: Do you know that the United States is the only land on earth where human beings are burned at the stake? In four years, 1918-1921, twenty-eight people were publicly burned by American mobs..." These were the opening words of a full-page advertisement in *The New York Times* of 23 November 1922, part of a campaign by the National Association for the Advancement of Colored People to lobby support for an anti-lynching bill in the US Senate. Over 75 years later, the USA may yet become the world's sole perpetrator of another human rights violation - the execution of juvenile offenders.

In its time, lynching fed on public support for its continuation and required society's opposition to eventually outlaw it. So too with the judicial death penalty. Also like lynching, the death penalty in the USA has a racist history. In the case of juvenile offenders, some 70 per cent of those executed between 1642 and 1964 were black, and 24 per cent white. Nearly 90 per cent had been convicted of crimes against whites.

Like the death penalty as a whole, the juvenile death penalty of today is not as overtly racist as it once was. But, as with its adult relation, racial and ethnic minorities continue to make up a disproportionate number of the juvenile offenders on death row, and race of defendant and victim can still play a role in who gets sentenced to death.

David Baldus and George Woodworth, experts on race and the US death penalty, have written: "*Many citizens consider it insensitive and unseemly, if not immoral, for a country, with our historical record on slavery and race discrimination, to persist in using a punishment that is administered and controlled almost exclusively by whites and serves no demonstrated penological function, but has a profound adverse impact, physically, psychologically, and symbolically on its black citizens.*" (Acker, J.R: *America's Experiment with Capital Punishment*. CAP, 1998).

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." Hinds County has a high proportion of black residents, whereas Madison County is predominantly white. Pam McGill's murder had briefly united the two communities in shared outrage against the two black youths. However, as Azi Kambule's role in the crime emerged, sympathy for him within the black community increased.

Santonio Berry accepted a plea-bargain from the Madison County District Attorney - life imprisonment without parole in exchange for admitting to killing Pam McGill and agreeing to testify against his younger co-defendant. Azi Kambule refused a plea-bargain of life imprisonment without parole, asserting his innocence of capital murder. The District Attorney continued to press for the death penalty against Azi Kambule, despite the fact that the actual murderer had been spared from it, and despite knowing that his pursuit of a death sentence against a juvenile offender would violate international standards. This had been made clear to him via national and international appeals, including one from Archbishop Desmond Tutu, Chairperson of the Truth and Reconciliation Commission in South Africa. The Archbishop cited the Convention on the Rights of the Child and wrote: "*Azikiwe must stand trial for his part in the killing and should be punished if found guilty but society must not compound evil by violating his rights as a minor. I urge you as an officer concerned for justice, law and order to uphold the culture of reverence for human rights...*" The District Attorney rejected the appeals: "*It's just a bunch of these anti-death penalty zealots mouthing off... The death penalty is the only deterrent we have in this country to stop these senseless murders going on...*". He did not provide any evidence to back up this claim.

In June 1997, the judge ruled that the prosecution could not seek the death penalty against Azi Kambule when the actual killer had received a life sentence. The District Attorney could have continued with the charge of capital murder to gain a sentence of life imprisonment without parole. Fearful of this, Azi Kambule agreed to plead guilty to aiding a car-jacking and assisting in the attempt to sell the stolen car in return for the capital murder charge being dropped. He was sentenced to the maximum sentence - 35 years in prison without the possibility of parole.

Azi Kambule is in Woodville Correctional Center, a new prison owned by the Correction Corporation of America. He had completed his high school diploma by correspondence while awaiting trial. His parents, back in South Africa, are campaigning for him to be allowed to pursue a university degree by correspondence, but in August 1998 they had received no reply from the prison authorities.

Azi Kambule Photo: NCADP

Azi Kambule's own country continues to face a serious crime problem, but the government there is resisting reactionary calls for a return to executions. In June 1998, Deputy President Thabo

Mbeki said: *"We think the death penalty is wrong and will help entrench a culture of barbarity in this country. I am quite certain that the government is not going to take on itself the position of an official murderer."* After a bomb attack against the US-owned Planet Hollywood restaurant in Cape Town in August 1998, President Mandela rejected calls for the death penalty, saying that it had never been shown to be a deterrent and that *"that type of vengeance does not help us, to kill people merely because they have killed others."*

Wrong on all counts? - Shareef Cousin, Louisiana

"To sit here in the shadows of death, surrounded by death on each side of me is very hard to deal with... almost every day I think of killing myself, but I'm too scared to die" Shareef Cousin, 1997³⁸

On the evening of 2 March 1995, Michael Gerardi and Connie Babin left a restaurant in New Orleans. As they walked to their car, they noticed three males watching them, one of whom confronted Michael Gerardi. As Connie Babin ran towards the restaurant for help, she looked back to see the assailant fire his gun pointblank into her friend's face.

Three weeks later, 16-year-old Shareef Cousin was arrested and charged with the murder. From the moment of his arrest, he maintained his innocence. At jury selection for his trial in January 1996, the prosecution moved to exclude jurors whose "sympathy" towards a child of 16 would diminish their ability to vote for death.

The prosecution's case hinged on Connie Babin's account of the murder. She repeatedly stated her absolute certainty to the jury that Shareef Cousin was the perpetrator. The defence questioned the reliability of her testimony, producing a police report from the night of the killing which stated that she had said that she had "not got a good look at the perpetrators, and probably could not identify them." There was no physical evidence linking Shareef Cousin to the shooting.

James Rowell, 16, was meant to testify that Shareef Cousin had told him that he had shot Michael Gerardi. However, when questioned in court, James Rowell said that he had never had such a conversation and had only said what his lawyer and the police told him to say in order to receive favourable treatment on the armed robbery charges he was facing.

Shareef Cousin was playing basketball on the evening of the murder. There was some dispute about the exact timing of the game, but several alibis testified that Shareef Cousin could not have committed the murder, including the basketball coach who said that he had given the boy a lift home, dropping him off after the time of the crime.

On 26 January, the jury found Shareef Cousin guilty of first-degree murder. While his estranged father turned up too late to testify as a character witness at the sentencing on 30 January, Michael Gerardi's father made an emotionally powerful "victim impact statement", in which he told of the pain of losing his son. The jury decided that Shareef Cousin should die.

After the trial, an anonymous source sent the defence team a tape of a statement that Connie Babin had made to investigators a few days after the murder, but which had not been made known at the trial. On the tape, asked if she could identify the killer, she replied *"I don't know, it was dark, and I didn't have my contact [lenses] or my glasses so I'm coming at this from a disadvantage"* and that she could see only *"outlines and shapes and things"*.

The defence said that the prosecution had hidden key alibi witnesses. Three of Shareef Cousin's basketball teammates were waiting outside the courtroom during one of the last days of the trial, ready to testify that he was with them in the coach's car around the time of the murder. However, prosecution staff took the boys to their office and they were never heard in court. The Assistant District Attorney said that the boys had been moved for their own comfort as it was hot where they were waiting. On questioning, he admitted that the trial took place in January, a cold time of year.

The judge denied the request for a new trial and on 2 July 1996 confirmed the death sentence. Shareef Cousin was sent to Louisiana State Prison in Angola, becoming the youngest death row inmate in the USA. On appeal in April 1998, the state Supreme Court ruled that the prosecutor had made improper use of James Rowell's alleged pre-trial

statements. Because this may have influenced the jury, the court overturned the conviction and death sentence and remanded Shareef Cousin for retrial. He is currently in Orleans Parish Prison in New Orleans. His new trial is scheduled for late 1998 at which the state will again seek the death penalty, in violation of international human rights law.

Children and the death penalty

"This is a kid. I swear to God, when Shareef was first arrested, he called me up collect, he goes, 'Tonya, can you go to school and get my assignments because I don't want to be late with my lessons...'"

"[After the appeal] Shareef called me... My daughter was there and I said 'guess what? Your uncle Shareef got a new trial.' And she says - she was five - she says 'Mummy, does that mean they not gonna kill him?' And that's when it hit home..."

Tonya Cropper, sister of Shareef Cousin, June 1998

Was the state also wrong in who it convicted? If so, it would not be the first time that a person has been wrongly convicted and sentenced to death in the USA. In 1998, Curtis Kyles became the 75th such person to be released since 1973. He had been subjected to five capital trials by the same District Attorney's Office which prosecuted Shareef Cousin. The US Supreme Court eventually ruled that the verdict against Curtis Kyles 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.³⁹

A mind to kill - Sean Sellers, Oklahoma

"He's only 17, but when he picked up that .357 he became a man... And when he picked up that .44 Special, he became a man again." District Attorney, trial of Sean Richard Sellers⁴⁰

Sean Sellers

In 1986 a prosecutor used these words to argue to a jury that Sean Sellers should die for his "adult" crimes. Twelve years later, a federal appeals court noted that a serious mental condition may have led the 16-year-old Sean Sellers to commit those crimes. Yet the Oklahoma state authorities still intend to kill him.

Sean Sellers was sentenced to death in 1986 for the 1985 murder of Robert Bower, a store owner, and of his own mother and stepfather in 1986. On 4 February 1998 a US Court of Appeals for the 10th Circuit denied his latest appeal, despite acknowledging the "significant evidence that the person facing death... is not the person who committed the crime."⁴¹ The court had just reviewed expert testimony that Sean Sellers has Multiple Personality Disorder (MPD), a mental condition in which "alter" personalities manifest themselves in the sufferer.

This testimony states that: (a) a quantitative electroencephalogram test (QEEG) disclosed that Sean Sellers has brain damage as a result of a head injury suffered as a child; (b) the QEEG dramatically changed with each of Sean Sellers' alter states, indicating the presence of at least three alter personalities; (c) an Evoked Potential Test (EPT), which relies upon biological signals from the body and cannot be falsified by the patient, confirmed the QEEG; (d) two doctors, separately, spoke to two of Sean Sellers' alter personalities, named "Danny" and "The Controller"; (e) Sean Sellers suffered from MPD at the time of the killings; (f) one of the alter personalities, which is unlikely to have understood the difference between right and wrong, "must have been in executive control of [Sellers'] person or body" at those times; (g) there was only limited awareness

of MPD in the mental health community at the time of the trial, when tests for it had not yet been developed; (h) MPD is a "hidden disease" which generally takes seven years to confirm.

The Court admitted that, if believed by a jury, this evidence of the culpability of an alter personality "renders the person known as Sean Sellers actually innocent". However, it said that, as a federal *habeas corpus* court, it was restricted to ruling whether a sentence violates the Constitution, rather than to correcting errors of fact. The Court ruled that it could not act unless Sean Seller's claim of innocence was so great that no reasonable juror would convict. It noted that, although the psychiatric evidence was "clear, strong and supportive", it had not been cross-examined in a courtroom, and also lay people (ie jurors) could be expected to be sceptical about MPD. The Court said that it was therefore not able to conclude that not one juror would vote to convict. Stating that it was "not unmoved by the Petitioner's dilemma", the Court denied the appeal, noting that Sean Sellers had recourse to executive clemency.

Sean Sellers' earlier state appeals had been exhausted after the Oklahoma Court of Criminal Appeals ruled in 1995 that his right to raise the claim of MPD had been waived because it could, and therefore should, have been raised at the time of the trial.

It said that the evidence thus did not fall under the category of "newly discovered" which could have allowed for a successful appeal. This ruling, apparently unsupported by any expert evidence, contradicts the undisputed testimony that it was not possible to raise the MPD claim at Sean Sellers' trial because the clinical tests for discovering and confirming the presence of MPD had not yet been developed. The experts also provided evidence that it usually takes several years and several incorrect diagnoses to establish that a person suffers from MPD.

Children and the death penalty

"To condemn me to death solves nothing! To be condemned is to say my life has no positive value, I'm beyond correction or rehabilitation. That's not true." Jerry Mooney, juvenile offender, H-Unit, Oklahoma, quoted in *Buried Alive*, SPIN magazine, October 1998.

Jerry Mooney, Sean Sellers, and Scott Hain are on death row for crimes committed when they were not yet 18 years old. All three are held in H-Unit, Oklahoma State Penitentiary. Their sentences and incarceration in H-Unit are an affront to the widely accepted principles that rehabilitation and the "best interests of the child" should be uppermost in the minds of officials dealing with young offenders. Built entirely of concrete and sited so that the living accommodation is effectively underground, H-Unit is an electronically controlled facility designed to minimize contact between inmates and prison staff. Prisoners are confined for 23 or 24 hours a day in windowless cells allowing virtually no natural light and no natural air. Amnesty International has found that the conditions under which death row inmates are held in H-Unit amount to cruel, inhuman or degrading treatment.

Jerry Mooney, convicted in 1995 of a murder committed when he was 16, had a disturbed and abused childhood, and suffered brain injury.

At the original trial in 1986, a psychiatrist had testified that Sean Sellers was "legally unconscious" at the time of all three killings and therefore incapable of forming the intent required of first-degree murder. To rebut this, the prosecution provided testimony from a doctor, who was unable to rule out the possibility that the psychiatrist was correct in his assessment. In 1987, another psychiatrist found Sean Sellers to be chronically psychotic, exhibiting symptoms of paranoid schizophrenia, and suffering from hallucinations, delusional beliefs, peculiar acts of self-mutilation and obsessions with God, Satan, good and evil.

At the sentencing phase, the judge did not allow the defence to introduce expert testimony that juveniles are developmentally different to adults, on the grounds that all jurors would know this anyway. Nor did the judge allow expert testimony that the length of a life sentence in Oklahoma meant at least 15 years in prison without parole. The defence had wished to counteract recent newspaper articles suggesting that life imprisonment meant release in under half that time.

Sean Sellers had a disturbed childhood. His mother was 16 when he was born, and his parents divorced three or four years later. As a small boy he was often left in the care of relatives while his mother was away with his stepfather, a truck driver. An uncle made him wear nappies because he still wet the bed at the age of 12 and 13. If he wet the bed two nights in a row, the uncle would make him wear soiled nappies on his head all day as punishment. He was exposed to violence from an early age. His stepfather and mother both carried guns and knives with them. An uncle who took him hunting tried to teach him to step on an animal's head and pull on its legs to kill it. None of this detail was presented to the trial jury as mitigating evidence.

The authorities continue to expose Sean Sellers to brutality by keeping him under sentence of death. They are breaking international law. They are also planning to rewrite Oklahoma's history of capital punishment; no juvenile offender has ever been executed in the state.

Time for mercy - Kevin Hughes, Pennsylvania

"The drugs they gave Kevin for the trial made him quiet and less moody, but he was even less able to understand... It was like having a trial with a three-year-old child. We could not understand how they could try someone so out of touch." Affidavit of aunt of Kevin Hughes

On 1 March 1979, the body of nine-year-old Rochelle Graham was found in a building in Philadelphia. She had been raped and strangled. This appalling crime went unresolved until 11 January 1980, when Kevin Hughes was arrested after another young girl identified him to police as the person who had sexually and physically assaulted her a few days before. Noting similarities in the crimes, the police questioned Kevin Hughes about Rochelle Graham. He eventually confessed to her murder, committed when he was 16.

At the time of his arrest there were signs that Kevin Hughes was suffering from mental health problems, when he indicated to police that "voices" had made him commit the murder. In the

next few months, the severity of these problems was noted by mental health professionals at the prison where he was held in pre-trial detention and at a psychiatric hospital where he was sent in August 1980. However, he was found competent to stand trial by two doctors, one of whom found signs of schizophrenia, but believed that it was under control because of the anti-psychotic drug, Thorazine, he was taking. A third psychiatrist found Kevin Hughes not competent to stand trial, as he was "profoundly disturbed" and suffering from a delusional belief that "all he has to do is to tell his story to the judge and he will be sent home." The judge ruled that the trial could proceed, but ordered, at the prosecutor's request, that Kevin Hughes be kept on Thorazine throughout the proceedings.

At the sentencing phase, the jury was not properly instructed to consider Kevin Hughes' youth in mitigation, and the jurors never heard evidence of Kevin Hughes' abusive and neglected childhood, or his mental illness. According to later affidavits from relatives, his mother was a diagnosed schizophrenic. She was alcoholic and a drug-abuser, who drank heavily when pregnant with Kevin. He never knew his father. He and his five siblings were fathered by five different men. The family was very poor; the children would often go hungry and miss school because their mother was drunk or absent. She attempted suicide several times and Kevin tried to overdose with her once. She was involved with many men, many of whom were violent and abusive both to her and the children. She would often have sex in front of the children and try to involve them, and the children witnessed their mother being physically violated. Kevin Hughes was especially targeted for abuse because he was mentally slow. According to relatives, Kevin was sexually abused by at least one man who told him that men should forcibly subdue women.

His relatives have testified that as a child, Kevin Hughes would suffer from radical mood swings, hear voices, and often be out of touch with reality. His elder brother says that Kevin "*believed that he had magical powers and that there was some kind of magic that protected him. This was especially strange to listen to, because it was obvious from all the bad things he went through that nothing had ever protected him.*" Kevin Hughes' mental health problems have continued on death row. He has been diagnosed as

Children and the death penalty

Gary Graham is a juvenile offender who has been on death row in Texas since 1981 for a murder he says he did not commit.

In late 1994 two leading US experts on the death penalty wrote to the *Houston Post*, pointing out the risk of executing the innocent and mentioning the case of Gary Graham. A reader wrote back: "*...As a defender of the death penalty, I have no problem in admitting innocent people can be executed and couldn't care less what happens to Gary Graham... There is a war going on in our own country - against crime and thugs like Graham. It is sad that innocent people get killed in war, but that is the way it is...*"

Such views can only be encouraged by a political leadership which refuses to see the death penalty as a human rights violation or the execution of juvenile offenders as a violation of international law. Some politicians' simplistic responses to violent crime, echoed in this letter, help perpetuate the myth that the death penalty can offer constructive solutions to the problem.

suffering from paranoid schizophrenia, brain damage, and a subaverage IQ.

In arguing for a death sentence, the trial prosecutor pointed out that Kevin Hughes had been calm and taken notes during the proceedings. His current attorneys and his family say that this "calmness" was the result of the Thorazine that he was being given, and that the "notes" were childish scribbles and nursery rhymes. The prosecutor also argued that the jurors would have to "go beyond being human" and "go beyond being rational" to "show him mercy". On 24 March 1981, the jury sentenced Kevin Hughes to death. He remains on death row. A ruling on his latest appeal is expected in late 1998 or early 1999.

It was 1916 when Pennsylvania last executed a juvenile offender. It is time now to give Kevin Hughes back his human rights and grant him clemency.

**Brutal lives, brutal deaths -
Joseph Cannon and Robert
Carter, Texas**

"I want people to know I have repented for what I have done, and if I could do something, anything, to change what has been, I would... I am very ashamed to die this way." Joseph John Cannon, executed 22 April 1998

The gurney in Huntsville, Texas, where Joseph Cannon and Robert Carter were put to death in 1998. ©AP

"I'm going to a better place. I hope the victim's family will forgive me, because I didn't mean to hurt or kill no one." Final statement of Robert Anthony Carter, executed 18 May 1998

Within a period of 27 days in 1998, two men were killed in Texas for crimes committed when they were 17. They shared a common death - strapped down in the same execution chamber and injected with the same lethal chemicals. Their childhoods were similar; their home as adults was Ellis Unit 1 in Huntsville, a prison block whose very existence denies the possibility of rehabilitation.

Joseph Cannon killed Anne Walsh in 1977, the year that the USA signed the International Covenant on Civil and Political Rights and resumed executions. His life up to the time he committed his shocking crime had been one of abuse and deprivation.

When he was four, Joseph Cannon was hit by a truck and suffered a fractured skull. This left him hyperactive and with a speech impediment; he could not speak clearly until he was six. He had learning disabilities and was unable to function in the classroom. He was expelled from school

in first grade (age 6-7) and received no other formal education. He turned to glue sniffing and solvent abuse and, aged 10, was diagnosed as suffering from organic brain damage as a result. He was later diagnosed as schizophrenic. He also suffered from severe depression, and at the age of 15 he attempted suicide. He was severely sexually abused by his stepfather when he was seven and eight, and regularly sexually assaulted by his grandfather between the ages of 10 and 17.

He was thrown out of his home by his stepfather. He broke into an apartment and stayed there until he was arrested for burglary. The lawyer appointed to represent him on the burglary charge arranged for his release on parole, and invited him to stay with his sister, Anne Walsh, which he did for about a week. Then, on 30 September 1977, having swallowed some 25 "pills" and drunk a large quantity of whisky, he shot Anne Walsh, fled in the family's car, crashed it and was arrested. He confessed, but could not explain his actions. "I go crazy sometimes... I had no grudge or any reason to kill Anne; in fact she went out of her way to be nice to me." He was sentenced to death.

Tests revealed that Joseph Cannon had an IQ of just 79 (borderline mentally retarded). In 1989 a doctor concluded that the prognosis of "future dangerousness" presented to the trial jury, and medical testimony that Joseph Cannon could not be managed anywhere, were "wholly inconsistent with scientifically established knowledge and procedure". One psychologist considered Joseph Cannon's case "exceptional" in terms of the brutality and abuse he had been subjected to as a child. Indeed, Joseph Cannon thrived better on death row, where he learned to read and write, than he ever did in his home environment. His IQ, aptitude and self-image all improved in prison.

On 22 April 1998, Joseph Cannon was led to the death chamber, the threat he had lived with for more than half of his life. As the lethal solution began to flow, the needle blew out of his arm. Witnesses to the execution were ushered out, while the needle was reinserted. A few minutes later they returned to watch him be put to death. His mother collapsed after seeing her son killed and had to be taken to hospital. One of Anne Walsh's sons, who had lost his own mother in such

violent circumstances 21 years earlier and who witnessed the execution, told reporters: "*Job well done. End of story.*"

But it is not the end of the story. Certainly not in Texas, which in June 1998 accounted for 26 of the 70 juvenile offenders on death row in the USA. Of the 11 such offenders executed nationwide since 1985, seven were put to death in Texas. Joseph Cannon was the first juvenile offender executed in the USA since 1993. His execution, together with the killing of Robert Carter which was to follow a little under a month later, served as a profound reminder as to why the world is abandoning this most calculated of human rights violations.

Robert Carter, one of six children in one of the poorest families of an impoverished Houston neighbourhood, was abused throughout his childhood. His mother and stepfather would whip and beat the children with wooden switches, belts and electric cords. At the age of five he was hit on the head with a brick; on another occasion a dinner plate his mother threw at him smashed on his head. At the age of 10 he was hit so hard on the head with a baseball bat that the bat broke. He received no medical attention for any of these injuries. In an incident shortly before the murder for which he was eventually to die, Robert Carter was shot in the head by his brother, the bullet lodging near his temple. He afterwards suffered seizures and fainting spells.

Children and the death penalty

"Earlier this week, I spoke to a group of young people in a classroom. I decided to explain to them what had happened. I told them that I was there because a group of people had decided that my husband had killed one of their brothers and so they took him prisoner. Then they set up this device, they decided on a day, they invited people to watch, they brought him into this little room, and they strapped him down. And then they attached electrodes to his body and then they sent a current through those electrodes over and over again until flames leapt from the top of his head, and smoke came out of his ears. Then when they were sure he was dead, some of them celebrated their revenge.

And the kids, they were crying.

And my daughter, sometimes when she has a hard time with things in life - she was 15 when they did this to her father - and sometimes now when she has troubles, she goes and gets his pyjamas and puts them on and she sits down in a quiet place and she meditates and prays for her father to come...

The people that did this - I told the children - were the State of Florida. And they were very shocked. The kids still had some questions about the death penalty, but not one of them could say that that sounded like the right thing to do...."

Sonia Jacobs, June 1998. She and her husband, Jesse Tafero, were convicted of killing a state trooper and sentenced to death in 1976. She was released in 1992 after a court ruled that she had been wrongly convicted. This came too late to save Jesse Tafero, convicted on similarly flawed evidence. His sentence had been carried out in 1990 in a horribly botched electrocution.

On 24 June 1981, 18-year-old Sylvia Reyes was shot and killed during a robbery at a petrol station where she worked. Robert Carter, a brain damaged 17-year-old, was arrested, held incommunicado, and confessed to the murder, after waiving his right to have a lawyer present.

At his trial, the prosecution took one day to present its entire case. It stated that Robert Carter had been approached by three people who solicited him to commit a robbery on the spur of the moment and gave him a gun. The prosecution stated that Robert Carter had accidentally shot Sylvia Reyes as he attempted to uncock the gun. After the defence failed to offer any evidence in rebuttal, Robert Carter was convicted of capital murder. At the sentencing, during which the prosecutor told the jury that life imprisonment would be like a "slap on the wrist", the jury was not invited to consider as mitigating evidence Robert Carter's age at the time of the crime; the fact that he was mentally retarded (in 1986 he was found to have an IQ of 74), brain damaged and had suffered brutal physical abuse as a child; or that this was his first offence. The jurors took 10 minutes to decide that Robert Carter should die.

Sixteen years later, on 18 May 1998, the adult Robert Carter was taken to a room, strapped down, and killed. His death compounded the violent tragedy of Sylvia Reyes' killing, a crime for which Robert Carter had come to display deep remorse, as Amnesty International delegates were to witness when they met him a few months before he was executed.

He had spent the last afternoon of his life talking to the prison chaplain, who related the next day that "Robert was very calm, very peaceful...He was very polite and very gentle. He'd changed a lot. He was a man truly filled with remorse for what had taken place." His spiritual advisor who also visited him on 18 May said that "one of the saddest things to [Robert] was that even with his death that night, it would not be enough. He was so sorry."

What did the killing of Robert Carter and Joseph Cannon achieve? Deterrence is no longer advanced as a serious argument for the death penalty in the USA, and in any event has long been seen as far less applicable to juvenile crimes. Nor can the goal of retribution be justified; given the two men's youth and limited intelligence at the time of their crimes, neither can be considered to have been fully responsible for their actions, rendering their lethal like-for-like punishment disproportionate in the extreme.

Like many on death row, Robert Carter and Joseph Cannon, came from brutalizing and deprived backgrounds. Their killing offended basic notions of humanity and denied their progress towards rehabilitation, the widely accepted goal for juvenile offenders.

Their executions not only violated international law, but appear to have been acts of simple vengeance.

At death's door - Dwayne Allen Wright, Virginia

"Wright's jury was fully informed of Wright's brother's early death, his absent father, his trouble in school, his depression, and his borderline intelligence..." Federal appeals court, confirming Dwayne Wright's death sentence, July 1998⁴²

At the time of writing, Dwayne Allen Wright may have only a matter of weeks to live. If executed as scheduled, on 14 October 1998, he will be the first juvenile offender put to death in Virginia in over 65 years. His life experiences echo those of many juvenile offenders on death row in the USA: a childhood marked by poverty and deprivation; exposure to violence from an early age; and serious mental health problems. Charged with capital murder committed when he was not yet 18, he faced a trial jury which decided that he was a future threat to society and that this outweighed any hope of his reform.

This bleak view is encouraged by officials who insist that the death penalty is the only appropriate response to certain violent crimes and that US domestic legislation takes priority over international law in the case of juvenile offenders charged with capital offences. The Supreme Court of Virginia reflected this in 1993 when it confirmed Dwayne Wright's death sentence: *"Executing a defendant who was 17 years old when he committed a capital offense does not violate society's evolving standards of decency"*. The Court failed to mention that such an execution violates international standards.

Dwayne Wright grew up in a poor family in a deprived neighbourhood of Washington DC, rife with criminal drugs activity, where he witnessed habitual gun violence and murder. From the age of four, Dwayne Wright lost his father to incarceration in prison. His mother, who suffered from mental illness, was often unemployed for long periods. When he was 10, his 23-year-old half-brother, to whom he was very close, was murdered. After this Dwayne Wright developed serious emotional problems. He did poorly at school. Between the ages of 12 and 17, Dwayne Wright spent periods in hospital and juvenile detention facilities. During this time he was treated for "major depression with psychotic episodes"; his mental capacity was evaluated as borderline retarded, his verbal ability as retarded; and doctors found signs of organic brain damage.

In October 1989, a month after he turned 17, Dwayne Wright went on a two-day violent crime spree, which culminated in the robbery and attempted rape and shooting of Saba Tekle, a 33-year-old Ethiopian woman. He was caught the next day, confessed to the police and was tried in 1991.

At the sentencing phase of his trial, the defence accepted the court's nomination of a clinical psychologist to present evidence in mitigation. On cross-examination, the defence lawyer learned for the first time that the psychologist was the author of a study in which he concluded that mental illness and environment are not responsible for people committing crimes, but that criminals act because they develop an ability to "get away with" their crimes and "live rather well" as a result. In July 1998, the US Court of Appeals for the Fourth Circuit admitted that the psychologist's testimony had "dealt quite a blow to Wright's mitigation defense". However, it ruled that the defence counsel's failure to investigate the psychologist's background was not enough of an error to make for a successful appeal on the issue. It said that although parts of the psychologist's testimony "were less than favourable to Wright's defense", the defence had managed to use the testimony to present "a significant amount" of mitigating evidence to the jury.

The prosecutor argued to the jury that this "random killer" should die for his crimes. He said: "I defy you to find one ounce of remorse or penitence or sorrow for the acts he's committed. There's not a breath of it." Dwayne Wright had reportedly displayed little emotion during the trial, but wept when his mother described his despair over the loss of his brother in 1983. Dwayne Wright himself is now facing brutal death.

A STEP IN THE RIGHTS DIRECTION

***"It is the mark of a good action that it appears inevitable in retrospect."* Robert Louis Stevenson**

In the USA and many other countries, violent crime is a serious problem. Such crimes have tragic and lasting ramifications for the families and loved ones of the victims. As an organization dedicated to the victims of human rights violations, Amnesty International would never seek to excuse or belittle these crimes. But the death penalty is a calculated denial of the right to life and the right not to be subjected to cruel, inhuman or degrading punishment, basic rights to which all human beings are entitled, no matter who they are or what they have done.

The current use of the death penalty in the USA is driven by anger and fear about violent crime, desire for retributive justice, and by elected officials unwilling to risk their careers by supporting alternatives. Fear of violent crime, whether juvenile or adult, can make many citizens feel that abandoning the death penalty would be a leap into the dark. Yet it is no longer a step into the unknown; the experience of very many countries has shown that there are alternatives to the death penalty and that there is no descent into social disorder following abolition. For example, the murder rate in Canada dropped by 34 per cent in the 20 years that followed abolition in 1976.

There is an overwhelming international legal and moral consensus against any nation executing juvenile offenders. However heinous the crime, the sentencing to death and execution of a young person denies the possibility of rehabilitation, cannot be justified on grounds of retribution or deterrence, and is contrary to contemporary standards of justice and humane treatment in every corner of the world. As the world marks 50 years of the Universal Declaration of Human Rights, ending the death penalty against juvenile offenders would be a particularly appropriate step for the US government to take towards total abolition and towards meeting its promise of rights for all.

Amnesty International urges the US government to take this step now.

RECOMMENDATIONS

Pending total abolition of the death penalty, the US federal authorities should:

- withdraw their reservation to article 6(5) of the International Covenant on Civil and Political Rights;
- ratify the Convention on the Rights of the Child, without reservation;
- take all necessary steps to ensure that state authorities comply with these international standards as they affect juvenile offenders and the death penalty, including by ensuring that life imprisonment without possibility of parole is not instituted as an alternative for crimes committed by those under 18;

Pending abolition of the death penalty in their state, authorities in the 24 states which currently allow for its use against defendants who were under 18 at the time of crime, should:

- establish an immediate moratorium on the execution of juvenile offenders pending the adoption of legislation imposing a minimum age of 18 at the time of the crime in capital trials.

TABLE 1 - JUVENILE OFFENDERS EXECUTED, USA 1977 - 1998

Name	State	Executed	Age at crime	Age at death	Race
Charles RUMBAUGH	Texas	1985	17	28	W
James Terry ROACH	South Carolina	1986	17	25	W
Jay PINKERTON	Texas	1986	17	24	W
Dalton PREJEAN	Louisiana	1990	17	30	B
Johnny GARRETT	Texas	1992	17	28	W
Curtis HARRIS	Texas	1993	17	31	B
Frederick LASHLEY	Missouri	1993	17	29	B
Ruben CANTU	Texas	1993	17	26	L
Chris BURGER	Georgia	1993	17	33	W
Joseph John CANNON	Texas	1998	17	38	W
Robert Anthony CARTER	Texas	1998	17	34	B

TABLE 2 - JUVENILE OFFENDERS ON DEATH ROW, USA - JUNE 1998

STATE Prisoner name	Age at crime	Date of crime	Race (all male)	Victim race/gender
ALABAMA				
Willie Roy BURGESS	16	1993	B	W/M
Taurus CARROLL	17	U	B	U/U
Timothy Charles DAVIS	17	1978	W	W/F
Gary Davis HART II	16	1989	B	W/M
James Matthew HYDE	17	1995	W	W/M
William Thomas KNOTTS	17	1989	W	B/F
Marcus Dewayne PRESSLEY	16	1996	B	2W/F
Nathan D. SLATON	17	1987	W	W/F
ARIZONA				
Martin Paul FONG	17	1992	L/A	3A/M
Levi Jaimes JACKSON	16	1992	W	W/F
Kenneth Jeremy LAIRD	17	1992	W	W/F
ARKANSAS				
Damien SANFORD	16	1995	B	B/F

FLORIDA				
James BONIFAY	17	1991	W	W/M
Keith M. BRENNAN	16	1995	W	W/M
Roderick Justin FERRELL	16	1996	W	W/F+W/M
Cleo Douglas LECROY	17	1981	W	W/F+W/M
Nathan RAMIREZ	17	1995	L	W/F
David SNIPES	17	1995	W	U/U
Ryan URBIN	17	1995	W	U/M
GEORGIA				
Jose Martinez HIGH	17	1976	B	W/M
Alexander Edmund WILLIAMS	17	1986	B	W/F
KENTUCKY				
Kevin N. STANFORD	17	1981	B	W/F
MISSISSIPPI				
David BLUE	17	1992	B	B/F
Ronald Chris FOSTER	17	1989	B	W/M
William HOLLEY	17	1992	W	B/M
Stephen McGILBERRY	16	1994	W	2W/M+2W/F
MISSOURI				
Antonio RICHARDSON	16	1991	B	2W/F
Christopher SIMMONS	17	1993	W	W/F
NEVADA				
Michael DOMINGUES	16	1993	L	A/F + A/M
NORTH CAROLINA				
Kevin GOLPHIN	17	1997	B	2W/M
Curtis Ray WOMBLE	17	1993	B	B/M
OKLAHOMA				
Scott Allen HAIN	17	1987	W	W/M+W/F
Jerry DuWane MOONEY	16	1993	W	W/M
Sean Richard SELLERS	16	1985+86	W	2W/M+W/F
PENNSYLVANIA				
Kevin HUGHES	16	1979	B	B/F
Lee PERCY	17	1986	B	2B/F
SOUTH CAROLINA				
Robert Lewis CONYERS	16	1991	B	W/F
Joseph HUDGINS	17	1992	W	W/M
Herman Lee HUGHES, Jr.	17	1994	B	U/M
Ted Benjamin POWERS	16	1990	W	W/M

TEXAS				
Steven Brian ALVARADO	17	1991	L	L/M+L/F
Randy ARROYO	17	1997	L	L/M
Mark ARTHUR	17	1996	B	L/M
Mauro Morris BARRAZA	17	1989	L	W/F
Napoleon BEAZLEY	17	1994	B	W/M
Charles BURNELL	17	1993	B	U/U
Edward B. CAPETILLO	17	1995	L	U/U
John Curtis DEWBERRY	17	1994	W	W/M
Justin Wiley DINKINS	17	1994	W	U/U
Anthony Jerome DIXON	17	1994	B	W/F
Gary L. GRAHAM	17	1981	B	W/M
Anzel JONES	17	1995	B	U/U
T.J. JONES	17	1994	B	U/M
Miguel Angel MARTINEZ	17	1991	L	W/M+2L/M
Glenn Charles McGINNIS	17	1990	B	W/F
Laquan MILES	17	1991	B	2B/M
Gerald Lee MITCHELL	17	1985	B	W/M
Jose Ignacio MONTERRUBIO	17	1993	L	L/F
Oscar ORTIZ III	17	1994	L	L/M
Toronto PATTERSON	17	1995	B	B/F
Efrian PEREZ	17	1993	L	L/F+W/F
Johnny REY	17	1991	L	W/M
Oswaldo Regaldo SORIANO	17	1992	L	U/M
Raul VILLAREAL	17	1993	L	L/F+W/F
Nanon McKewn WILLIAMS	17	1992	B	W/M
Robert James WILLS	17	1985	B	W/F
VIRGINIA				
Chauncey JACKSON	16	1994	B	B/M
Steve E. ROACH	17	1993	W	W/F
Douglas Christopher THOMAS	17	1990	W	W/F+W/M
Dwayne Allen WRIGHT	17	1989	B	B/F

Key: A=Asian; B=Black; L=Latino; W=White; F=Female; M=Male; U=Unknown;

Source: Victor L. Streib, *The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes*. Professor Streib updates this regularly. Website: <http://www.law.onu.edu/faculty/streib/juvdeath.htm>

1. Joseph Green Brown, also known as Shabaka, was wrongly convicted and sentenced to death in Florida in 1974. He was released 13 years later.
2. Interview on NBC-TV "The Today Show" with Matt Lauer, Columbus, Ohio
3. The term "juvenile offender" is used throughout this paper to denote a person convicted or accused of an offence committed when they were under 18 years old.
4. From: Victor L. Streib. *Death Penalty for Juveniles*. Indiana University Press, 1987. References to pre-1977 executions of juvenile offenders in the USA in this report are made possible by Professor Streib's research.
5. Interview in Ellis Unit 1, Huntsville, Texas, conducted by Carmilla Floyd of *Barnens Värld* (Children's World), Sweden, June 1998. Text in box from same interview.
6. For an outline of Amnesty International's concerns about, and recommendations on, the death penalty as a whole in the USA, see *USA: Rights for All*, AI Index: AMR 51/35/98, October 1998. For more information on the organization's concerns on non-death penalty aspects of juvenile justice in the USA, see *Betraying the Young: Children in the US Justice System*, AI Index: AMR 51/60/98, to be issued on 20 November 1998.
7. Sonia Jacobs was speaking at a meeting "The Human Face of Capital Punishment" on 6 June 1998 in Dallas, Texas, attended by Amnesty International. The meeting was organized by 'The Journey of Hope... from Violence to Healing', a US organization led by family members of murder victims.
8. Dissenting opinion in *Michael Domingues v. The State of Nevada*, 31 July 1998. The last known executions of juvenile offenders in the countries that Chief Justice Springer cites were in 1986 (Bangladesh), 1987 (Iraq), 1992 (Iran), and 1997 (Pakistan and Nigeria). The treaty he refers to is the International Covenant on Civil and Political Rights.
9. Additional Protocols I and II to the Geneva Conventions of 12 August 1949 relating to the protection of victims of armed conflict not of an international character, articles 77.5 and 6.4 respectively.
10. *Gregg v. Georgia* (1976). In 1972, *Furman v. Georgia*, the Court had stopped executions in the USA after finding that the death penalty was being imposed in a manner that violated the constitution.
11. Article 18 of the United Nations Convention of the Law of Treaties (Vienna, 1969)
12. The reservation reads: "*The United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.*"
13. Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Portugal, Spain, Sweden.
14. See William A. Schabas, *The Abolition of the Death Penalty in International Law*, Second Edition, Cambridge University Press, 1997, page 90
15. California, Colorado, Connecticut, Illinois, Kansas, Maryland, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Tennessee and Washington have a minimum age of 18. Alaska, District of Columbia, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin do not have the death penalty.
16. The 24 states are (minimum age, either by statute or (US or state Supreme) court ruling, in brackets): **Alabama** (16), **Arizona** (16), **Arkansas** (16), Delaware (16), **Florida** (16), **Georgia** (17), Idaho (16), Indiana (16), **Kentucky** (16), Louisiana (16), **Mississippi** (16), **Missouri** (16), Montana (16), **Nevada** (16), New Hampshire (17), **North Carolina** (17), **Oklahoma** (16), **Pennsylvania** (16), **South Carolina** (16), South Dakota (16), **Texas** (17), Utah (16), **Virginia** (16), Wyoming (16). States in bold had juvenile offenders on death row in June 1998.

17. In the same way as the USA takes the position that it will accept certain international standards only in so far as they do not conflict with its own domestic laws and constitution, some Islamic states, for example Iran and Saudi Arabia, have made the general reservation when ratifying the CRC that they only accept its provisions to the degree that they do not conflict with Islamic law.

18. For example, the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty ("*Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death*"). UN Economic and Social Council resolution 1984/50, adopted 25 May 1984 and endorsed by the UN General Assembly in resolution 39/118, adopted without a vote on 14 December 1984, another sign of the strong consensus among nations that this provision should be observed.

19. Inter-American Commission on Human Rights, Report No 3/87, Case No 9647/USA

20. *Thompson v. Oklahoma* (1988) with reference to *Trop v. Dulles* (1958)

21. *Weems v. United States* (1910)

22. *Stanford v. Kentucky*. This ruling actually covers two cases, that of Kevin Stanford (17 at time of crime, still on death row) and Heath Wilkins (16 at crime). The latter case was *Wilkins v Missouri*.

23. International Commission of Jurists. *Administration of the Death Penalty in the United States*.

24. *Weems v. United States* (1910)

25. *Trop v. Dulles* (1958)

26. *Executioner's Myth* - Los Angeles Times, 5 May 1997

27. *Allen v State*

28. *Death penalty to be sought for youths in tourist killing*. Sun-Sentinel, 23 October 1993

29. *May v. Anderson* (1953)

30. According to the UN Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules"), one element of juvenile justice should be the "protection of the young" (Rule 1.4), and its objective should be the "well-being of the juvenile" (Rule 5.1). Juvenile justice should consider, amongst other things, the "circumstances and the needs of the juvenile" (Rule 17.1a). The Beijing Rules were adopted by the UN General Assembly on 29 November 1985 (resolution 40/33).

31. Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, *Confronting Youth Crime* 7 (1978), cited in *Eddings v. Oklahoma* (1982)

32. *Dorsie Lee Johnson v. Texas*

33. *Eddings v. Oklahoma* (1982)

34. *USA: The death penalty and juvenile offenders*. AI Index: AMR 51/23/91, October 1991

35. Victor Streib, quoted in *Dead Teen Walking*, *Time* magazine, 19 January 1998.

36. Presented in the ABA's *amicus curiae* brief in *Stanford v. Kentucky*.

37. *The Wall Street Journal*, 20 February 1997. Dennis Brutus, poet and former anti-apartheid activist, is now a university professor in Pittsburgh, USA.

38. From letters to his sister Tonya Cropper, sent from death row, 1997.

39. For further information see *Fatal Flaws: Innocence and the Death Penalty in the USA* (AI Index: AMR 51/69/98, to be issued in November 1998).

40. While the District Attorney was technically correct to say that Sean Sellers was 17 (at the trial), his words were somewhat misleading as Sean Sellers was 16 when the crimes were committed.

41. US Court of Appeals for the 10th Circuit, 4 February 1998 (*Sellers v. Ward*).

42. *Dwayne Allen Wright v. Ronald J. Angelone*, 1998