

For immediate release
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Texas seeks to execute man with the mind of a 7 year old

The State of Texas has stated that it intends to execute Johnny Paul Penry on 16th November 2000. Penry has been on death row since 1980 for the rape and murder of Pamela Carpenter in 1979; he has an I.Q. of 54, and the mind of a 7year old. Presidential candidate George W. Bush will be asked to grant clemency in the case.

Penry endured physical abuse by his schizophrenic and alcoholic mother throughout his childhood. At the age of 2, he was hospitalised due to cigarette burns and scalds. Penry was institutionalised aged twelve and has been diagnosed with "organic brain syndrome with mental retardation and behavioural disturbances". A teacher stated that "He couldn't reason logically, he had trouble learning in every area that we taught". As an adult, he did not know the days of the week or the months of the year, or his date of birth. He still can barely read or write.

Outcry has surrounded Texas's decision to execute. Following the rejection of an appeal to the Fifth Circuit Court of Appeals in New Orleans, an appeal was lodged with the **United States Supreme Court** arguing that "evolving standards of decency" within the USA meant that it was no longer acceptable to execute those suffering from mental retardation.

An amicus curiae brief was drafted by Amicus, together with the Bar Human Rights Committee of England and Wales. The brief argues that

- all other Common Law countries forbid the execution of mentally retarded persons
- the international prohibition on the execution of juveniles is relevant to a man with the mental age of a 7 year old
- international law would forbid executing a man who had been on death row for 20 years, as this would amount to cruel and unusual punishment

The **Inter American Commission on Human Rights** has requested that Texas stay the execution whilst they consider the case, following an appeal lodged by the BHRC and Amicus. The appeal argues that to execute Johnny Paul Penry would be a violation of the American Declaration of the Rights and Duties of Man, which has been signed by the USA.

The **European Union** has issued a demarche against the United States - a formal diplomatic complaint that the 15 member states think that the execution of Mr Penry would be wrong.

The final decision rests with the Texas Board of Pardons and Paroles who will make their recommendation to **Governor George Bush**. Penry's lawyers have presented an appeal for clemency. However, whilst he has been in office, Bush has presided over the executions of 145 people - more than any other governor - and has never granted clemency.

-ENDS-

Background:

The legal proceedings : The first trial occurred in 1980. Psychiatrists from both sides accepted that Penry was of extremely limited mental ability, and that he was unable to learn from his mistakes. The defence expert stated that he was mentally retarded, from brain damage. He was found guilty of the offence. The jury next had to consider whether to give a sentence of life without parole, or the death penalty. Under Texas law at the time, they were only allowed to consider whether he caused the death, whether he was likely to commit further offences, and whether there had been any provocation. They were not allowed to consider his mental retardation, and they did not know that a life sentence had no possibility of parole. They voted for death.

In 1988, Penry got to within 13 hours of execution when the Supreme Court stayed the killing. In an appeal that generated national publicity in the USA, they decided that the jury were not properly able to consider his mental retardation as a mitigating factor, and ordered a new trial. However, they decided that the execution of those with mental retardation did not amount to a violation of the Eighth amendment ban on "cruel and unusual" punishment. They were asked to consider "evolving standards of decency", and concluded that "at present, there is insufficient evidence of a national consensus against executing mentally retarded people convicted of capital offenses for us to conclude that it is categorically prohibited by the Eighth Amendment". At the time, only 2 death penalty states prevented such executions. Since that date, 11 states have enacted legislation to protect the mentally retarded.

Following that decision of the Supreme Court, Texas changed the law, but not before Penry was retried. Consequently, the jury only got a long and rambling instruction from the judge about the consideration of mitigating factors, but were still told to consider the other three questions. He was convicted again, and sentenced to death.

Note to Editors:

1. To arrange an interview with one of the lawyers in the USA or the UK, please contact the Bar Human Rights Committee on 00 44 20 7395 9508, bhrc@compuserve.com or Amicus on 00 44 20 7404 8828
2. The Bar Human Rights Committee is the international human rights arm of the Bar of England and Wales. It is concerned with defending the rule of law and internationally recognised human rights standards.
3. Amicus is a charitable organisation which aims to provide assistance to those practising in the field of capital defence in the US